HOW THE ACORN UNFOLDS IN EDUCATION:

Mapping the Legal and Normative Orders that Interact to Inform First Nation Youths' Right to Education through Legal Pluralism and Critical Legal Pluralism

by

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A Thesis submitted to the Faculty of Graduate Studies of

The University of Manitoba

in partial fulfilment of the requirements of the degree of

MASTER OF LAWS

Faculty of Law

University of Manitoba

Winnipeg

ABSTRACT

The current education mandate for First Nations in Canada has been described as a "inexcusable educational-rights vacuum" for which First Nation students and communities pay a "heavy price". To better gauge the effectiveness of the current education mandate, this study employed the socio-legal approaches of legal pluralism and critical legal pluralism and found that no participant felt that their right to education was fully actualized. From the perspective of First Nation students, their right to education necessarily includes: adequate funding for post-secondary education, learning from an Indigenized curriculum, and learning in an environment that is free from discrimination and racism. This study also found that the participants of the study situate themselves in a plurality of legal orderings. They draw on Treaties, international human rights laws, and First Nation laws to inform their perceptions on their right to education, even though these legal orderings and laws are not necessarily validated or recognized by Canada through official state law.

ACKNOWLEDGEMENTS

The decision to pursue my LL.M. in Aboriginal Law at the Faculty of Law, University of Manitoba, was, in part, prompted by a recognition that my own education failed to teach me the dark, violent history of Canada's origins and its broken relations with Indigenous peoples. It was also prompted by a desire to personally participate in some aspect of reconciliation and truth-telling, which necessarily involves confronting the hard truths of my hometown, Thunder Bay, Ontario.

There are a number of teachers, who have assisted me throughout this ongoing re-education, to whom I remain indebted. First, I would to thank the participants of the study for sharing and entrusting with me their stories. I hope that I have presented them in a respectful way and honoured them throughout this thesis. Second, I am deeply grateful for the ongoing support and patience of my thesis advisor, Dr. David Milward, who even, after having had taken a new position at the Faculty of Law, University of Victoria, stayed on in this capacity when I required an extension to complete my thesis work. Third, many thanks to Aboriginal Initiatives, Native Access Program, and Aboriginal Cultural & Support Services at Lakehead University. Fourth, to my internal and external reviewers, Professor Brenda Gunn and Dr. John Borrows, respectively, many thanks for taking the time to review my thesis and providing such invaluable insights, comments, and support. Finally, to my partner, Jens, and my daughter, Sybil, who had to adapt to many days and evenings of 'life without Momma'; thank you for permitting me the time to complete this work.

DEDICATION

This thesis is dedicated to my daughter, Sybil.

May you learn to live a good life.

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Between 2000 and 2011, seven First Nation youths between the ages of fifteen and twenty-one died in Thunder Bay, while pursuing their secondary education.[1] These youths either did not have access to a provincial or First Nation high school within their home communities (as secondary education was not available on their respective reserves) or the schools they did have access to were inadequate in meeting their needs.[2] Even though each came from communities that are signatories to treaties that contain educational clauses (ostensibly securing them to a right to education), these youths were forced to leave their friends and families and move hundreds of kilometres away from their homes to an unknown city in hopes of obtaining a high school diploma.[3]

At the request of Nishnawbe Aski Nation (NAN), a political organization that represents forty-nine First Nations in northern Ontario, a discretionary inquest was called in 2012 by Ontario's Chief Coroner, pursuant to section 20 of the Ontario *Coroners Act* (the "*Seven First*

[1] See Ontario, Office of the Chief Coroner, *Inquest - Seven First Nations Youths 2016* (Thunder Bay: Ministry of Community Safety & Correctional Services, 2016) (Dr. David Eden), online: <https://www.mcscs.jus.gov.on.ca/english/Deathinvestigations/Inquests/Verdictsandrecommendations/OCCVerdictsSevenFirstNationsYouths.html#Reconciliation> [*Seven First Nations Youth Inquest*]. See also *Inquest into the deaths of Seven First Nations Youths: Jethro Anderson, Reggie Bushie, Robyn Harper, Kyle Morrisseau, Paul Panacheese, Curran Strang, Jordan Wabasse*, Verdict Explanation, 2016 CanLII 66257 (ON OCCO), online: <www.aboriginallegal.ca> [*Inquest Verdict Explanation*].

[2] See generally Tanya Talaga, *Seven Fallen Feathers: Racism, Death, and Hard Truths in a Northern City* (Toronto: Anansi, 2017) [Talaga, *Seven Fallen Feathers*]; see also City of Thunder Bay, Joint Media Release, "North Caribou Lake First Nation signs Friendship Agreement with Fort William First Nation, City of Thunder Bay and Thunder Bay Police Services" (29 September 2017), online: <www.thunderbay.ca>.

[3] *Inquest Verdict Explanation*, *supra* note 1; Talaga, *Seven Fallen Feathers*, *ibid* at 18; *APTN*, "River of Tears", *infra* note 19.

Nations Youths Inquest").[4] The inquest jury was mandated with looking into the circumstances surrounding the deaths of these seven youths and making recommendations aimed at preventing future deaths of high school students who move from their remote First Nations to Thunder Bay.[5] Though there were commonalities among the deaths, especially among those youths whose bodies were recovered from rivers (earning the waterways of Thunder Bay the ubiquitous title 'river of tears'),[6] each death was unique. The jury determined one youth died as a result of alcohol poisoning, another due to no known anatomical or toxicological reasons (natural causes being a possible cause of death), and five due to drowning with alcohol playing a variable role in each case.[7] In reaching its verdict, the jury determined that a lack of preparation in transitioning students to high school and the challenges they face while at school, including insufficient support and supervision, the loss of family ties, dealing with racism, adaptation to the urban environment, and risky behaviours, such as underage alcohol consumption, were central to their deaths.[8] These underlying reasons, among others, put high school students from remote First Nations at a much higher risk of death than other students in Thunder Bay; findings that

[4] Ministry of Community Safety and Correctional Services, Archived News Release, "Chief Coroner Calls Joint Inquest Into The Deaths of Seven Aboriginal Youth in Thunder Bay (31 May 2012), online: <www.newsontario.ca>.
[5] *Seven First Nations Youth Inquest*, *supra* note 1.
[6] See e.g. *APTN*, "River of Tears", *infra* note 19; *Maclean's*, "River of Tears", *infra* note 19.
[7] See *Inquest Verdict Explanation*, *supra* note 1 at 2 (it should be noted that none of these deaths were conclusively ruled as suicide. However, suicide remains a possible "manner of death" for three of the youths who died by drowning. In these three instances, the jury ruled the manner of death as "Undetermined" as it was not able to meet the legal standard of proof required to solely select Suicide because the evidence showed that Suicide was equally possible to another manner(s) of death, be it Natural, Accident, or Homicide).
[8] *Inquest Verdict Explanation*, *supra* note 1 at 7 (there were four major themes that the evidence at the inquest was largely based, which were used to inform the 145 jury recommendations, including: historical and legal context (e.g. the relationship between First Nations and the Crown and the "funding model for education delivery"), preparation for high school (e.g. "the realities and challenges of growing up on reserve"), challenges while attending school (as mentioned above), and response to missing student or student death (e.g. "prompt and effective response by agencies and individuals when a student is reported missing, or dies").

informed the 145 jury issued recommendations directed at all levels of government as well as a number of education mandated First Nation organizations and schools in northwestern Ontario.[9]

Thunder Bay is situated at the upper reach of Lake Superior in the northwest region of Ontario. The city has a population of 107,909 and resides in the heart of Anishinaabe territory;[10] specifically, on the traditional lands of Fort William First Nation whose reserve of approximately fifty-eight square kilometres directly neighbours Thunder Bay.[11] The vast majority of its citizens are white,[12] English-speaking,[13] and of European ancestry.[14] People who identify as Indigenous,[15] including First Nations, Métis, and Inuit, make up approximately thirteen percent of the city's total population.[16] This makes Thunder Bay home to the highest proportion of Indigenous persons living in any major city across Canada.[17]

The highest number of police-reported hate crimes directed against Indigenous people is also found in Thunder Bay.[18] In recent years, the city has garnered significant national and

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[9] *Seven First Nations Youths Inquest*, *supra* note 1.
[10] Statistics Canada, Census Profile, 2016, Thunder Bay, City, Ontario, online: <www12.statcan.gc.ca> [*Census Profile, Thunder Bay*].
[11] Statistics Canada, Census Profile, 2016, Fort William 52, Indian reserve, Ontario, online: <www12.statcan.gc.ca>.
[12] *Census Profile, Thunder Bay*, *supra* note 10 (wherein 4,705 individuals in Thunder Bay, or 4.5% of the population, identify as being visible minorities or non-white. But, note that, for the purposes of the census, this number excludes Aboriginal persons).
[13] *Census Profile, Thunder Bay*, *supra* note 10 (wherein English, as a first official language, is spoken by 103,440 individuals in Thunder Bay, or 97.4% of the population; and 90,135 individuals in Thunder Bay, or 84.9% of the population, consider English as their mother tongue).
[14] *Census Profile, Thunder Bay*, *supra* note 10 (wherein 86,065 individuals in Thunder Bay, or 81.8% of the population, identify as being of European ancestry, including, among others, English, Irish, Scottish, French, Italian, German, and Finnish).
[15] For the purposes of this thesis, the term "Indigenous" is used to refer to the first inhabitants of Canada, including First Nations, Métis, and Inuit.
[16] *Census Profile, Thunder Bay*, *supra* note 10 (wherein 13,490 individuals in Thunder Bay, or 12.8% of the population, identify as being Aboriginal, including First Nations, Métis, and Inuit).
[17] See generally *Census Profile, Thunder Bay*, *supra* note 10 (wherein other major Canadian cities, such as Winnipeg, Saskatoon, and Regina, have proportionately fewer numbers of Aboriginal persons living in their cities, respectively being, 12.2%, 10.9%, and 9.9%). See also The Canadian Press, "Key highlights from latest release of 2016 census data" *CBC News* (25 October 2017), online: <www.cbc.ca>.
[18] See Statistics Canada, *Police-Reported Hate Crime in Canada, 2015*, by Ben Leber, Catalogue No 82-002-X (Ottawa: Industry Canada, 2017) 11 (wherein it is stated:

> The highest rate of police-reported hate crime among [Canadian Major Cities] in 2015 was recorded in Thunder Bay (22.3 per 100,000 population). The rate of police-reported hate crime in Thunder Bay was mostly the result of 10 incidents

international media attention and has been the subject of numerous headlines in regard to its relations with Indigenous peoples.[19] Of significant concern expressed by Indigenous people in Thunder Bay is the racism and violence they face on a day-to-day basis while living in the city.[20]

One recent incident, which has drawn considerable attention nationally and has been asserted by some to be a racially motivated crime, involves a white man tossing a trailer hitch out of the window of a moving vehicle striking a First Nations woman in the abdomen as she was walking along the sidewalk with her sister. As the trailer hitch struck her and as the vehicle continued past the women, the words, "I got one", were heard. The woman's name was Barbara Kentner. She later died in hospital, as a result of her injuries. The man's name is Brayden Bushby. He faces second degree murder charges.[21]

Reports of objects being thrown out of windows at Indigenous people from passing vehicles is not uncommon in Thunder Bay; young Indigenous persons often report being regularly 'garbaged' by such things as eggs, food and drink containers, even beer bottles.[22] They

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against Aboriginal populations, which accounted for 29% of the total anti-Aboriginal hate crimes reported in Canada in 2015).

[19] See e.g. Jorge Barrera, "Death and questions along Thunder Bay's 'river of tears'", *APTN National News* (19 June 2017), online: <www.aptnnews.ca> [*APTN*, "River of Tears"]; Nancy Macdonald, "A river of tears", *Maclean's* (7 July 2017), online: <www.macleans.ca> [*Maclean's*, "River of Tears"]; "Canada police watchdog steps up racism inquiry", *BBC News* (12 September 2017), online: <www.bbc.com>.

[20] *Ibid;* Talaga, *Seven Fallen* Feathers, *supra* note 2 at 141 and 185; *Inquest Verdict Explanation*, *supra* note 1 at 10.

[21] At the time of writing, Brayden Bushby has yet to be tried and heard on these charges. See "Brayden Bushby murder charge in death of Barbara Kentner back in court in early 2018", *CBC News* (8 December 2017); Jody Porter, "'Vision of mutual respect can help Thunder Bay, Ont., in wake of Barbara Kentner's death, ONWA says" *CBC News* (12 July 2017), online: <www.cbc.ca>.

[22] Ontario, Ontario Human Rights Commission, *Impact Today, Investment for Tomorrow: Ontario Human Rights Commission Annual Report 2017/18* (30 June 2018), online: <www.ohrc.on.ca> at 20 (wherein the commission heard concerns of everyday racism in Thunder Bay, "[m]ost strikingly, people talked about being 'garbaged' – literally having garbage thrown at them while walking down the street, all because of their Indigenous ancestry"). See also Talaga, *Seven Fallen Feathers*, *supra* note 2 at 141 and 185; Jody Porter, "Trailer hitch thrown in assault of First Nations woman in Thunder Bay, Ont.", *CBC News*, (1 February 2017), online: <www.cbc.ca>; "Monday vigil marks one year since attack on Barbara Kentner", *CBC News*, (29 January 2018), online: <www.cbc.ca>; Willow Fidler, "Thunder Bay police seek help identifying suspects after eggs thrown at Indigenous men", *APTN National News* (2 March 2018), online: <www.aptnnews.ca>; Kristy Kirkup, "Safety of Indigenous youth focus of emergency meeting in Thunder Bay", *CTV News* (6 July 2017), online: <www.ctvnews.ca>. See also Thunder Bay Police Service, Media Release, "Trailer Hitch Assault Incident Update" (6 February 2017), online: <www.thunderbaypolice.ca> (wherein it is stated:

also report being the routine target of verbal abuse by passersby, including being called "stupid savage" or told "Indians go home".[23] In light of the violence, verbal abuse, and racism experienced by Indigenous people in Thunder Bay and in light of the deaths of the seven First Nation youths, who are named at the outset of this chapter, First Nation leaders and parents have been questioning whether they should be sending their children to the city for school.

This sentiment is reflected in the words of NAN's Grand Chief Alvin Fiddler when he said:

> Our children should not have to choose between their education and their safety, and many families are in fear of sending their children to school in Thunder Bay in September.[24]

But, does this have to be the choice: education or safety? Should high-school aged children have to leave their homes to attend school in an unknown city even when they may not be well prepared for independent urban living? Or, should their secondary education be available within or nearer to their own communities? What purposes do the education clauses within the numbered treaties serve with respect to the education of First Nations? Can they be relied upon to provide any guidance in resolving the dilemma posed by Grand Chief Alvin Fiddler?

Though the recent deaths of young First Nation students and the challenges they faced in transitioning to the "geographically and culturally distant city" that is Thunder Bay is not the specific problem, nor are these the precise research questions posed in this study, it is this context that inspired this study.[25]

> The Thunder Bay Police are aware of the reporting by members of the aboriginal community that they have been victim to objects being thrown at them by person(s) in passing vehicles. The police are also very aware that many incidents go unreported).

[23] *Inquest Verdict Explanation*, *supra* note 1 at 10.
[24] Nishnawbe Aski Nation, News Release, "NAN Announces Action Plan to Address Student Safety" (6 July 2017), online: <www.nan.on.ca>.
[25] *Inquest Verdict Explanation*, *supra* note 1 at 7.

PURPOSE OF THE STUDY

The purpose of this study is twofold. First, the general intent of the research project is to understand the right to education, including its scope and content, from the perspective of First Nation students who live in Thunder Bay.[26] Second, this study specifically aims to identify, document, and map the various sources of law that First Nation students draw on when conceptualizing their right to an education. To achieve these objectives, this study employs the socio-legal approaches of legal pluralism and critical legal pluralism.

Within the Canadian legal landscape there are multiple 'recognized' legal orders that address educational rights for First Nations, including international, treaty, constitutional, and federal laws. There are also 'unrecognized' legal orders, including First Nation legal traditions and laws.[27] By investigating the manner in which these various legal orders intersect to inform First Nation students' understanding on their right to an education, in addition to understanding how they interpret that right (including what that right ought to be), the extent to which their rights are being actualized may become better understood. As well, the effectiveness of today's educational laws, policies, and practices may be better ascertained.

SPECIFIC RESEARCH QUESTIONS

The specific research questions of this study are divided into four sections that generally address the following: (a) availability and accessibility to education at every level, including pre-primary, primary, secondary, and post-secondary education; (b) barriers particular to post-

[26] For ease of reference I refer to all participants in the study as "students" even though they may not, presently, be attending school. It should also be noted that this study considers all levels of schooling, including pre-school, grade school, secondary school, and post-secondary school, though the emphasis is on post-secondary education.
[27] For greater discussion on the difference between 'recognized' and 'unrecognized' laws, and how these terms are used throughout this thesis, see Part II ("The 'Unrecognized' Legal Landscape") and Part III ("What is Legal Pluralism") at Chapter Two.

secondary education; (c) discrimination and racism in education; and (d) perceived definitions on the right to an education, including its scope and content. Each participant in the study were asked a series of questions (see Appendix A: Interview Guide), which were designed to achieve the following specific goals:

1. To understand how First Nation students give meaning to the concept of a right to education, including the scope and content of such right.
2. To understand how these students view their right to education in comparison to any educational rights that non-Indigenous students may hold.
3. To determine, based on the participant's understanding of their right, the extent to which this right to education has been fulfilled, or not, through their own educational experiences.
4. To determine the 'recognized' and 'unrecognized' legal orders that First Nation students draw on when conceptualizing their right to education.
5. To learn the extent to which First Nation students are acting as legal agents actively engaged in the creation of their rights versus rights merely being interpreted for them.

RESEARCH APPROACH

Upon receiving research ethics approval at the University of Manitoba as well as Lakehead University (see Appendix B: Research Ethics Board Approvals), in-depth, face-to-face interviews were conducted with First Nation persons living in Thunder Bay, who were studying, had studied, or intended to study at a college or university.

Participants were recruited through the assistance of Aboriginal Initiatives; a division of Lakehead University that collaborated on this project, principally by advertising and promoting the study and recruiting participants. Four individuals, as identified by pseudonyms throughout

this thesis, ultimately participated. Their answers to the semi-structured questions, as described above, were recorded and then later transcribed verbatim for data coding, analysis, and interpretation purposes. It is these four interviews that represent the method of data collection for this study and inform the basis for its overall findings.

The qualitative methodological approach of a participatory action research (PAR) project was utilized, to the extent possible, throughout the research process. As will be further discussed at Chapter Four, this study was challenged in meeting all key principles and ideals of a PAR project, however, a number of them were still realized. Additionally, the grounded theory method was utilized at the data coding, analysis, and interpretation stages of the study, which approach is well aligned with decolonizing methodologies and PAR principles.

NEED FOR THE STUDY

This study will help address existing gaps in literature on the right to education for First Nations. While there is a plethora of research regarding Indigenous education, which explores the barriers, conditions, or factors that contribute to Indigenous students' lack of educational successes,[28] and considerable research that examines Indigenous students' school experiences, including their perceptions on post-secondary education,[29] no research has yet been undertaken

[28] See e.g. Gail Winter, *Breaking the Camel's Back: Factors Influencing the Progress of First Nation Postsecondary Students Studying in Thunder Bay, Ontario, Canada* (PhD Education Thesis, University of Toronto, Department of Adult Education, Community Development, and Counselling Psychology, 1996) [unpublished] [Winter, *Camel's Back*]; Andrea Williams, *Sioux Lookout District First Nations Education: Factors Influencing Secondary School Success*, (MA Thesis, Trent University, Canadian Studies and Native Studies MA Program, 2000) [unpublished]; Jan Hare & Michelle Pidgeon, "The Way of the Warrior: Indigenous Youth Navigating the Challenges of Schooling" (2011) 34:2 Can J Education 93 at 97; Heather Finlay, *"Just a Pepper in a Bunch of Salt": Aboriginal Students' Stories of Schools* (M.Ed., University of Regina, Curriculum and Instruction, 2014).

[29] See e.g. Winter, *Camel's Back*, *ibid*; Angela Nardozi, *Perceptions of Postsecondary Education in a Northern Ontario First Nation Community* (MA University of Toronto, Ontario Institute for Studies in Education, 2011) [unpublished]; Jann Ticknor, *Learning within the Ivory Tower: Exploring Aboriginal University Student Experiences* (MA Thesis, Dalhousie University, 2005) [unpublished]; Marlis Bruyere, *An Interpretive Study of Native Women in Post-Secondary Education* (M.Ed Lakehead University, Faculty of Education, 2004) [unpublished]; Michael DeGagné, *Interaction without Integration: The Experience of Successful First Nations Students in Canadian Post-Secondary Education* (PhD Education Administration Thesis, Michigan State University,

that attempts to understand the educational experiences and expectations of First Nations students from a rights-based or legal pluralist perspective. I believe there is an important distinction to draw between general perceptions on education versus perceptions on rights to education. A student's understanding on their right to education can offer a unique perspective on gauging the effectiveness of existing educational laws and policies in Canada and informing current educational debates. Moreover, as will be demonstrated in the next chapter, as right holders, these students have an active role to play in defining and shaping the very laws to which they feel beholden.[30]

The results of this study may also help to delineate the right to education; one that is congruent with recognized Canadian laws. Very little research has been undertaken in Canada that aims to determine what a right to education means for First Nations, whether the right is investigated as a treaty,[31] Aboriginal, or inherent right. This is an important area of research. First Nation communities have long asserted education as a treaty as well as an inherent right.[32] But, as will be further articulated in the next chapter, the Canadian government continues to circumvent its obligations. In some instances, principally with respect to post-secondary education, the government asserts that there is no right to continuing education at all.[33] No legal precedent has yet been established by a Canadian court that resolves the debate as to whether there is a treaty, Aboriginal, or inherent right to education benefiting the

2002); Margaret Dobson, *Journey to the Honour Song: Stories of First Nations Student Success* (PhD Philosophy, University of Calgary, Graduate Division of Education Research, 2012) [unpublished].
[30] See Part III ("What is Legal Pluralism?") and Part IV ("Critical Legal Pluralism") at Chapter Two.
[31] Sheila Carr-Stewart, *Perceptions and Parameters of Education as a Treaty Right within the Context of Treaty 7* (PhD Philosophy Thesis, University of Alberta Department of Educational Policy Studies, 2001) [unpublished] at 5 [Carr-Stewart, *Education and Treaty 7*].
[32] Carr-Stewart, *Education and Treaty 7*, *ibid* at 5.
[33] See Chapter Two; see also Carr-Stewart, *Education and Treaty 7*, *supra* note 31 at 5, 11 and 24.

affirmation and protection of section 35(1) of the *Constitution*.[34]

SIGNIFICANCE OF THE STUDY

Indigenous people move to Thunder Bay for reasons primarily related to health, family, work, and education.[35] But, it is this latter reason which is cited as a "greater consideration".[36] More than any other comparable city in Canada, education is the main driving force behind Indigenous people moving into Thunder Bay from their remote home communities.[37] Combining this remarkable statistic with the environment that young First Nation students face while living in the city (as articulated within the opening paragraphs of this chapter), this study was intentionally designed to understand the right to education from the perspective of First Nation students who live in Thunder Bay.

A study that generally aims to better understand the right to education for First Nations is timely; especially, one that is focused on Thunder Bay. This study is particularly pertinent given that the *Seven First Nations Youths Inquest* has concluded and all levels of government and various education mandated First Nation institutions, organizations, and schools are now tackling how best to go about implementing the 145 recommendations that were directed to them by the

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[34] *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Constitution*] (wherein it is stated that, "[t]he existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed"). Also, for discussion as to whether a Canadian court would recognize education as a treaty right, or as an Aboriginal or inherent right under section 35(1) of the *Constitution*, see section "The Constitution: Aboriginal and Treaty Rights" under Part I ("The 'Recognized' Legal Landscape") at Chapter Two.

[35] Environics Institute, *Urban Aboriginal Peoples Study: Thunder Bay Report* (Toronto: Environics Institute, 2011), online: <www.uaps.ca> at 16 and 19 [*UAPS Thunder Bay*].

[36] *UAPS Thunder Bay*, *ibid.*

[37] *UAPS Thunder Bay*, *ibid* at 35 (as compared to the following cities: Toronto, Winnipeg, Edmonton, Vancouver, Saskatoon, Halifax, Montreal, Calgary, Regina, and Ottawa. However, Regina and Halifax were cited as being comparable in numbers. The top responses for Aboriginal people in Thunder Bay to the question: "what is the most important reason why you *first* moved to [Thunder Bay]?" were: (1) Education/to go to school (49%); (2) Family (37%); and (3) Work/to find a job (27%)).

jury,[38] which collectively aim "to reduce the risk of future deaths of high school students from remote First Nations" in Thunder Bay.[39] The results of this study may help inform the measures that the parties are currently undertaking in implementing the jury recommendations.[40] In particular, it is anticipated that the results of this study will provide some further insight into the following topics that were identified by the presiding coroner to aid in the interpretation of the jury's recommendations: (1) respect for treaty relationships, (2) on-reserve environments, (3) preparation of transition to the city, (4) high school environments, and (5) funding.[41]

More generally and broadly, I believe the results of this study will also help gauge the effectiveness of the current education mandate for Indigenous students across Canada and help transform educational laws, policies, and practices of the day.

OVERVIEW OF CHAPTERS

This introductory chapter sought to establish the context in which the present study, *How the Acorn Unfolds in Education*, was conceived. It provided a brief description of the environment that First Nation students face when they move to Thunder Bay for school and asserts that this study is timely, contextually relevant, and will help fill the gap in existing literature on the right to education for First Nations.

In Chapter Two, I discuss legal pluralism and critical legal pluralism and provide an explanation as to how these socio-legal approaches were specifically employed in the research

[38] To see how the parties are faring in implementing the recommendations, see Jonathan Rudin & Caitlyn Kasper, "First Nations Youth Inquest: 2017 Report Card on Recommendations", Aboriginal Legal Services (23 August 2017), online: <www.aboriginallegal.ca/fny>.
[39] *Inquest Verdict Explanation*, *supra* note 1 at 8.
[40] Recognizing, however, that the goals of these two exercises, the *Seven First Nations Youth Inquest* and this study, are ultimately dissimilar. Whereas, the focus of the *Seven First Nations Youths Inquest* is on preventing the future deaths of high school students in Thunder Bay, this study aims to better understand what the right to education means from the perspective of First Nations students with a focus, principally, on post-secondary education.
[41] *Inquest Verdict Explanation*, *supra* note 1 at 8.

project. I then identify the various 'recognized' and 'unrecognized' legal orders that currently make up the education mandate for Indigenous people in Canada, which represent some of the legal orders that the participants in the study draw on to inform their thoughts on their right to education.

In Chapter Three, I situate myself as an outsider in the study, given that I am a white, non-Indigenous, novice researcher. After careful consideration of current literature on colonialism in academia and the appropriateness of 'outsiders' conducting 'insider' research, I answer the question of whether it is appropriate for me to conduct this study with a resounding: maybe. So long as certain key goals and principles are employed throughout the study, such as those found within a PAR project, the colonizing effects caused by my outsider status could be ameliorated. However, I also acknowledge in Chapter Three that this is not a question that I, personally, can answer. Rather, it is for the participants of the study, the community members who I collaborated with on the study, and the First Nation communities of northern Ontario who may be affected by the study's findings to judge the intentions of this project and my intentions as its researcher.

In Chapter Four, I provide an account of the qualitative methodological approaches used in the research project, including the specific PAR principles that were applied. I also discuss how the grounded theory method, which is used to move the data from the collection stages through to the coding, analysis, and interpretation stages of the research, is well aligned with the decolonizing methodologies and PAR principles employed in this study. I then discuss ethical considerations in conducting this research project and make some concluding remarks about the challenges that I faced as researcher throughout the research process.

In Chapter Five, I present the overarching patterns or themes that emerged through the four in-depth interviews that I conducted with First Nations students living in Thunder Bay as well as the study's key findings. As will be further discussed, the participants of this study perceive their right to education to include, among other things: adequate funding for post-secondary education, learning from an Indigenized curriculum, and learning in an environment that is free from discrimination and racism. To inform their understandings on their right to education, this study found that the participants draw on Treaties, international law (such as the *United Nations Declaration on the Rights of Indigenous Peoples*), and First Nation legal traditions (such as *Mino-bimaadiziwin*). Unsurprisingly, they do not rely on any Canadian laws.

Finally, in Chapter Six, I offer some concluding remarks and recommendations that have educational law, policy, and practice implications, building upon recommendations previously made in *The Royal Commission on Aboriginal Peoples* (RCAP), the *Truth and Reconciliation Commission of Canada* (TRC), as well as the *Seven First Nations Youths Inquest*. I also provide some suggestions for further research on the right to education for First Nations youth.

CHAPTER TWO:
THE LEGAL AND NORMATIVE ORDERS

> My thesis is that Canada cannot presently, historically, legally, or morally claim to be built upon European-derived law alone.[1]

INTRODUCTION

The right to education has long been asserted by First Nation communities in Northern Ontario. With the negotiations of Treaties 3, 5, and 9, in the late 1800s and early 1900s, First Nation leaders of the day were able to commit the Canadian government to "maintain[ing] schools for instruction…whenever the Indians of the reserve shall desire it",[2] "pay[ing] such salaries of teachers to instruct the children", and "to provid[ing] such school buildings and educational equipment".[3] Historical accounts of these treaty negotiations reveal that First Nation leaders appreciated western concepts of formal education and sought state-of-the-art education for their youth; education that would "provide a livelihood sufficient to put them on an equal footing with the settlers in the new economy".[4]

Though these communities were able to secure education as a treaty right for their children, it quickly became clear to them that the Canadian government would fail in

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[1] John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 15 [Borrows, *Indigenous Constitution*].

[2] *Treaty between Her Majesty the Queen and the Saulteaux Tribe of the Ojibbeway Indians at the Northwest Angle on the Lake of the Woods with Adhesions*, 3 October 1873, online <www. http://www.aadnc-aandc.gc.ca/eng/1100100028675/1100100028679> [*Treaty 3*]; *Treaty 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren's River and Norway House with Adhesions*, 28 September 1875, online < http://www.aadnc-aandc.gc.ca/eng/1100100028699/1100100028700> [*Treaty 5*].

[3] *The James Bay Treaty – Treaty No. 9 (Made in 1905 and 1906) and Adhesions Made in 1929 and 1930*, online < http://www.aadnc-aandc.gc.ca/eng/1100100028863/1100100028864> [*Treaty 9*].

[4] Blair Stonechild, *The New Buffalo: The Struggle for Aboriginal Post-Secondary Education in Canada* (Winnipeg: University of Manitoba Press, 2006) at 102 [Stonechild, *New Buffalo*]; *Report of the Royal Commission on Aboriginal Peoples*: *Gathering Strength*, vol 3 (Ottawa: Supply and Services Canada, 1996) at 471 [*RCAP,* vol 3]; Sheila Carr-Stewart, "A Treaty Right to Education" (2001) 26:2 Can J Education 125 at 126-127 [Carr-Stewart, "A Treaty Right"] (though this study centres around educational rights under Treaty 7, which covers 5 First Nations in southern Alberta, the findings of this study has general applicability to the other numbered treaties, including Treaties 3, 5, and 9).

implementing its promises.[5] Soon after the numbered treaties were signed, the government would refuse to provide on-reserve schools and sufficient educational funds.[6] Further, the government would relegate its obligations to religious institutions, which sought to advance an agenda of "Christianization and assimilation" rather than providing "the learning of the white man", as promised.[7] These failures continued for well over a century and accrued most notably in the "conscious policy of cultural genocide" that was the residential schooling of First Nations, Métis, and Inuit children across Canada. [8] The last of these residential schools having only recently closed its doors in the late 1990s.[9]

Prior to the injection of these western concepts of schools and education, however, First Nation peoples had their own systems of education. Learning was considered to be a lifelong journey.[10] The family, community, respected Elders, and the natural environment surrounding them were the educators.[11] The intellectual, spiritual, emotional, and physical well-being and development of young persons informed the holistic curriculum.[12] First Nations' systems of education were (and remain) vital to the transmission of language, identity, and culture. When First Nation leaders signed the numbered treaties they sought an educational right that would

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[5] See *Kelly* v. *Canada (Attorney General)*, 2013 CanLII 2268 (Ont Sup Ct (Civ Div)) (Statement of Claim and Amended Statement of Claim, Plaintiffs) at para 30 [*Kelly* v. *Canada*, Statement of Claim]. See also *Final Report of the Truth and Reconciliation Commission of Canada*, vol 1 (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) at 53 [*TRCC*]; Carr-Stewart, "A Treaty Right", *ibid* at 126 and 138; *Kelly* v. *Canada (Attorney General)*, 2013 CanLII 2268 (Ont Sup Ct (Civ Div)) (Evidence, Affidavit of Grand Chief Diane Kelly) at paras 12 and 13 [Affidavit of Grand Chief Diane Kelly]; Sheila Carr-Stewart, *Perceptions and Parameters of Education as a Treaty Right within the Context of Treaty 7* (PhD Thesis, University of Alberta Department of Educational Policy Studies, 2001) [unpublished] at 240 [Carr-Stewart, PhD Thesis].

[6] *Ibid.*

[7] *Kelly* v. *Canada*, Statement of Claim, *supra* note 5; *TRCC*, *supra* note 5; Carr-Stewart, "A Treaty Right" *supra* note 4 at 126; Alexander Morris, *The Treaties of Canada with the Indians* (Toronto: Coles, 1979) (Original work published in 1880) [Morris, "Treaties of Canada"].

[8] *TRCC*, *supra* note 5 at 3.

[9] Canada, The Truth and Reconciliation Commission of Canada, *What We Have Learned: Principles of Truth and Reconciliation* (Justice Murray Sinclair) (Ottawa: TRCC, 2015).

[10] *RCAP,* vol 3, *supra* note 4 at 414.

[11] Marlene Gallagher, *Anishinaabe Elders Share Stories on their Perceptions about Anishinaabe Identity for School Success* (Master of Education Thesis, University of Manitoba, 2013) [unpublished].

[12] *RCAP,* vol 3, *supra* note 4 at 404.

complement these inherent systems of education understanding that, for the continued success of their people and communities, their youth would benefit from an education that could instill within them the language and literacy skills of the settlers.[13] This complementary education was supposed to be lifelong and "free at all levels", including post-secondary education.[14] The federal government continues to deny these things today.[15]

These educational transgressions have yet to be remedied. It has been twenty years since the release of *The Royal Commission on Aboriginal Peoples*, which called upon the Canadian government to promptly acknowledge the significance of education for Indigenous peoples and recognize and fulfill its educational treaty obligations.[16] Yet, the education system continues to fail First Nations youth, particularly for those who live on-reserve. These youth are rapidly losing their language, identity, and culture, have significantly fewer educational dollars for their schooling at both the secondary and post-secondary levels, and graduate from high school at considerably lower rates compared to the general Canadian population, to name but a few of these educational transgressions.[17]

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[13] Carr-Stewart, "A Treaty Right", *supra* note 4 at 138.

[14] Treaty 7 Elders and Tribal Council, *The True Spirit and Original Intent of Treaty 7* (Montreal: McGill-Queen's University Press, 1996) at 302 (though this is the understanding of Treaty 7 Elders with respect to the negotiation of Treaty 7, which covers five First Nations in southern Alberta, the negotiation of Treaty 7, and its educational provisions, have similarities and general applicability to the other numbered treaties, including Treaties 3, 5, and 9). See also Carr-Stewart, "A Treaty Right", *supra* note 4 at 128; *RCAP,* vol 3, *supra* note 4 at 471 (wherein the Royal Commission seemingly concludes that the treaty right to an education includes post-secondary education; Recommendation 3.5.20 reads:

> The Commission recommends that the government of Canada recognize and fulfill its obligations to treaty nations by supporting a full range of education services, including post-secondary education, for members of treaty nations where a promise of education appears in treaty texts, related documents or oral histories of the parties involved.

[15] Stonechild, *New Buffalo*, *supra* note 4 at 101-103.

[16] *RCAP,* vol 3, *supra* note 4 at 414 and 471 (see Recommendations 3.5.1 and 3.5.20).

[17] See generally Canada, National Council of Welfare Reports, *First Nations, Métis and Inuit Children and Youth: Time to Act*, vol 127 (Ottawa: National Council of Welfare, 2007) at 45-59; *RCAP,* vol 3, *supra* note 4; Canada, Office of the Auditor General of Canada, *Status Report of the Auditor General of Canada to the House of Commons*, Chapter 4: Programs for First Nations on Reserves (Ottawa: Office of the Auditor General of Canada, 2011) at 12-14 [Auditor General of Canada, *Status Report*].

The Research Project

This study aims to identify and document the various sources of law, which First Nation students draw on when constructing their understanding of their right to education, including First Nation legal orders not currently recognized by the Canadian government as well as their own perceptions of their rights ('living rights').[18] By attempting to investigate the manner in which these various intersecting legal and normative orders interact we can, not only broaden our understanding of the educational experiences of First Nation students, but also better understand the effectiveness of current official educational laws and policies in Canada.[19]

To this end, this study draws upon both legal pluralism and critical legal pluralism. These socio-legal approaches offer useful tools to map and investigate the multiple, overlapping, and interacting normative and legal orders, which First Nation students bring into play when conceptualizing their right to education.

To this end, Parts I and II of this chapter discuss the development of legal pluralism and critical legal pluralism as well as the major principles of each perspective, which ultimately forms the underlying theoretical basis of the study. Part III provides an outline of how these approaches will be specifically employed in the research project. Parts IV and V of this chapter then sets out the various legal orders, both the 'recognized' (including state and international law) and the 'unrecognized' (including Indigenous law), that presently make up the education mandate for Indigenous youth in Canada. These legal orderings and laws are specifically identified in this chapter for several reasons. First, to provide an overview of the legal landscape

[18] See Edward van Daalen, Karl Hanson & Olga Nieuwenhuys, "Children's Rights as Living Rights: The Case of Street Children and a new Law in Yogyakarta, Indonesia" (2016) 24:4 Intl J Child Rts 803 at 818 ("The concept of living rights is built upon a non-essential vision of what rights are…[t]his vision entails that various actors, including children themselves, constantly re-interpret what children's rights are or ought to be.")
[19] See e.g. Giselle Corradi & Ellen Desmet. "A Review of Literature on Children's Rights and Legal Pluralism" (2015) 47:2 J Leg Pluralism & Unofficial L 226.

in which First Nations youth find themselves today vis-à-vis their right to education. Second, to identify the legal orders and laws, which the participants of the study, specifically, may draw on when constructing their understanding on their right to an education. Third, to better understand the interaction between or amongst these legal and normative orders, for example, the degree of compatibility (or incompatibility) between international instruments and Indigenous laws, which exercise requires a base understanding of these things. As will be discussed later in this chapter, I do not predetermine the manner of interaction between these legal and normative orderings that the participants in the study may espouse. Rather, I take a more robust view of their inter-legality; these legal orderings and laws are open to fall within a range of possibilities along the full spectrum; from compatible and mutually reinforcing to incompatible, which will be further explored at Chapters Five and Six.

PART I: WHAT IS LEGAL PLURALISM?

Answering the question "what is legal pluralism?" remains a predominant and, to some extent, an elusive exercise in the intellectual legal tradition that is legal pluralism. Since its modern inception in the late 1970s and early 1980s, numerous academics and legal theorists have endeavored to delineate its exact meaning.[20] Significant literature has been written and various articulations of the concept have been proffered, but no single, comprehensive definition has yet been generally agreed upon by its main proponents.[21] For present purposes, however, and at the

[20] See Brian Z Tamanaha, "A Non-Essentialist Version of Legal Pluralism" (2000) 27:2 JL & Soc'y 296 at 296 [Tamanaha, "Non-Essentialist"]. See also Sally Engle Merry, "Legal Pluralism" (1988) 22 Law & Soc'y Rev 869 at 872 [Merry, "Legal Pluralism"] (which places the origins of what Merry refers to as 'classic legal pluralism' in the 1970s when research in the field was largely conducted on colonial and post-colonial societies).

[21] Some definitions of legal pluralism include: "a situation in which two or more legal systems coexist in the same social field" (see Merry, "Legal Pluralism", *ibid* at 870); "[t]he plurality is not just of citizens; it is a plurality of legal orders as well each operative within the same social space and each one of which exists independently of the others" (see Kleinhans & Macdonald, "What is Critical?", *infra* note 43 at 76); "the co-existence of two or more legal orders in the same space-time context" (see Twinning, "Legal Pluralism 101", *infra* note 28 at 114); "the presence in a social field of more than one legal order" or "that state of affairs, for any social field, in which behaviour pursuant to more than one legal order occurs" (Griffiths, "Legal Pluralism?", *infra* note 28 at 1-2); "the

risk of overgeneralizing, legal pluralism could simply be summed up as multiple legal orders co-existing within the same geographical area and within the same time period to which a society may be subject.[22]

Legal pluralism sprang from a tradition of studying colonial and post-colonial societies, wherein 'subordinate' Indigenous legal orders could be clearly demarcated from the 'dominant' European legal order operating within a state; a form of legal pluralism Sally Engle Merry refers to as "classic legal pluralism".[23] Legal pluralism later transformed into a descriptive theory of law wherein the relationship between 'dominate groups' and 'subordinate groups' were studied in non-colonized societies.[24] This "new legal pluralism" captures a greater number of legal orders within a greater variety of social fields, including "the family, corporations, factories, sports leagues, and indeed just about any social arena with social regulation".[25]

Whether 'classic' or 'new', these approaches to legal pluralism have been generally conducted within a national context. In more recent years, however, legal pluralism has grown to include the global context as well.[26] In this latter approach, legal pluralists pay "attention to the interaction of local law with normative ordering emanating from processes of globalization".[27]

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deceptively simples idea that in any one geographical space defined by the conventional boundaries of a nation state, there is more than one 'law' or legal system" or "the situation where there is more than one form of law in any geo-political space" (see Davies, "Legal Pluralism", *infra* note 26 at 805 and 817); "the state of affairs in which a category of social relations is within the fields of operation of two or more bodies of legal norms" (Woodman, "Ideological", *infra* note 48 at 157); "multiple uncoordinated, coexisting or overlapping bodies of law" (Tamanaha, "Understanding" *infra* note 25 at 375); "different legal orders are conceived as separate entities coexisting in the same political space" (see Gunther Teubner, "The Two Faces of Janus: Rethinking Legal Pluralism" (1991) 13 Cardozo L Rev 1443 at 1444 [Teubner, "Two Faces"], citing Boaventura de Sousa, "Law: A Map of Misreading. Toward a Postmodern Conception of Law" (1987) 14 JL & Soc'y 279 at 293).

[22] *Ibid.*

[23] Merry, "Legal Pluralism", *supra* note 20 at 872.

[24] *Ibid*; Howard Kislowicz, *Social Processes in Canadian Religious Freedom Litigation: Plural Laws, Multicultural Communications, and Civic Belonging* (SJD Thesis, University of Toronto Faculty of Law, 2013) [unpublished] [Kislowicz, Thesis].

[25] Merry, "Legal Pluralism", *supra* note 20 at 872; Brian Z Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global" (2008) 30 Sydney L Rev 375 at 393 [Tamanaha, "Understanding"].

[26] Margaret Davies, "Legal Pluralism" in Peter Cane & Herbert M Kritzer, eds, *The Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2010) 805 at 814 [Davies, "Legal Pluralism"].

[27] *Ibid.*

This ‘global legal pluralism’ is often utilized to better understand how international human rights regimes interact with national and local legal orderings.

For most legal pluralists, particularly those practicing in its anthropological or sociological traditions, the fact that there are varying approaches to legal pluralism does not impede their work. In part, this may be due to their understanding that legal pluralism is not a mere intellectual exercise in the theorizing of law, but see law and all of its many manifestations as sociological facts.[28] These practitioners understand that legal pluralism is not a new phenomenon. Nor is it unique. Rather, it is historical, pervasive, contemporary, and extends beyond the disciplinary.[29]

Though differing at times in their approaches, legal pluralists continue to persevere in developing legal pluralism as a theory of law with its advocates converging on certain conceptions of law that philosophically bind the legal tradition. These include: (a) law is plural (i.e. law consists of multiple legal orders); (b) not all law has its source in the state (i.e. law can originate from non-state legal orders too, which may be referred to as unofficial law, customary law, local law, or non-state law that can co-exist with, or alongside, state law in any given social

[28] See e.g. William Twinning, “Legal Pluralism 101” in Brian Z Tamanaha, Caroline Sage & Michael Woolcock, eds, *Legal Pluralism and Development: Scholars and Practitioners in Dialogue* (Cambridge: Cambridge University Press, 2012) 112 [Twinning, “Legal Pluralism 101”]. See also John Griffiths, “What is Legal Pluralism?” (1986) 24 J Leg Pluralism & Unofficial L 1 at 4 [Griffiths, “Legal Pluralism?”] (wherein he states, “[l]egal pluralism is the fact. Legal centralism is a myth, an ideal, a claim, an illusion.”).

[29] See e.g. Roderick A Macdonald, "Metaphors of Multiplicity: Civil Society, Regimes and Legal Pluralism" (1998) 15:1 Ariz J Intl & Comp L 69 at 75 (legal pluralism is not new; territorial states did not have exclusivity in the formulation of laws); Tamanaha, "Understanding”, *supra* note 25 (wherein he provides an account of the historical lineage of legal pluralism, beginning with the medieval era, and tracing its roots through to European colonization of non-western peoples. Pluralism is not new, he asserts. Rather, it is a "common historical condition"); Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (Cambridge: Harvard University Press, 1936) ch VII at 137 [Ehrlich, *Fundamental*] (law existed well before the state; he cautions against viewing law merely as state law; such a one sided view is scientifically untenable); The International Council on Human Rights Policy, “When Legal Worlds Overlap Human Rights, State and Non-State Law” (Versoix, Switzerland: ICHRP, 2009), online: <http://www.ichrp.org/files/reports/50/135_report_en.pdf> [ICHR, “Legal Worlds Overlap”], (a near 200-page report documenting legal pluralism, including both state and non-state laws, which are currently at play in a number of specific geographical contexts around the world. This substantial report well establishes legal pluralism as a social fact, on the global scale).

field); and (c) law is not dependent on the state (i.e. the state need not recognize non-state legal orders for them to have legal authority over the members of the respective social field).[30]

Law is Plural

Central to understanding the 'pluralism' in legal pluralism, or to know that multiple forms of law co-exist within any one given social field, be it a state, community, or institution, one is required to be capable of conceptualizing or demarcating individual systems of law. If a system of law can be identified and circumscribed, as the argument goes, then one can evidence law's plurality.

To this end, legal pluralism "begs the question of what *law* is";[31] a question that has been likened to the "quest for the holy grail" for legal theorists and social scientists alike.[32] But, for legal pluralists, specifically, this quest has been especially tasking. By its own practitioners, this endeavour has been described as a "debilitating problem"[33] and as having "cast a shadow"[34] over legal pluralism; circumstances from which legal pluralism needs rescuing. Merry encapsulates this endeavour well when she asks the following,

> Why is it so difficult to find a word for nonstate law? It is clearly difficult to define and circumscribe these forms of ordering. Where do we stop speaking of law and find ourselves simply describing social life? Is it useful to call all these forms of ordering law? In writing about legal pluralism, I find that once legal centralism has been vanquished, calling all forms of ordering that are not state law by the term law confounds the analysis. The literature in this field has not yet clearly demarcated a boundary between normative orders that can and cannot be called law.

[30] But see Brian Z Tamanaha, "The Folly of the 'Social Scientific' Concept of Legal Pluralism" (1993) 20:2 JL & Soc'y 192 at 193 [Tamanaha, "Folly"] (wherein Tamanaha asserts that the only certainty for legal pluralists is that law can be independent from the state).
[31] Davies, "Legal Pluralism", *supra* note 26 at 817.
[32] Tamanaha, "Non-Essentialist", *supra* note 20 at 300.
[33] Twinning, "Legal Pluralism 101", *supra* note 28 at 115.
[34] Davies, "Legal Pluralism", *supra* note 26 at 820.

So how do legal pluralists overcome the problem of law? How do they separate law from everything else that is social life? How does a legal pluralist, or any legal theorist for that matter,[35] know instances of law from every other instance of normative ordering or social control, such as custom, religion, morality, tact, decorum, fashion, or even etiquette?[36] The answers to these questions are far ranging.

Law is contextual

William Twinning suggests that this "almost obsessive concern" in demarcating law from non-law is "unnecessary, because in most contexts not much turns on where, or even whether the line is drawn".[37] While recognizing his answer does not entirely solve the issue of legal demarcation, his claim does serve to "contextualize" the problem, thereby, making it "less important". Context can be particularly important for borderline cases, where a legal order may either be included or excluded as law. In these cases, Twinning asserts, categorizing something as law is "of little or no practical importance".[38]

John Griffiths similarly emphasizes the importance of context. Though diverging to some extent from his original position on the problem in his seminal paper, "What is Legal Pluralism?"[39] (wherein he argued that law could be scientifically conceptualized), he now asserts that law as a concept cannot be empirically known.[40] Though law is a fact, it cannot be

[35] HLA Hart, *The Concept of Law*, 3rd ed (Oxford: Oxford University Press, 2012) (endeavouring to answer the question, 'What is law?', is not unique to legal pluralism. In the opening paragraph to his book, *The Concept of Law*, Hart aptly observes: "Few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question 'What is law?' Even if we confine our attention to the legal theory of the last 50 years and neglect classical and medieval speculation about the 'nature' of law, we shall find a situation not paralleled in any other subject systematically studied as a separate academic discipline.")
[36] Ehrlich, *Fundamental*, *supra* note 29 at 165.
[37] Twinning, "Legal Pluralism 101", *supra* note 28 at 114-115.
[38] *Ibid.*
[39] Griffiths, "Legal Pluralism?", *supra* note 28.
[40] Tamanaha, "Understanding", *supra* note 25 at 395-396.

circumscribed scientifically because law is whatever people within the social field being studied labels as 'law' and these labels change and evolve with time and geo-political space.[41] "Thus, what law is, is determined by the people in the social arena through their own common usages, not in advance by the social scientist or theorist".[42]

Law is political nomenclature

The very fact that legal pluralists have not been able to come to a clear consensus on the definition of law is evidence that defining what is and what is not law is, one part, a matter of discourse, and another part, a political endeavour.[43] Much like Humpty Dumpty, in Lewis Carroll's *Through a Looking Glass*, asserting to Alice that words mean "just what I choose it to mean – neither more nor less" and that words can mean so many things depending on who "is to be master – that's all", conceptualizing, defining, demarcating law is dependent on discourse, behaviour, and politics. [44]

In this regard, when studying social phenomena in any given social field, law exists where (1) the members of the social field apply the label of law to the social phenomena being studied as law;[45] (2) the members of the social field treat the social phenomena as law, as evidenced through their own social practices;[46] and (3) there is "a certain degree of commitment"

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[41] *Ibid.*
[42] Tamanaha, "Non-Essentialist", *supra* note 20 at 314.
[43] See Martha-Marie Kleinhans & Roderick A Macdonald. "What is a *Critical* Legal Pluralism?" (1997) 12:2 CJLS 25 at 33 [Kleinhans & Macdonald, "What is Critical?"].
[44] Lewis Carroll, *Through the Looking Glass with Twelve Full-Page Illustrations in Color From Drawings by Blanche McManus* (New York: MF Mansfield & A Wessels, 1899) at 81-82 (the exchange between Humpty Dumpty and Alice goes as follows: 'When I use a word,' Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean – neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be master – that's all.'
[45] See e.g. Teubner, "Two Faces", *supra* note 21 at 1451 ("Legal pluralism is then defined no longer as a set of conflicting social norms in a given social field but as a multiplicity of diverse communicative processes that observe social action under the binary code of legal/illegal"). See also Twinning, "Legal Pluralism 101", *supra* note 28 at 114-115.
[46] Tamanaha, "Non-Essentialist", *supra* note 20 at 313 ("Law is whatever people identify and treat through their social practices as 'law' (or recht, or droit, and so on.)").

from the members of the social field, who view the legal discourse (e.g. legal/illegal, permitted/not permitted, allowed/disallowed, etc.) as law, though it is not necessary for the whole social field to share the same view.[47] In short, what law is and what law is not is dependent on discourses, social practices, and political power.

Law covers a continuum

Another tenable answer to the untenable question of what is law has been proffered by Gordon Woodman. He suggests that legal pluralists should disentangle themselves from the what-is-law debate altogether and accept the fact there is no discernable way to draw a dividing line between state law and all other forms of social ordering as these lines are blurred and indistinguishable. In this regard he states,

> [i]t does not seem possible to meet this criticism by defining law as a distinct form of social control which is clearly distinguishable from the others. Attempts to do this have failed in consequence of the variety of known social orders. A more defensible answer is that, if there is no empirically discoverable dividing line running across the field of social control, we must simply accept that all social control is part of the subject-matter of legal pluralism. This conclusion is not convenient, but it may be necessary. To invent a dividing line which did not accord with a factual distinction would be irrational and unscientific…The conclusion must be that law covers a continuum which runs from the clearest form of state law through to the vaguest forms of informal social control.[48]

Just as the plurality of law remains central to the philosophical tradition of legal pluralism, so too is the principle that law is not dependent on the state. In sociological fact, not all law has its source in the state and not all law requires recognition from the state for it to hold legal persuasion or authority over those to whom these laws apply.

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[47] Emmanuel Melissaris, "The More the Merrier? A New Take on Legal Pluralism" (2004) 13:1 Soc & Leg Stud 57 at 75 [Melissaris, "More the Merrier?"].
[48] Gordon R Woodman, "Ideological Combat and Social Observation: Recent Debate about Legal Pluralism" (1998) 42 J Leg Pluralism & Unofficial L 21 at 45 [Woodman, "Ideological"].

Law can be Independent from the State

Viewing instances of law as sitting somewhere along a continuum "from the clearest form of state law through to the vaguest forms of informal social control", as advocated by Woodman, acknowledges the fact that there are a variety of ways in which law may come into being.[49] Laws may be created by the state, but laws too may be created completely outside the reach of the state by people who, through their own social practices, determine for themselves what law is.[50] As Val Napoleon asserts, "[l]aw is not a thing; it is a process that people actually engage in…law is societally bound".[51] This view of "law-as-process" as opposed to "law-as-object" challenges the commonly held misconception that the state is the only institute in society capable of creating law.[52]

The state is not the only creator of law, nor are all laws subordinate to it

There is clear consensus amongst legal pluralists of all approaches that the state, or government, "does not have a monopoly on law".[53] If there is one assertion or conception of law that secures legal pluralism as a theoretical approach, it is this one.[54] Since the modern inception of legal pluralism, and beginning with Griffith's paper, "What is Legal Pluralism?", legal pluralists have been united in attacking 'legal centralism' (or 'state centralism'), which Griffiths asserts remains "a myth, an ideal, a claim, an illusion", while legal pluralism is "the fact". [55]

> According to what I shall call the ideology of <u>legal centralism</u>, law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions. To the extent that other, lesser normative orderings,

[49] *Ibid*.
[50] Davies, "Legal Pluralism", *supra* note 26 at 808.
[51] Val Napoleon, "Thinking About Indigenous Legal Orders" in René Provost & Colleen Sheppard, eds, *Dialogues on Human Rights and Legal Pluralism* (Springer: Springer Science+Business Media Dordrecht, 2013) 229 at 232.
[52] *Ibid.*
[53] Tamanaha, "Folly", *supra* note 30 at 193.
[54] Twinning, "Legal Pluralism 101", *supra* note 28 at 114.
[55] Griffiths, "Legal Pluralism?", *supra* note 28 at 4.

> such as the church, the family, the voluntary association and the economic organization exist, they ought to be and in fact are hierarchically subordinate to the law and institutions of the state.[56] [emphasis original]

Griffiths' conceptualization of legal pluralism, and his attack on legal centralism, deconstructs the hierarchal, supra-normative nature of state law and recognizes that multiple, potentially binding, non-state legal orders can co-exist independently from state law within any given social field. Moreover, not all law has its source in the state.[57] Griffiths asserts that legal centralism's conception of law "has long been the major obstacle to the development of a descriptive theory of law" and "the major hindrance to accurate observation".[58]

Recognition of the state is not necessary

As aptly noted by Twinning, in legal pluralism studies "[t]here is no agreed terminology with respect to recognition, but there is widespread agreement that is a highly political matter".[59] What recognition may mean in one particular study, or social field, or context, may mean something entirely different in another. Legal pluralists have used a multitude of words to describe the relationship or connection between state law and non-state law. For instance, recognition can be the matter of a state "according", "acknowledging", "taking into account", "deferring to", or "incorporating" non-state law into its official legal system.[60] Or, recognition may be found where social fields, communities, groups, or even individuals seek, claim, demand, or ask a state to recognize their non-state laws in any manner of ways, including those already mentioned.[61]

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[56] Griffiths, "Legal Pluralism?", *supra* note 28 at 3.
[57] Tamanaha, "Non-Essentialist", *supra* note 20.
[58] Griffiths, "Legal Pluralism?", *supra* note 28 at 3-4.
[59] Twinning, "Legal Pluralism 101", *supra* note 28 at 120.
[60] *Ibid.*
[61] *Ibid.*

What is important to note, regardless of how recognition is viewed, is that for legal pluralists non-state law need not be recognized by the state in any manner whatsoever for such law to be considered valid or to hold legal authority over or to govern the lives of the members of the social field, community, or group to whom the non-state law applies. This form of legal pluralism is what Griffiths refers to as "strong" pluralism as opposed to "weak" pluralism.

For Griffiths, legal pluralism can be subdivided into two categories: "weak" pluralism and "strong" pluralism.[62] "Strong" legal pluralism includes those instances where legal pluralism exists in a society (or 'social field'), but where non-state law is not integrated into (or 'recognized' by) the predominant legal regime that is the state. "Weak" legal pluralism, on the other hand, includes those instances where non-state law is integrated into (or 'recognized' by) the state. Griffiths refers to these latter instances as "weak" pluralism because it reinforces the ideology of legal centralism. To him 'recognition' brings with it "the idea that 'law' must ultimately depend from a single validating source".[63] According to Griffith's rationale, section 35(1) of the *Constitution*, which formally recognizes treaty rights and inherent or Aboriginal rights in Canada, would be an exercise in "weak" pluralism.

With respect to section 35(1) of the *Constitution* and non-state Indigenous laws in Canada, particularly, recognition by the government could potentially be of great value to Indigenous communities, groups, and individuals. For instance, recognition could act to "shield" non-state Indigenous laws from being prohibited or denied by the Canadian governments or it could act to "lever" certain state laws in favour of Indigenous individuals (e.g. "to access certain benefits, allowances, and services"), which would not otherwise be available under the non-state

[62] Kislowicz, Thesis, *supra* note 24 at 37.
[63] Griffiths, "Legal Pluralism?", *supra* note 28 at 8.

Indigenous legal order.[64] There are dangers too, though, for Indigenous communities, groups, and individuals in seeking or claiming recognition by the state:

> …from an indigenous perspective, recognition may exact a high price in the form of cultural dispossession and the loss of autonomy, if it is achieved at the cost of making indigenous law subject to alteration, amputation and falsification by an arrogant and dominant state legal system.[65]

Whereas the theory of legal pluralism, in any of its forms (be it classical, new, or global), concentrates its attention at the societal, community, or social field level in determining instances of law and examines how the members to whom the laws apply engage in and process these group made laws, critical legal pluralism, on the other hand, focuses its attention at the individual level; it examines the ways in which individuals can create the very laws to which they consider themselves beholden.

PART II: CRITICAL LEGAL PLURALISM

In the 1990s, a further approach to legal pluralism emerged. In their article entitled, "What is a *Critical* Legal Pluralism?", Martha-Marie Kleinhans and Roderick Macdonald argue for a critical approach to the tradition. They assert that contemporary forms of legal pluralism fail to recognize the agency of individuals as legal subjects and fail to allow these legal subjects to situate themselves in law. Given that any one individual lives in a multitude of overlapping normative and legal orders as "heterogeneous, multiple creature[s]", the question remains: to which normative or legal orders does he or she belong?[66] Through a critical analysis, the individual is seen as the "irreducible site of normativity", who is capable of placing herself in

[64] Ghislain Otis, "Constitutional recognition of aboriginal and treaty rights: a new framework for managing legal pluralism in Canada?" (2014) 46:3 J Leg Pluralism & Unofficial L 320 at 321.
[65] *Ibid* at 322.
[66] Kleinhans & Macdonald, "What is Critical?", *supra* note 43 at 36.

any number of legal and normative orders, capable of interpreting those normative orders, and capable too of generating normativity in these normative and legal orders.[67] Critical legal pluralism accounts for the creativity of individuals as legal subjects. They are seen as both "law abiding" as well as "law inventing".[68] This is not to say, however, that anything goes as 'law' in critical legal pluralism. Rather,

> A *critical* legal pluralism presumes that legal subjects hold each of their multiple narrating selves up to the scrutiny of each of their other narrating selves, and up to the scrutiny of all the other narrated selves projected upon them by others. The self is the irreducible site of normativity and internormativity. And the very idea of law must be autobiographical.[69]

Central to critical legal pluralism is the individual and the individual's agency in the processing of law (versus the objectifying of law). The individual not only situates himself, herself, or themself within the array of normative and legal orders surrounding them in any one of their given social fields, but they are simultaneously interpreting, understanding, and creating the very laws to which they feel beholden. As the overarching goal of this research project is to understand the right to education from the perspective of First Nation students and to gauge their perceptions on the effectiveness of this right (whatever laws or legal systems they may be drawing on to circumscribe that right), critical legal pluralism offers an advantageous theoretical platform in understanding how the project's participants interpret their right to an education and the degree to which they choose to adhere to or call upon that right when measuring its effectiveness.

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[67] *Ibid* at 43.
[68] *Ibid* at 39.
[69] *Ibid* at 46.

PART III: USING LEGAL PLURALISM AND CRITICAL LEGAL PLURALISM TO MAP NORMATIVE ORDERS

There are advantages to employing both legal pluralism and critical legal pluralism as a means of investigating the legal and normative orders that interact to inform First Nation persons' views on their right to education. Foremost amongst these advantages is the opportunity to conduct research in a manner that is respectful of First Nation communities and their legal orders, which these individuals may draw on to inform their perceptions, as well as to those who have to live day-to-day with the educational transgressions imposed upon them by government mandate. To presume that I, a lawyer trained in the conventional language of western Canadian law, who is white, non-Indigenous, and does not speak the traditional languages of the persons and communities I intend to study (e.g. Cree, Oji-Cree, or Ojibway), know what 'law' is in advance of conducting the study is merely another ethnocentric endeavour repeating the past sins of anthropologists and sociologists who contributed to the ongoing colonial project that is research.[70] Moreover, to miss or exclude Indigenous law as 'law' because it is not recognized by the state or because it does not "look a particular way" or "match conventional notions of law" only reinforces a "theoretical ethnocentricity".[71] As Emmanuel Melissaris aptly puts it,

> In order for the legal discourses not to be colonized by the observer, they have to be given their own voice. Legal pluralism will remain disabled for as long as it is believed that one can experience, understand and report the way a legal discourse operates in identical ways irrespective of whether one is a participant in the discourse or not. The only way of approaching a legal discourse and doing justice to it is by having an account of

[70] See e.g. Norman K Denzin & Yvonna S Lincoln, "Introduction: Critical Methodologies and Indigenous Inquiry" in Norman K Denzin, Yvonna S Lincoln & Linda Tuhiwai Smith, eds, *Handbook of Critical and Indigenous Methodologies* (Los Angeles: Sage, 2008) 1 at 4 (research is a metaphor of colonialism, representing all those things desired, appropriated, and privileged by the colonizer: knowledge, power, and truth; "This close involvement with the colonial project contributed, in significant ways, to qualitative research's long and anguished history, to its becoming a dirty word.").

[71] See Davies, "Legal Pluralism", *supra* note 26 at 822.

> the participants themselves as to what it is that they do when entering that discourse and why.[72]

Even by employing the term 'Indigenous law' throughout this thesis to describe the legal orders of First Nation communities in northern Ontario, I am potentially perpetuating the ethnocentric tradition of research in that the term itself 'Indigenous law', just like its cousins 'customary law' and 'traditional law', are "constructed labels and categories created for specific purposes in the circumstances of colonisation and its aftermath" which were "marked (for various purposes) as distinct from the transplanted norms and systems of the colonisers".[73]

Additionally, if I were to define or demarcate law in advance of the research project, this exercise would only serve to reinforce, not only my own preconceptions and biases of what 'law' is, but my own self-interests as a researcher as "[t]ypologies and categories are analytical devices that are designed to meet the purposes of the social scientist or theorist who constructs them".[74]

In short, legal pluralism and critical legal pluralism appreciate the politics inherent in defining law and provide the means of overcoming this potentially debilitating exercise.[75] To guard against any legal discourses in this study being colonized by me, as a researcher and observer, the participants themselves will be given their own voice and provide an account of what 'law' is to them.[76]

To this end, the tools that legal pluralism and critical legal pluralism advantageously provide will be used in the present research study to assess what legal and other normative orders First Nation students draw on when conceptualizing their right to education.

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[72] Melissaris, "More the Merrier?", *supra* note 47 at 75.
[73] Tamanaha, "Understanding", *supra* note 25 at 397.
[74] Tamanaha, "Non-Essentialist", *supra* note 20 at 315.
[75] See Davies, "Legal Pluralism", *supra* note 26 at 822. See also Kleinhans & Macdonald, "What is Critical?", *supra* note 43 at 33.
[76] Melissaris, "More the Merrier?", *supra* note 47 at 75.

First, the potential sources of law and normative orders that are at play in informing their conception of their right to education, including those not currently recognized by the Canadian government, such as Indigenous legal orders, will be documented. This documentation will help broaden our understanding of the educational experiences of First Nations persons, including their primary, secondary, and post-secondary schooling, and may potentially reveal hidden norms not otherwise accounted for in the current educational mandate.

Second, these legal and normative orders will be investigated to determine how they interact and redefine one another. Unlike classic legal pluralists who viewed interactions between European legal orders and Indigenous legal orders in terms of conflict and competition,[77] this study employs a contemporary (or social fact) legal pluralist perspective by not predetermining the manner of interaction between these multiple overlapping legal and normative orders. Rather, a more robust view of inter-legality is adopted. The legal and normative orders identified will be open to fall within a range of possibilities, including "symbiosis, subsumption, imitation, convergence, adaptation, partial integration, and avoidance as well as subordination, repression, or destruction".[78]

Third, with the aim of understanding the effectiveness of the current education mandate for First Nation persons, Indigenous legal orders or any normative orders revealed at the investigative stage of this study will be gauged to determine their reach into the students' conceptions of their right to education and to determine the extent of which they may exert any influence over them and their perceptions.

[77] Twinning, "Legal Pluralism 101", *supra* note 28 at 121 (wherein Twinning states that for "social fact legal pluralists" it is a "distortion to think of interlegality – relations and interactions between coexisting legal orders – as typically entailing conflict and competition.").
[78] *Ibid* at 119.

PART IV: THE 'RECOGNIZED' LEGAL LANDSCAPE

Within the Canadian legal landscape there are multiple legal orders that address educational rights for First Nations. These legal orders, as identified below (i.e. international, constitutional, and federal), have been collectively described as a "pandemic gridlock" leaving an "inexcusable educational-rights vacuum" for which First Nation students, their families, and communities continue to pay a "heavy price".[79] Consideration of the effectiveness of these officially recognized legal regimes is beyond the scope of this chapter. However, the question of effectiveness will be borne out through the responses of the participants in this study, which is presented at Chapters Five and Six. For present purposes, however, these normative orders are identified to, among other things, outline the legal landscape within which First Nation students may find themselves situated and from which they may draw to inform their perceptions on their right to education.

The International Legal Orders: Treaties

The Numbered Treaties and the Robinson Superior Treaty

Twenty-eight First Nation communities are signatories to Treaty 3, as signed on October 3, 1873. Two of these communities are in Manitoba, while the remaining twenty-six are located in Ontario. The Grand Council of Treaty 3 is the political organization that represents these Anishinaabe communities. Treaty 3 covers a geographical area of approximately 55,000 square miles, which runs west of Thunder Bay, north of Sioux Lookout, and along the borders of Manitoba and the United States of America.[80] The educational provision of Treaty 3 reads:

> And further, Her Majesty agrees to maintain schools for instruction in such reserves hereby made as to Her Government of Her

[79] Jerry Paquette & Gérald Fallon, "First Nations Education and the Law: Issues and Challenges" (2008) 17:3 Education LJ 347 at 350 [Paquette & Fallon, "First Nations Education"].
[80] Affidavit of Grand Chief Diane Kelly, *supra* note 5 at paras 2-3 and 7.

> Dominion of Canada may seem advisable whenever the Indians of the reserve shall desire it.[81]

Nishnawbe Aski Nation (NAN) (previously known as Grand Council Treaty No. 9) is the political organization that represents the signatories of both Treaty 9 and Treaty 5 (at least those of Treaty 5 that reside within Ontario's borders). NAN represents forty-nine First Nation communities that span across two-thirds of Ontario covering approximately 210,000 square miles.[82] The educational provision of Treaty 5, as signed on September 28, 1875, reads exactly as the one contained in Treaty 3, as above. The educational provision of Treaty 9, as signed on August 3, 1905, however, is different from the texts of Treaties 3 and 5. It reads:

> Further, His Majesty agrees to pay such salaries of teachers to instruct the children of said Indians, and also to provide such school buildings and educational equipment as may seem advisable to His Majesty's government of Canada.[83]

The Robinson Superior Treaty lands are located entirely within Ontario and run approximately 435 miles along the northern shores of Lake Superior from Pigeon River to Batchewana Bay and inland up to (but not including) Armstrong. There are eleven First Nation communities that are signatories to the Robinson Superior Treaty, including Fort William First Nation, which neighbours the municipality of Thunder Bay.[84] The Robinson Superior Treaty is silent with respect to education; no educational provision is included within its terms. [85]

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[81] Treaty 3, *supra* note 2.
[82] Nishnawbe Aski Nation, "About Us", online: NAN <http://www.nan.on.ca/article/about-us-3.asp>.
[83] Treaty 9, *supra* note 3.
[84] The following First Nation communities are all located within the Robinson Superior Treaty lands: Animbiigoo Zaagi'igan Anishinaabek (Lake Nipigon), Biigtigong Nishnaabeg (Pic River), Biinjitiwaabik Zaaging Anishinaabek (Rocky Bay), Bingwi Neyaashi Anishinaabek (Sand Point First Nation), Fort William First Nation, Gull Bay, Michipicoten, Pays Plat, Pic Mobert, and Red Rock. See Government of Ontario, "Treaties map", online: <www.ontario.ca/page/ontario-first-nations-maps>.
[85] *Robinson Treaty Made in the Year 1850 with the Ojibwa Indians of Lake Superior Conveying Certain Lands to the Crown,* 7 September 1850, online: <www.aadnc-aandc.gc.ca/eng/1100100028970/1100100028972> [*Robinson Superior Treaty*].

From the perspective of numerous Indigenous communities in Canada, treaties are seen as sacred sources of law. They were forged not only between nations, but with the Creator; a third party to the treaties. These treaties form an enduring relationship wherein covenants, that were to last "as long as the sun rises and the water flows", were made between nations.[86] Sacred treaties are incapable of being changed or breached, according to these Indigenous legal orders.[87]

Within western Canadian legal traditions, however, there are differing views on how treaties are to be legally treated. In some instances, treaties have been likened to mere contracts, capable of being easily changed or amended. In other instances, treaties have been equated to international instruments of law with legally binding force in Canada. Whether treaties are more akin to that of a contract than that of an international instrument of law has been a "much-debated question" in Canada.[88] One commentator, who is trained in the western Canadian traditions of law, suggests a middle position,

> In any case, there is reason to think that some treaties constitute both international and domestic instruments, producing legal effects at both levels. International law and Canadian law are distinct and potentially overlapping systems of rules. On occasion, both systems may recognize certain transactions as valid and attach legal consequences to them, each within its proper sphere.[89]

The Supreme Court of Canada has weighed in on this debate, asserting a different approach. With respect to historical treaties, particularly, such as Treaties 3, 5, and 9, as well as

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[86] Morris, "Treaties of Canada", *supra* note 7 at 46.
[87] See *Report of the Royal Commission on Aboriginal Peoples*: *Restructuring the Relationship*, vol 2 (Ottawa: Supply and Services Canada, 1996) at 16 [*RCAP*, vol 2] ("The parties to the treaties must be recognized as nations, not merely as 'sections of society'"); Aimée Craft, *Breathing Life into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One* (Saskatoon: Purich, 2013) at 8 [Craft, *Breathing Life*]. But see Borrows, *Indigenous Constitution, supra* note 1 at 24-28 and 26 (though many Indigenous peoples of Canada view treaties as sacred, other Indigenous peoples in Canada do not hold the same view).
[88] Brian Slattery, "Making Sense of Aboriginal and Treaty Rights" (2000) 79 Can Bar Rev 196 at 207 [Slattery, "Making Sense"].
[89] *Ibid* at 207.

the Robinson-Superior Treaty,[90] the Supreme Court of Canada views treaties as a unique form of agreement altogether (referred to as *sui generis*) grounded in Canadian law.[91] They do not necessarily conform to international law, contract law, or Indigenous custom.[92] Some of the seminal cases on this point are *R. v. Simon*,[93] *R. v. Sundown*,[94] and *Beckman v. Little Salmon/Carmacks First Nation*,[95] wherein the Supreme Court of Canada, respectively, comments:

> While it may be helpful in some instances to analogize the principles of international law to Indian treaties, these principles are not determinative. An Indian treaty is unique: it is an agreement *sui generis* which is neither created nor terminated according to the rules of international law. [emphasis original][96]
>
> …
>
> Treaties may appear to be no more than contracts. Yet they are far more. They are a solemn exchange of promises made by the Crown and various First Nations. They often formed the basis for peace and the expansion of European settlement.[97]
>
> …
>
> [T]he treaty will not accomplish its purpose if its interpreted…as if it were an everyday commercial contract. The treaty is as much about building relationships as it is about the settlement of ancient grievances. The future is more important than the past. A canoeist who hopes to make progress faces forward, not backwards.[98]

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[90] See *Quebec (Attorney General) v. Moses*, [2010] 1 SCR 557 at para 7 (wherein the Supreme Court of Canada intimates that it is more appropriate to analogize treaties to contracts with respect to modern treaties, but not necessarily for historical treaties: "The contract analogy is even more apt in relation to modern comprehensive treaty…[as] [t]he text of modern comprehensive treaties is meticulously negotiated by well-resourced parties.")
[91] *R. v. Simon*, [1985] 2 SCR 387 at 404 [*R. v. Simon]*; *RCAP*, vol 2, *supra* note 87.
[92] Slattery, "Making Sense", *supra* note 88 at 207.
[93] *R. v. Simon*, *supra* note 91.
[94] *R. v. Sundown*, [1999] 1 SCR 393 [*R. v. Sundown*].
[95] *Beckman v. Little Salmon/Carmacks First Nation*, [2010] 3 SCR 103 [*Beckman v. Little Salmon*].
[96] *R.* v. *Simon*, *supra* note 91 at para 30.
[97] *R. v. Sundown*, supra note 94 at para 24.
[98] *Beckman v. Little Salmon*, *supra* note 95 at para 10.

The current state of the law in Canada, according to the Supreme Court of Canada, places Treaties in a realm of its own. When courts are called upon to interpret any of the rights or obligations contained within them, no one legal ordering, be it international law, Canadian law, or Indigenous legal tradition, can dictate their strength or meaning.

The International Legal Orders: Human Rights Instruments

The following set of international human rights instruments, including the *Universal Declaration of Human Rights* and the *Convention on the Rights of the Child*, in most instances are viewed by the state as having "persuasive and moral force" (in the former instance) or an "important role…as an aid in interpreting domestic law" (in the latter), but no legally binding force in Canada.[99] Though this is the stance that the Canadian government takes with respect to the legality of these international human rights instruments, individuals, contrastingly, may hold them out as laws that bind the state. In fact, as will be borne out through the participants' answers to the questions posed to them during their interviews, as later discussed at Chapters Five and Six, these laws are instrumental to their understandings on their right to education. The findings of the study show that in the context of the right to education, First Nation students find themselves at an "intersection of a plurality of normative regimes", most notably the global and local levels, among which they construct and "choose to regulate" their right to an education, regardless of whether these laws are validated by official state law.[100]

Universal Declaration of Human Rights

The *Universal Declaration of Human Rights* specifically references education,

[99] See e.g. Paquette & Fallon, "First Nations Education", *supra* note 79 at 350; *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 1999 CanLII 699 SCC at para 70.
[100] Ghislain Otis, "Individual Choice of Law for Indigenous People in Canada: Reconciling Legal Pluralism with Human Rights?" (2018) 8 UC Irvine L Rev 207 at 207.

recognizing that every person has the right to an education and that education is about the full development of the human personality.[101] Article 26 of the *Universal Declaration of Human Rights* reads:

> (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
>
> (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
>
> (3) Parents have a prior right to choose the kind of education that shall be given to their children. [102]

Building upon the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights,* too recognizes the right to education for all.

International Covenant on Economic, Social and Cultural Rights

The *International Covenant on Economic, Social and Cultural Rights* was acceded to by Canada on August 19, 1976.[103] Article 13 speaks to the right of education for all and, among other things, serves to do the following: (a) ensure the availability of educational institutions and programs, including appropriate educational facilities, such as safe drinking water, trained teachers, libraries, school equipment, etc., (b) ensure everyone has access to educational institutions and programs free from discrimination, (c) ensure culturally appropriate and relevant

[101] Larry Steves, Sheila Carr-Stewart & Jim Marshall, "Aboriginal Student Educational Attainment: A Saskatchewan Perspective" (2010) 21:2 J Educational Administration & Foundations 19 at 20.
[102] *Universal Declaration of Human Rights*, GA Res 217A(III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.
[103] *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, GA Res 2200A (XXI) (entered into force 3 January 1976, acceded by Canada 19 May 1976).

curricula and teaching methods are provided in education, and (d) ensure flexibility to allow education to respond to the changing needs and diversity of its students and communities.[104]

> *Article 13*
>
> 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
>
> 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
>
> (a) Primary education shall be compulsory and available free to all;
>
> (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
>
> (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
>
> (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
>
> (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
>
> 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such

[104] *General Comment No. 13, The right to education (article 13 of the Covenant)*, UNCESCR, 21st Sess, UN Doc E/C.12/1999/10 (1999) at paras 4-7, online: UNCESCR <www.right-to-education.org/resource/cescr-general-comment-13-right-education-article-13>.

> minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
>
> 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.[105]

The following international instrument, the *Convention on the Rights of the Child*, like the previous ones already mentioned, also speaks to the right to equal access to education. But, unlike the others, it is one of the first international instruments to specifically mention the distinct educational rights of Indigenous children.

Convention on the Rights of the Child

The *Convention on the Rights of the Child* was ratified by Canada on December 13, 1991,[106] and is one of the first international human rights treaties to make specific reference to Indigenous children.[107] It recognizes the serious discrimination and racism that Indigenous children face in education and attempts to remedy this by implementing special measures so that they may fully enjoy their educational rights and be put on equal footing with non-Indigenous children.[108] Articles 28 and 29 of the *Convention on the Rights of the Child* are two of the most pertinent provisions in this regard. They read as follows:

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[105] *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 art 13 (entered into force 23 March 1976, accession by Canada 19 May 1976) [*ICCPR*].
[106] *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990, ratified by Canada 13 December 1991) [*CRC*].
[107] *General Comment No. 11 (2009): Indigenous children and their rights under the Convention*, UNCRC, 50th Sess, UN Doc CRC/C/GC/11 (2009) at para 1, online: UN Digital Library <www.https://digitallibrary.un.org/record/ 648790?ln=en> [*General Comment No.11 (2009)*].
[108] *General Comment No. 11 (2009)*, *ibid.*

Article 28

1. States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

> (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
>
> (e) The development of respect for the natural environment.[109] [emphasis added]

The next international instrument is a more recent international instrument that is wholly concerned with the rights of Indigenous peoples, both at the communal level as well as the individual level and addresses a broad range of issues, including culture, identity, language, employment, health, and education, among others.

UN Declaration on the Rights of Indigenous Peoples

The Canadian government's support for the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) had a tumultuous beginning.[110] On September 17, 2007, when UNDRIP was put to a vote before the General Assembly of the United Nations, Canada, along with three other countries, voted against it.[111] At that time, Canada asserted that it had "significant concerns with the wording of the current text" and that the provisions were "overly broad, unclear and capable of a wide variety of interpretations…possibly putting into question matters that had already been settled by treaty".[112] It further contended that it would not be able to "act on any legislative or administrative power that might affect indigenous peoples without obtaining their consent", if it were to vote in favour of UNDRIP.[113] Supporters of UNDRIP,

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[109] *CRC*, *supra* note 106.
[110] *Declaration on the Rights of Indigenous Peoples*, 13 September 2007, GA Res 61/295, UN Doc A/Res/61/295 (voted against by Canada 17 September 2007) [UNDRIP].
[111] United Nations Bibliographic Information System, Voting Records Search, "United Nations Declaration on the Rights of Indigenous Peoples: resolution/adopted by the General Assembly" (13 September 2007), online: UNBISNET <www.unbisnet.un.org:8080/ipac20/ipac.jsp?profile=voting&index=.VM&term=ares61295>.
[112] United Nations, Press Release, GA/10612, "General Assembly Adopts Declaration on Rights of Indigenous Peoples: 'Major Step Forward' Towards Human Rights for All, Says President" (13 September 2007), online: UN Meetings Coverage & Press Releases <www.un.org/press/en/2007/ga10612.doc.htm>.
[113] *Ibid*.

however, such as Amnesty International and numerous Canadian legal scholars and lawyers, directly challenged the position that the Canadian government was positing at the time.[114] They asserted UNDRIP "outlines minimum human rights standards, complementing rather than overriding existing rights" and called the government's position "misleading" as "[n]o credible legal rationale has been provided to substantiate [the government's] extraordinary and erroneous claims".[115]

Three years later, on November 12, 2010, Canada reversed its position and professed its support of UNDRIP and proclaimed: "[t]oday, Canada joins other countries in supporting the United Nations Declaration on the Rights of Indigenous Peoples. In doing so, Canada reaffirms its commitment to promoting and protecting the rights of Indigenous peoples at home and abroad".[116]

Then six years later, Canada took this position even further when, on May 10, 2016, at the UN headquarters in New York during a session of the UN Permanent Forum on Indigenous Issues (UNPFII), the federal Minister of Indigenous and Northern Affairs, Hon. Carolyn Bennett, announced that Canada was now "a full supporter of the Declaration without qualification".[117] The Canadian government, she asserted, "intend[s] nothing less than to adopt and implement the

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[114] Erin Hanson, "UN Declaration on the Rights of Indigenous Peoples", online: Indigenous Foundations, Arts, University of British Columbia <http://indigenousfoundations.arts.ubc.ca/un_declaration_on_the_rights_of_indigenous_peoples/#_ftn2>; "Open Letter – UN Declaration on the Rights of Indigenous Peoples Canada Needs to Implement this New Human Rights Instrument", *Nation Talk* (1 May 2008), online: Nation Talk, <http://nationtalk.ca/story/open-letter-un-declaration-on-the-rights-of-indigenous-peoples-canada-needs-to-implement-this-new-human-rights-instrument>.

[115] *Ibid.*

[116] Canada, "Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples" (12 November 2010), online: INAC <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142> ["Canada's Statement of Support on UNDRIP"].

[117] United Nations, Meetings Coverage, HR/5299, "Continuing Session, Speakers in Permanent Forum Call upon Governments to Repeal Oppressive Laws, Practices that Encroach on Rights of Indigenous Peoples" (10 May 2016), online: UN Meetings Coverage & Press Releases <www.un.org/press/en/2016/hr5299.doc.htm>; Online Editor, "Fully Adopting UNDRIP: Minister Bennett's Speech at the United Nations", *Northern Public Affairs* (11 May 2016), online: <www.northernpublicaffairs.ca/index/fully-adopting-undrip-minister-bennetts-speech/>.

declaration in accordance with the Canadian constitution".[118] By doing so, Canada would be "breathing life into section 35" and recognizing it as "a full box of rights for Indigenous peoples in Canada".[119]

To further this commitment, a private members bill, as tabled by Romeo Saganash, Member of Parliament (MP), was recently passed at the House of Commons and introduced to the Senate that aims to harmonize UNDRIP with the laws of Canada [120] Though some commentators express concern that the bill will be challenged in harmonizing the laws of Canada, as it is currently drafted,[121] others call it a "pivotal legal instrument to further implement the Calls to Action and engage in the reconciliatory process",[122] while recognizing that full implementation of UNDRIP will require "long-term commitment", "collaboration", and "hard work".[123]

There are four provisions within UNDRIP, including Articles 14, 15, 17, and 21, that touch upon the rights of Indigenous peoples within the educational context. Two of the more relevant provisions, for the purposes of this thesis, are Articles 14 and 15. Article 14 aims to

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[118] *Ibid.*
[119] *Ibid.*
[120] Bill C-262, *An Act to ensure that the laws of Canada are in harmony with the United Nations Declaration on the Rights of Indigenous Peoples,* 1st Sess, 42 Parl, 2016, (as passed by the House of Commons 30 May 2018 and at second reading with the Senate 23 October 2018).
[121] See Thomas Isaac & Arend Hoekstra, "Implementing UNDRIP in Canada: Challenges with Bill C-262", *Cassels Brock Lawyers Newsletter*, (8 January 2018), online: <www.casselsbrock.com/CBNewsletter/Implementing_UNDRIP_in_Canada__Challenges_with_Bill_C_262> (wherein the authors state: "No explanation is provided in the Bill on how the adoption of UNDRIP in the Canadian context will co-exist, modify, or alter existing Canadian law"); Radha Curpen et al., "Canada Supports UNDRIP Implementation Bill" (6 December 2017), Bennett Jones (blog), online: <https://www.bennettjones.com/en/Blogs-Section/Canada-Supports-UNDRIP-Implementation-Bill> (wherein the authors state: "The government's support of the Bill is symbolically important; but the Bill creates only general obligations on the federal government without explaining how UNDRIP will be implemented procedurally and substantially into Canadian law").
[122] Shaké Sarkhanian, "Decolonizing Accountability to Law: Reforms Concerning Indigenous Peoples in the Post-TRC Period" (2018) JPPL 425 at 452.
[123] *Ibid*; The Coalition for the Human Rights of Indigenous Peoples, Public Statement, "Bill C-262: An Essential Framework for Implementation of the United Nations Declaration on the Rights of Indigenous Peoples" (4 May 2016), Amnesty International Canada, online: <https://www.amnesty.ca/news/bill-c-262-essential-framework-implementation-united-nations-declaration-rights-indigenous>.

"remedy the historical and contemporary inequalities in education" for Indigenous peoples by addressing three themes:[124] (1) the Indigenous community's right to self-determine their educational systems, (2) the right for Indigenous persons, particularly children, to have access to linguistically pertinent education, and (3) the right for Indigenous persons, particularly children, to have access to culturally pertinent education.[125] Article 15 is primarily focused on "improving relations between Indigenous and non-Indigenous peoples" and aims to ensure that Indigenous peoples and cultures are appropriately represented within education curricula and other public information.[126] It also aims to promote the "the dignity and diversity of Indigenous cultures" and combat prejudice and discrimination.[127] These articles read as follows:

> *Article 14*
>
> 1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
>
> 2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
>
> 3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.
>
> *Article 15*
>
> 1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

[124] Lorie Graham & Amy Zyl-Chavarro, "A Human Rights Perspective on Education and Indigenous Peoples: Unpacking the Meaning of Articles 14 and 15 of the UN Declaration on the Rights of Indigenous Peoples" (2016) 8:1 Northeastern UL J 135 at 142.
[125] *Ibid* at 143-150.
[126] *Ibid* at 150.
[127] *Ibid*.

> 2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.[128]

While the international legal order provides numerous human rights instruments, which directly speak to the educational rights of children across the globe, including Indigenous children (particularly, UNDRIP), at the federal level in Canada, only one piece of legislation directly touches upon the education mandate of Indigenous children; the *Indian Act*. The Canadian *Constitution* may also touch upon the education mandate and may even go further to offer protections and affirmations of a right to education for First Nations children, particularly as a Treaty right under section 35(1), but this has yet to be determined.

The Constitution: Aboriginal and Treaty Rights

Aboriginal rights (also referred to as 'inherent rights') and treaty rights of Indigenous peoples in Canada are constitutionally protected under section 35(1) of the *Constitution*,[129]

> 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
>
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
>
> (3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
>
> (4) Notwithstanding any other provisions of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

[128] UNDRIP, *supra* note 110.
[129] *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Constitution*].

Determining what this section actually means for First Nation and Métis peoples as well as the Inuit in Canada, and determining what specific rights are recognized and protected under section 35(1) of the *Constitution*, has been left to the courts to resolve on a case-by-case basis and is a matter of great debate amongst academics.[130] Some Indigenous legal scholars view section 35(1) as a distraction as it takes Indigenous peoples away from fully asserting their autonomy and sovereignty. While others see it as a vehicle for change, capable in helping Indigenous peoples assert and define their own rights.[131] For instance, Taiaiake Alfred warns Indigenous communities and persons from relying on the common law western sense of rights under section 35(1) of the *Constitution* because it serves to "alienate the individual from the group" and "concede[s] nationhood in the truest sense".[132] John Borrows, on the other hand, takes a more moderate approach to section 35(1), seeing it as means for Indigenous peoples to regain their power of self-determination.[133]

To date, Canadian courts have yet to determine whether the right to education is either a treaty right, an Aboriginal, or an inherent right benefiting the affirmation and protection of section 35(1).[134]

With respect to education as a treaty right, disagreement between the federal government and First Nation communities, who are signatories to the numbered treaties, for instance, lie not so much in the recognition of education as a treaty right. But, rather, discord between the parties

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[130] See generally Ardith Walkem & Halie Bruce, eds, *Box of Treasures of Empty Box? Twenty Years of Section 35* (Penticton: Theytus Books, 2003).
[131] Erin Hanson, "Aboriginal Rights", online: Indigenous Foundations, Arts, University of British Columbia <http://indigenousfoundations.arts.ubc.ca/home/land-rights/aboriginal-rights.html> [Hanson, "Aboriginal Rights"].
[132] Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto*, 2nd ed (Oxford: Oxford University Press, 2009) at 176.
[133] John Borrows, "Measuring a Work in Progress: Canada, Constitutionalism, Citizenship and Aboriginal Peoples" in Ardith Walkem & Halie Bruce, eds, *Box of Treasures of Empty Box? Twenty Years of Section 35* (Penticton: Theytus Books, 2003) 222. See also Hanson, "Aboriginal Rights", *supra* note 131.
[134] See generally Paquette & Fallon, "First Nations Education", *supra* note 79.

seem to centre on the substantive meaning of the educational clauses in the treaties, their implementation, and whether they are to be interpreted to reflect modern modalities of education.[135]

In 1991, Justice James MacPherson, while he was Dean of Law at Osgoode Hall Law School, and prior to his appointment to the Court of Appeal for Ontario, provided comments to the federal government with respect to the comprehensive four-volume study undertaken by the Assembly of First Nations, entitled *Tradition and Education: Towards A Vision of Our Future*.[136] In this report, he asserts that the "education provisions in most of the major treaties impose a legal obligation to do more than simply 'maintain a school'" and opines that treaties will be interpreted by Canadian courts "in light of modern needs".[137] To this end, he states: "…there can be no doubt that when there is an education provision in a treaty it will be interpreted liberally so as to ensure that it operates in a meaningful way in the current context".[138]

Though no decisions have yet been rendered on the issue of education as a treaty right, it may be that, in the near future, a court will. In 2013, Grand Chief Kelly (now Grand Chief Warren White), on behalf of all beneficiaries of Treaty 3, launched a lawsuit against the federal government for breach of its treaty obligation "to maintain schools for instruction" in the twenty-eight reserves covered by Treaty 3.[139] This case was initially dismissed at the first level of court

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[135] Paquette & Fallon, "First Nations Education", *supra* note 79 at 356; Sheila Carr-Stewart, "A Treaty Right", *supra* note 4 at 140-141(self-determination and local control over education, appropriate funding and resources, quality educational programming and curricula that reflect the language, culture, and traditions of the communities, remain some of the sources of debate).

[136] Canada, Department of Indian Affairs and Northern Development, *MacPherson Report on Tradition and Education: Towards a Vision of our Future*, by James C. MacPherson (Ottawa: DIAND, 1991) [*MacPherson Report*].

[137] *Ibid* at 32.

[138] *Ibid*.

[139] *Kelly* v. *Canada (Attorney General)*, 2014 CanLII 92 (Ont CA) [*Kelly* v. *Canada*] (wherein the Court of Appeal grants the Grand Chief Warren to continue the proceeding on behalf of all persons who are beneficiaries of Treaty 3. At the time of the Court of Appeal's decision, the government had yet to file its defence). See also *Kelly* v. *Canada*

for being non-justiciable.[140] Upon appeal, however, the Ontario Court of Appeal overturned the decision and ruled that the matter could proceed as an action.[141] This matter has yet to be heard and remains before the courts.

With respect to the question of whether the right to education is an Aboriginal or inherent right, the Supreme Court of Canada has provided a glimpse as to the direction courts will take in this regard in *R*. v. *Côté*.[142] Here the court ruled that "a substantive aboriginal right will normally include the incidental right to teach such a practice, custom and tradition to a younger generation".[143] In this case, one of the appellants was charged and convicted for fishing without a licence, under federal legislation (which conviction was eventually overturned at the Supreme Court of Canada), though he was not fishing for food, per se. Rather, he was "fishing to illustrate and teach younger aboriginal students the traditional Algonquin practices of fishing for food".[144] In other words, the right to teach fishing is incidental to the substantive Aboriginal right to fish. The question as to whether a right to education is a substantive right in and of itself, however, that is not necessarily incidental or tied to another Aboriginal right, custom, or practice, has been answered differently by commentators. Some assert Canadian courts will have to include education as a section 35(1) right, while others speculate on the possibility.

Paquette and Fallon, for instance, contend that, pursuant to the Supreme Court of Canada's decisions in *Delgamuukw*[145] and *Van der Peet*,[146] a court will inevitably have to find education to be an inherent right. Particularly, if education is viewed more broadly:

(Attorney General), 2013 CanLII 2268 (Ont Sup Ct (Civ Div)) (Statement of Claim and Amended Statement of Claim, Plaintiffs).
[140] *Ibid.*
[141] *Kelly* v. *Canada*, *supra* note 139 at para 21.
[142] *R.* v. *Côté*, [1996] 3 SCR 139, 1996 CanLII 170 (SCC) at para 56 [*R.* v. *Côté*].
[143] *Ibid.*
[144] *Ibid.*
[145] *Delgamuukw v. British Colubmia*, [1997] 3 SCR 1010 [*Delgamuukw*].
[146] *R. v. Van der Peet*, [1996] 2 SCR 507 [*Van der Peet*].

> At first blush, these [key defining] criteria [of an inherent right as enunciated in *Delgamuukw* and *Van der Peet*] seem to decisively exclude education. That is particularly the case if one thinks of education as a synonym for conventional schooling centred on mainstream provincial or territorial curricula. If one thinks of education in broader terms, however, the exclusion appears less decisive. Little doubt exists, after all, that in pre-contact times Aboriginal peoples "educated" their youth in a way that broadly paralleled the purposes, if not the modalities, of European and Euro-Canadian education.[147]

MacPherson, on the other hand, takes a more conservative approach. In his report to the federal government, as noted above, he acknowledges another legal scholar's opinion that section 35(1) requires courts to recognize education as an aboriginal right,[148] but then goes on to conclude:

> It is impossible to say with certainty that Canadian courts would decide that education is a constitutionally protected aboriginal right. Moreover, even if the Supreme Court of Canada was prepared to take that step, it would be very difficult to speculate on the actual content of the right. Much would depend, as it always does in considering aboriginal rights, on local history. Nevertheless, in light of the far-reaching language and bold spirit of the Supreme Court's decision in Sparrow, a future argument that in some communities there is an aboriginal right to education cannot be dismissed.[149] [emphasis original]

The authors of *The Royal Commission on Aboriginal Peoples* too recognize the uncertainty of how a Canadian court will determine the issue, whether education would be recognized as an Aboriginal or inherent right. But, in their view, they conclude that education is a core element of jurisdiction in Indigenous self-government, which warrants affirmation and protection under section 35(1) of the *Constitution*. To this end, they determined:

> …section 35 recognizes and affirms the inherent right of self-government as an existing Aboriginal and treaty right, and that

[147] Paquette & Fallon, "First Nations Education", *supra* note 79 at 366. See also Emily Milne, "Implementing Indigenous Education Policy Directives in Ontario Public Schools: Experiences, Challenges and Successful Practices" (2017) 8:3 Intl Indigenous Pol'y J 1 at 1 (who asserts: "…control over education is a right of Indigenous Peoples protected within Canada's Constitution (see Section 35 of the Constitution Act, 1982)").
[148] See William Pentney, "The Rights of the Aboriginal Peoples of Canada in the Constitution Act, 1982: Part II: Section 35: The Substantive Guarantee" (1988) 22:2 UBC L Rev 207 at 259.
[149] *MacPherson Report*, *supra* note 136 at 33.

> Aboriginal nations can assume jurisdiction without benefit of a new treaty arrangement in core areas, including education, health, social services, languages and culture.[150]

Regardless of what the legal scholars, who are trained in western conceptions of law, may speculate, it is clear that First Nation leaders have long asserted education as an inherent right. Notably, in 1972, the National Indian Brotherhood (Assembly of First Nations), in its seminal policy paper, *Indian Control of Indian Education*, asserts that based on Indigenous traditions, which saw adults personally responsible to teach children in their respective communities all that they needed to know "in order to live a good life", Indigenous people, particularly parents, must control Indigenous education.[151]

The federal government, in 1973, adopted this position, as enunciated in *Indian Control of Indian Education* to a limited extent. The federal government only went so far as to "devolve limited control to First Nations bands in the form of educational administration of existing federal/provincial programs and services" and "enabled First Nations to set up educational authorities at local levels".[152] In 1988, the National Indian Brotherhood (Assembly of First Nations) again proclaimed inherent jurisdiction over education, in this instance, more clearly stating: "Education for First Nations people is a matter of inherent Aboriginal right".[153]

Federal Legislation: The Indian Act

Section 114 to 116 of the *Indian Act* gives the Minister of Indian Affairs certain powers

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[150] *Report of the Royal Commission on Aboriginal Peoples*: *Renewal: A Twenty-Year Commitment*, vol 5 (Ottawa: Supply and Services Canada, 1996) at 114 [*RCAP*, vol 5].
[151] National Indian Brotherhood, "Indian Control of Indian Education" (Policy Paper presented to the Minister of Indian Affairs and Northern Development, 1972) at 1 and 27-28 [NIB, "Indian Control"].
[152] Paulette Tremblay, "First Nations Educational Jurisdiction: National Background Paper" (2001) Assembly of First Nations, Education Sector at 15-16.
[153] National Indian Brotherhood/Assembly of First Nations, *Tradition and Education: Towards a Vision of Our Future: A Declaration of First Nations Jurisdiction Over* Education (1988) at 2 and 40.

in respect of the primary and secondary education of Aboriginal students.[154] These sections are devoid, as they do not provide any substantive educational rights to students, parents, or guardians.[155] These sections read:

> 114(1) The Governor in Council may authorize the Minister, in accordance with this Act, to enter into agreements on behalf of Her Majesty for the education in accordance with this Act of Indian children, with
>
> (a) the government of a province;
> (b) the Commissioner of Yukon;
> (c) the Commissioner of the Northwest Territories;
> (c.1) the Commissioner of Nunavut; and
> (d) a public or separate school board.
>
> (2) The Minister may, in accordance with this Act, establish, operate and maintain schools for Indian children.
>
> 115 The Minister may
>
> (a) provide for and make regulations with respect to standards for buildings, equipment, teaching, education, inspection and discipline in connection with schools; and
> (b) provide for the transportation of children to and from school.
>
> 116(1) Subject to section 117, every Indian child who has attained the age of seven years shall attend school.
>
> (2) The Minister may
>
> (a) require an Indian who has attained the age of six years to attend school; and
> (b) require an Indian who becomes sixteen years of age during the school term to continue to attend school until the end of that term.
>
> 117 An Indian child is not required to attend school if the child
>
> (a) is, by reason of sickness or other unavoidable cause that is reported promptly to the principal, unable to attend school; or
> (b) is under efficient instruction at home or elsewhere.

[154] *Indian Act*, RSC 1985, c. I-5.
[155] Paquette & Fallon, "First Nations Education", *supra* note 79 at 353-356.

The 'recognized' legal orders, including federal legislation, such as the *Indian Act*, does not have a monopoly on the law. In accordance with legal pluralism, the 'unrecognized' legal orders, such as First Nations legal traditions and laws, too must be contemplated when determining or identifying the laws to which First Nation persons and peoples consider themselves beholden. Much like the international legal orders, the First Nation students who participated in the research project, in fact, rely on First Nation legal concepts to inform their right to an education, regardless of whether these laws are validated by official state law. This finding will be further explored at Chapters Five and Six.

PART V: THE 'UNRECOGNIZED' LEGAL LANDSCAPE

Indigenous peoples in Canada have always had their own legal traditions and systems of law. They were not without law or 'pre-legal' as some commentators, particularly those trained in legal positivism, may assert.[156] Nor was Canada "legally vacant at its foundation" upon the arrival of Europeans.[157] Indigenous legal traditions and systems of law have always existed, irrespective of Europeans and the introduction of the (seemingly) centralized legal authority that is Canada. This has specifically been recognized by the Supreme Court of Canada; Indigenous legal traditions and laws existed prior to the establishment of Canada.[158] And, they continue to

[156] Borrows, *Indigenous Constitution*, *supra* note 1 at 12 (wherein Borrow explains: "For legal positivists… centralized authority and explicit command are necessary for a legal system to exist".)
[157] *Ibid.* at 12-13.
[158] See *R.* v. *Sparrow*, [1990] 1 SCR 911; see also *Calder* v. *British Columbia (Attorney General)*, [1973] SCR 313 at 328 (wherein the court states: "…the fact is that when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries. This is what Indian title means and it does not help one in the solution of this problem to call it a "personal or usufructuary right". What they are asserting in this action is that they had a right to continue to live on their lands as their forefathers had lived and that this right has never been lawfully extinguished. There can be no question that this right was "dependent on the goodwill of the Sovereign"). See also *Mitchell* v. *M.N.R.*, [2001] 1 SCR 911, 2001 CanLII 33 (SCC) at para 10 (wherein the states: "…European settlement did not terminate the interests of aboriginal peoples arising from their historical occupation and use of the land. To the contrary, aboriginal interests and customary laws were presumed to survive the assertion of sovereignty, and were absorbed into the common law as rights…").

co-exist with, or alongside, Canadian law today.[159]

Canada is a legally pluralistic state encompassing three distinct legal traditions: civil law, common law, and Indigenous legal traditions.[160] As was discussed in the previous part of this chapter, legal pluralism realizes that not all law has its source in the state, nor is law dependent on the state. Laws can originate from non-state legal orders too, such as the legal orders and traditions of First Nation communities in Canada. Moreover, the state, including its justice system and judiciary, need not recognize these non-state legal orders for them to have authority over the members of First Nation communities. It could be argued, however, that various state actors in Canada are increasingly incorporating Indigenous sources of law into the Canadian common law tradition. This is exemplified by the courts when they draw upon Indigenous sources of law to determine the extent and scope of Aboriginal rights under section 35(1) of the *Constitution* and refer to these rights as "pre-existing", "customary", "*sui generis*", and "unextinguished", among other things.[161]

More recently, this trend, or growing demand to better understand and harmonize Indigenous laws and legal systems within Canada, include the recent calls to action by the Truth and Reconciliation Commission of Canada (TRCC) as well as the establishment of the world's first joint common law and Indigenous law degree program at the University of Victoria.[162] First, the TRCC outright calls upon the federal, provincial, and territorial governments to 'recognize and implement' Indigenous justice systems consistent with treaty and Aboriginal rights under

[159] See generally Borrows, *Indigenous Constitution*, *supra* note 1; Craft, *Breathing Life*, *supra* note 87 at 9.
[160] Borrows, *Indigenous Constitution*, *supra* note 1 at 8.
[161] John Borrows, "With or Without You: First Nations Law (in Canada)" (1996) 41 McGill LJ 629 at 635-636 [Borrows, "With or Without You"].
[162] University of Victoria, UVic News, "World's first Indigenous law degree to be offered at UVic" (21 February 2018), online: UVic <www.uvic.ca/news/topics/2018+jid-indigenous-law+media-release> [UVic News].

section 35(1) of the *Constitution* as well as UNDRIP.[163] Second, the TRCC goes on to make several calls to action that are aimed not only at educating lawyers and law students on the history of Indigenous peoples in Canada, including their traditional laws and legal systems,[164] but on establishing institutions of law to transmit these very teachings and principles to Canada's future lawyers.[165]

In response to these calls to action, particularly the latter, the University of Victoria, as of September 2018, will open its doors to its first class of students enrolled in its joint Juris Doctor (JD)/Juris Indigenarum Doctor (JID) program, which will "combine the intensive study of both Indigenous and non-Indigenous law, enabling people to work fluently across the two realms". According to one of its founding members and Indigenous law experts, Val Napoleon, the program "will equip [its] students to take up that work at every level – local to national, private to public, and beyond" and will be "a vital part of rebuilding Indigenous law to meet today's challenges".[166]

Some First Nation communities in Canada have been able to well preserve their traditional laws and legal systems, particularly through the help of their Elders. While others were completely interrupted by the colonial project that is Canada and are only now in the

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[163] Canada, Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Ottawa: Truth and Reconciliation Commission of Canada, 2015) at 4 [TRCC, *Calls to Action*] (see Call to Action No. 42).

[164] *Ibid* at 3 (see Call to Action No. 27, which calls upon "the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples,* Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations."; see also Call to Action No. 28, which, in relevant part, reads: "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.").

[165] *Ibid* at 5 (see Call to Action No. 50, which states: "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".)

[166] UVic News, *supra* note 162.

process of having to expend significant time, effort, and resources to "rediscover and revitalize" the traditional laws of their communities.[167] Regardless of whether a First Nation community falls within the former or the latter of these situations, what remains evident is that their traditional laws are alive and well.

> Our traditional laws are not dead. They are bruised and battered but alive within the hearts and minds of the indigenous peoples across our lands. Our elders hold these laws within their hearts for us. We have only reach out and live the laws. We do not need the sanction of the non-indigenous world to implement our laws. These laws are given to us by the Creator to use. We are going to begin by using them as they were intended. It is our obligation to the children yet unborn.[168]

In his seminal text, *Canada's Indigenous Constitution*, Borrows identifies five sources of Indigenous law: sacred, natural, deliberative, positivistic, and customary.[169] Sacred laws are those that "stem from the Creator, creation stories or revered ancient teachings that have withstood the test of time".[170] These laws are given the highest of respect.[171] Natural laws are those that are developed "from observations of the physical world" around Indigenous peoples, wherein "rules for regulation and conflict resolution" may be drawn (such as the interactions between an insect and a bird).[172] Deliberative law is a "broad source of Indigenous legal tradition" and is "formed through processes of persuasion, deliberation, council, and discussion".[173] Positivistic laws are those that are "regarded by a sufficient number of people within a community as authoritative" and can be found in "proclamations, rules, regulations, codes, teachings, and axioms that are regarded as binding or regulating people's behaviour".[174]

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[167] *RCAP*, vol 2, *supra* note 87 at 117.
[168] *RCAP*, vol 2, *supra* note 87 at 117 (citing Sharon Venne, Saulteau First Nation, Fort St. John, British Columbia).
[169] Borrows, *Indigenous Constitution*, *supra* note 1 at 23-58.
[170] *Ibid* at 24.
[171] *Ibid*.
[172] *Ibid* at 28.
[173] *Ibid* at 35.
[174] *Ibid* at 46-47.

Finally, customary laws are those that are defined by "practices developed through repetitive patterns of social interaction that are accepted as binding on those who participate in them".[175]

Like Friedland, with respect to the research project and corresponding thesis work, I start from the position that it would be illogical to assume that Indigenous laws do not exist.[176] I echo her sentiment that: "one day [we will] shudder at the collective colonial ignorance and arrogance that once submerged the resources of Indigenous legal thought from the broader Canadian political and legal imagination".[177] A significant challenge I face in this project, however, particularly given my outsider status (see Chapter Three), will be the practical task of distilling from the answers of the First Nation students who participate in the research project any First Nation legal traditions that they may be drawing on to inform their understanding of their right to education. There are practical challenges that I will face in finding, understanding, and applying these Indigenous laws.[178]

CONCLUSION

This chapter has laid the groundwork in arguing that legal pluralism and critical legal pluralism together can offer a unique perspective into better understanding, not only the educational challenges that First Nations youth face in their day-to-day lives, but also how these multiple, overlapping, and interacting legal and normative orders interact to inform First Nation youths' perceptions on their right to education. Such perspectives will help better evidence the

[175] *Ibid* at 51.
[176] Hadley Friedland, "Reflective Methods for Accessing, Understanding and Applying Indigenous Laws" (2012) 11 Indigenous LJ 1 at 5-6.
[177] *Ibid.*
[178] *Ibid* (wherein the author cites the following challenges to finding, understanding and applying Indigenous laws: (a) challenges of accessibility; (b) challenges of intelligibility; (c) challenges of legitimacy; (d) challenges of distorting stereotypes; and (e) challenges of relevance and utility).

effectiveness of the educational laws and policies in Canada and inform current educational debates and policies.

CHAPTER THREE: SITUATING MYSELF (OR, CONFESSIONS OF A WHITE, NON-INDIGENOUS, NOVICE RESEARCHER)[1]

It ain't what you don't know that gets you into trouble. It's what you know for sure that just ain't so.[2]

INTRODUCTION

From the outset of this study and with every step I took throughout the research process, I grappled with the ethics of conducting research within an Indigenous context. When an 'outsider' conducts 'insider' research, particularly in an Indigenous context, a research project can potentially serve as another form of colonialism causing irreparable harm to the community being studied.[3] Even now, as I approach the end of the LL.M. program, I wonder: How will this research project be received? How will I be received? Am I an ally? Or, am I complicit in propagating the very system that serves to further disempower Indigenous peoples in that I have conducted yet another colonial research project.[4]

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[1] See Nado Aveling, "'Don't talk about what you don't know': on (not) conducting research with/in Indigenous contexts" (2013) 54:2 Critical Studies in Education 203 at 204 [Aveling, "On Conducting Research"] (this article provides the inspiration for the title of this chapter; the author refers to her "confessions of whiteness" when attempting to situate herself within her research project).

[2] See Al Gore, *An Inconvenient Truth: The Planetary Emergence of Global Warming and What We can do About it* (New York: Rodale, 2006) at 9 and 243 (who attributes this quote to Mark Twain, though this credit may be erroneous; see e.g. Nigel Rees, "Policing Word Abuse" (13 August 2009), <online: Forbes <www.forbes.com/2009/08/12/nigel-rees-misquotes-opinions-rees.html#4b07014d565b>.

[3] See Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 2nd ed (London: Zed Books, 1999) at 1 and 9-12 [Smith, *Decolonizing Methodologies*]; Norman K Denzin & Yvonna S Lincoln, "Introduction: Critical Methodologies and Indigenous Inquiry" in Norman K Denzin, Yvonna S Lincoln & Linda Tuhiwai Smith, eds, *Handbook of Critical and Indigenous Methodologies* (Los Angeles: Sage, 2008) 1 at 4 [Denzin, *Critical Methodologies*].

[4] Indeed, writing this chapter, I remain apprehensive. Will I say too much about myself? Is what I have to say even appropriate or relevant to the project? Will my words obscure those of the project participants'? Am I fully cognizant of my outsider status and its potential impacts on the findings? Or, is this chapter an attempt, on my part, to pardon my role as a researcher and, as such, my complicity in propagating colonialism in academia? See e.g. Aveling, "On Conducting Research", *supra* note 1 at 204 (wherein the author states: "What concerns me…is that self-disclosure can come dangerously close to the phenomenon of 'me-too-ism'. But how much self-disclosure is too much? What is simply self-absorbed 'navel-gazing'? and 'whiteys lov[ing] to talk about themselves'? Whether this is a legitimate concern or just an example of epistemological slippage in which a white, western woman feels a huge degree of discomfort about ways of doing things that are not part of my cultural heritage, I do not know. Perhaps,

Despite these concerns, and having read relevant literature on the insider-outsider debate in qualitative research, as well as decolonizing methodologies, it became clear to me that, though there is great debate on this issue, there is no ready answer. Nor is there any bright line distinguishing between those who 'should' from those who 'should not'.

To help determine the appropriateness of my role in this research project, in Part I of this chapter, I examine how the world of academia and research can continue to serve as an extension of colonialism, particularly, if it is done in a manner that wholly adopts the rules of positivism and disregards the needs of Indigenous people as determined by Indigenous people. In Part II, I situate myself as an outsider and attempt to answer the ultimate question: should I, a white, non-Indigenous, novice researcher, conduct research on a community of which I am not a member? I then end this chapter, in Part III, by examining how the research project may be designed and conducted in a manner so as to moderate my outsider status, promote respect, be more ethical, and contribute to the growing body of decolonizing research in academia.

PART I: RESEARCH AS AN EXTENSION OF COLONIALISM

> From the vantage point of the colonized, a position from which I write, and choose to privilege, the term 'research' is inextricably linked to European imperialism and colonialism. The word itself, 'research', is probably one of the dirtiest words in the indigenous world's vocabulary.[5]

The above words of Linda Tuhiwai Smith, as found in her seminal text *Decolonizing Methodologies: Research and Indigenous Peoples*, is probably the most cited excerpt found in academia that addresses and denounces the colonializing effect inherent in the research process, particularly in the anthropological and sociological disciplines.

'my confessions of whiteness' simply constitute 'a form of pleasurable relief' because such confessions absolve me from any complicity in perpetuating a system that enables whites to maintain power?").

[5] Smith, *Decolonizing Methodologies*], *supra* note 3 at 1.

As a Maori woman and daughter of an anthropologist, Smith describes the experiences of the Maori with research and researchers, and extends their experiences more generally to Indigenous peoples around the globe, including First Nation peoples in Canada.[6] Smith asserts that, from the Indigenous perspective, western forms of research has traditionally been, and continues to be, another manifestation of colonialism and imperialism, undertaken in the name of betterment and progress for Indigenous peoples, but serving only to impede their paths to self-determination and cultural autonomy.[7]

Since this trail-blazing text, it has become rote (though no less important) to say that research conducted within an Indigenous context can be an act, an extension, or a metaphor of colonialism.[8] This is particularly the case when research is conducted by 'outsiders' and in accordance with the rules of positivism, which assumes the independence of the researcher and views the world as being objective, observable, and capable of being known by breaking it down into discrete measurable components.[9] This western paradigm of research, which idealizes objectivity, can be harmful to Indigenous communities, who are the subject and object of study, whether such research is conducted using a quantitative or qualitative approach.[10]

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[6] See Smith, *Decolonizing Methodologies*, *supra* note 3 at 9-11. See also Pat Sikes, "Review Essay: Decolonizing research and methodologies: indigenous peoples and cross-cultural contexts" (2006) 14:3 Pedagogy Culture & Society 349 at 351 [Sikes, "Review Essay"].
[7] Smith, *Decolonizing Methodologies*, *supra* note 3 at 2.
[8] See Denzin, "Critical Methodologies", *supra* note 3 at 4; Aveling, "On Conducting Research", *supra* note 1 at 210; Amy T Blodgett et al, "In Indigenous Words: Exploring Vignettes as a Narrative Strategy for Presenting the Research Voices of Aboriginal Community Members" (2011) 17:6 Qualitative Inquiry 522 at 522 [Blodgett, "In Indigenous Words"]; Rhonda Koster, Kirstine Baccar & R Harvey Lemelin, "Moving from research ON, to research WITH and FOR Indigenous communities: A critical reflection on community-based participatory research" (2012) 56:2 Can Geographer 195 at 197 and 208 [Koster, Baccar & Lemelin, "Moving from research"]; Charles R Menzies, "Reflections on Research With, for, and Among Indigenous Peoples" (2001) 25:1 Can J Native Education 19 at 21.
[9] See Smith, "Decolonizing Methodologies", *supra* 3 at 1; Denzin, "Critical Methodologies", *supra* note 3 at 4; Aveling, "On Conducting Research", *supra* note 1 at 210.
[10] Denzin, "Critical Methodologies", *supra* note 3 at 6.

The western paradigm of research privileges the 'outsider' perspective while ignoring, silencing, or diminishing the 'insider' or Indigenous perspective.[11] Though there is no one Indigenous knowledge system or research methodology (as there are just as many of these things as there are Indigenous peoples)[12] a common principle found amongst them, for instance, is that the world cannot be known merely by objective means. Rather, the world is known through relationships with others, the spirit, and nature (both the animate and the inanimate), among other relations and things.[13] By rejecting a methodology that relies on relationships in favour of one which promotes the disembodiment of the researcher as the standard research paradigm, research becomes a tool of colonization; it deliberately attempts to extinguish Indigenous ways of knowing or Indigenous epistemologies.[14]

By objectifying Indigenous peoples and treating them as something to be collected, dissected, analyzed, and classified, Indigenous peoples are situated as the 'other'.[15] Through this process of 'othering', the discussion, or the manner in which the 'other' is represented (or misrepresented) back to the west, becomes one of race and binaries; between the white-skinned 'us' of the west and the dark-skinned 'them' of the 'other'.[16] This view serves to objectify Indigenous peoples as "beings to be studied…as part of nature, rather than as equal holders of

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[11] Koster, Baccar & Lemelin, "Moving from research", *supra* note 8 at 196; Robert Alexander Innes, "Wait a Second. Who are You Anyways: The Insider/Outsider Debate and American Indian Studies" (2009) 33:4 American Indian Quarterly 440 at 441; Margaret Kovach, "Emerging from the Margins: Indigenous Methodologies" in Leslie Allison Brown & Susan Strega, eds, *Research as Resistance: Critical Indigenous and Anti-oppressive Approaches* (Toronto: Canadian Scholar's Press, 2005) 19 at 22 [Kovach, "Emerging from the Margins"].

[12] See Mike Evans et al, "Chapter 10: Decolonizing Research Practice: Indigenous Methodologies, Aboriginal Methods, and Knowledge/Knowing" in Patricia Leavy, ed, *The Oxford Handbook of Qualitative Research* (New York: Oxford University Press, 2014) 179 at 179; See also Evelyn Steinhauer, "Thoughts on an Indigenous Research Methodology" (2002) 26:2 Can J Native Education 69 at 69 [Steinhauer, "Thoughts on an Indigenous"].

[13] Koster, Baccar & Lemelin, "Moving from research", *supra* note 8 at 198; Kovach, "Emerging from the Margins", *supra* note 11 at 27.

[14] Canada, Canadian Institutes of Health Research, *CIHR Guidelines for Health Research Involving Aboriginal People* (Ottawa: CIHR, 2008), online: <http://www.cihr-irsc.gc.ca/e/29134.html>.

[15] Koster, Baccar & Lemelin, "Moving from research", *supra* note 8 at 198.

[16] Smith, "Decolonizing Methodologies", *supra* note 3 at 1 and 33; Denzin, "Critical Methodologies", *supra* note 3 at 4.

knowledge or collaborators in the creation of knowledge".[17] In short, 'othering' represents a "process of dehumanization".[18]

By allowing the western research paradigm or 'outsiders' to set the research question, goal, or agenda, rather than allowing Indigenous peoples themselves to drive these things, the resulting research findings often provide zero benefit or usefulness to the community under study. Even worse, this 'scientific evidence' may be used to justify the intrusion or perpetuation of destructive laws and policies. As Smith aptly puts it: "The greater danger [of research], however, was in the creeping policies that intruded into every aspect of our lives, legitimated by research, informed more often by ideology".[19]

In turning the study of Indigenous peoples into a science, by misappropriating and misrepresenting their knowledge, traditions, imagery, and all things created and produced by them,[20] and by privileging the western world view and "reaffirming 'Whiteness' as an unchallenged norm",[21] researchers have contributed to the ongoing colonial project.[22]

Through that process, they too have destroyed any sense of trust that such communities may have had for researchers and the broader community, had such research been conducted in a moral and respectful manner in the first place. Indigenous groups in Canada, particularly, have refused researchers access to their communities due to these very things: past misrepresentations,

[17] Koster, Baccar & Lemelin, "Moving from research", *supra* note 8 at 198.
[18] Smith, "Decolonizing Methodologies", *supra* note 3 at 41.
[19] Smith, "Decolonizing Methodologies", *supra* note 3 at 3.
[20] Smith, "Decolonizing Methodologies", *supra* note 3 at 1.
[21] Blodgett, "In Indigenous Words", *supra* note 8 at 522.
[22] See e.g. Smith, "Decolonizing Methodologies", *supra* note 3 at 1 (wherein the author states: "It appals us [Indigenous peoples] that the West can desire, extract and claim ownership of our way of knowing, our imagery, the things we create and produce, and then simultaneously reject the people who created and developed those ideas.")

misappropriations, and general negative experiences, all of which helped lead to the word 'research' becoming a dirty word.[23]

PART II: SITUATING MYSELF

It is an essential element of the research process for researchers who undertake research within an Indigenous context, whether they are Indigenous or not, to locate themselves in the project.[24] By describing their relationship to the community that they aim to study in terms of ancestry, race, language, relationships to the land, as well as spiritual, social, economic, environmental, and political inclinations, among other things,[25] researchers can better open themselves to the community, create a space in which trust is invoked, and establish rapport between the researcher and research participants.

To this end, I am a white, English speaking person, and identify as a straight female. I was born and raised in Thunder Bay, Ontario, though my parents originally hail from Detroit, Michigan and Windsor, Ontario.

My mother's family consists of a mix of European heritages, being English, Irish, Scottish, and German. She is American born. When she married my father at eighteen years old, she ceded her American citizenship and became a full-fledged Canadian citizen.

My father's family is of mixed French and First Nation heritages. On his paternal side, my father's family migrated to Canada in 1874 from Rougemont, France, seeking to relocate to a more peaceful part of the world, having endured the Franco-Prussian war and having had the

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[23] John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 9.
[24] Kathy Absolon & Cam Willett, "Chapter 4: Putting Ourselves Forward: Location in Aboriginal Research" in Leslie Brown & Susan Strega, eds, *Research as Resistance: Critical, Indigenous and Anti-oppressive Approaches* (Toronto: Canadian Scholar's Press, 2005) 97 at 97 [Absolon, "Putting Ourselves Forward"]. Sonya Corbin & Jennifer Buckle, "The Space Between: On Being an Insider-Outsider in Qualitative Research*"* (2009) 8:1 International Journal of Qualitative Methods 54 at 55.
[25] Absolon, "Putting Ourselves Forward", *ibid* at 98.

whole of their farm and livelihood requisitioned by the Franco and Prussian armies, including their livestock, wine, and wheat harvest.[26] They settled directly into the Town of Sandwich (now Windsor). On my father's maternal side, my great-great grandfather also migrated to Canada from France, who upon arrival to Canada, married my great-great grandmother, who is from a First Nation community (it is believed) around the area of Ottawa, Ontario. It is largely unknown, or at least among those in my family with whom I have maintained relations, from what community she originated.

Given the number of heritages present within my family tree, and given that I am significantly disconnected from all of them, there is no one cultural identity that I feel a strong affiliation towards. When I am asked questions about my origins and family heritage, I am left to give the ubiquitous answer: Canadian. This is particularly appropriate given that my family has not retained any of our original languages (other than English), traditions, practices, customs, or cultural identities.

This is just as true with respect to my family's First Nation heritage. Here, the only indication that we are linked to any First Nation community is now found in the physical attributes of a few distant family members. Brown eyes, darker skin, and black hair serve as physical reminders of our bygone heritage. Long gone, however, is any affiliation to the culture, identity, and language.

With respect to my socio-economic standing, as a child I grew up in a poor, working

[26] Jack Cecillon, "The World of Jules Robinet: Pioneer Winemaker" 110:1 Ont History 10 at 13-14 (according to my great-great grandfather, Jules Robinet, as recorded in his diaries, and as reproduced in this article: "Alors mes parents ayant entendu parler due Canada comme un pays paisable et plein d'avenir, décidèrent d'y émigrer.", which translates into English as: "And so, my parents, having heard that Canada was a peaceful country with a promising future, decided to emigrate there.")

class family. My parents were young and uneducated when they married and started their family. They had to work hard to elevate themselves from the long history of poverty, familial violence, and alcoholism that plagued both of their family lineages, which they did with some success.

Given this background, I am one of the first of my family, on either side, to graduate from university. As I look back on my path in education as an adult, I am struck by how lucky, and to some extent how industrious, I had to be to see myself through two undergraduate degrees, a professional degree (being law school), and now this LL.M. program.

Throughout my education, I was entirely self-dependent in funding my education. I worked anywhere between two to four part-time jobs, while attending school on a full-time basis to fund these post-secondary degrees. For many years, I did not qualify for any government assistance, particularly, the Ontario Student Assistance Program (OSAP). Nor were my parents financially capable of providing me with any money to put towards my education.[27] Despite these financial challenges, I was able to find successes in my own formal education and move beyond the socio-economic class into which I was born.

The challenges and successes that I faced with respect to my education have heightened my passion regarding the role of education in society. I am of the view that education can serve as a great equalizer, providing an opportunity for low-income and minority children to raise themselves out of poverty and into higher socio-economic standing.

[27] I would like to, however, acknowledge that one year, during my undergraduate studies, my parents provided me with $2,000.00 to put towards my school books. In addition, while I attended school (with the exception of this LL.M. program), I lived with my parents, who provided me with food, shelter, and other living necessities during my post-secondary education.

PART III: ATONING FOR PAST SINS AND AMELIORATING MY 'OUTSIDER' STATUS: IS THIS POSSIBLE?[28]

As a novice researcher, embarking upon my very first foray into the world of academic research, numerous burgeoning questions spring to mind when I consider the magnitude of my thesis proposal with the most demanding question being: how does this novice researcher, who is trained in the conventional traditions of western law (which will serve to limit my understanding and interpretation of First Nations law),[29] who is white, non-Indigenous, and does not speak the traditional languages of the persons and communities she seeks to study (e.g. Cree, Oji-Cree, or Ojibway), undertake this research, given that she is certainly an 'outsider' doing 'insider' research?[30]

This question is not unique.[31] Fortunately, it has taken up significant space in recent academia and scholarly writings; literature from which I can glean some much needed wisdom and guidance as I navigate this strange, uncomfortable, but necessary issue. Unfortunately, however, there is no ready answer from which I can assert an absolute in either the negative or positive. There are those scholars who are adamant that only Indigenous researchers should ever engage in Indigenous research (or Indigenous research methodologies), given that Indigenous researchers have the "lifelong learning and relationship that goes into it", whereas the likes of me

[28] See e.g. Karen Heikkila & Gail Fondahl, "Co-managed research: non-Indigenous thoughts on an Indigenous toponymy project in northern British Columbia" (2012) 29:1 J Cultural Geography 61 at 61 [Heikkila, "Co-managed Research"] (wherein the authors state: "[t]he legacy of colonial research on Indigenous peoples weigh on non-Indigenous researchers as they strive to ensure that their projects are conducted ethically and in a manner that benefits the participant communities.")

[29] John Borrows, "With or Without You: First Nations Law (in Canada)" (1996) 41 McGill LJ 629 at 657.

[30] See Smith, "Decolonizing Methodologies", *supra* note 3 at 9-12 (from which I adopt the concepts of 'Other' 'othering' and 'insider/outsider'); Sikes, "Review Essay", *supra* note 6 at 353 (who states that "'Othering' currently has this kind of 'of the moment' status" and describes 'othering' as "the pervasive concern in contemporary research").

[31] Aveling, "On Conducting Research", *supra* note 1 at 203 (who more succinctly puts the question as: "Should non-Indigenous researchers attempt to research with/in Indigenous communities or not?").

do not.[32] Then there are those who assert the opposite; that it is possible for 'outsiders' to do 'insider' research.[33] Though these latter proponents are acquiescent, they attach some caveats to their opinion. Generally, they agree that non-Indigenous persons can undertake research within Indigenous contexts, but only so long as certain principles, or ideals, are met throughout the research process. Their opinions, however, diverge when they inventory these essential research objectives.

Regardless of where my ponderings on this essential question may lead, I remain cognizant of the following words of one non-Indigenous scholar,

> [i]f research is indeed a 'metaphor of colonization', then it seems to me that we have two choices: we have to learn to conduct research in ways that meets the needs of Indigenous communities and are non-exploitative, culturally appropriate and culturally safe, or we need to relinquish our roles as researchers within Indigenous contexts and make way for Indigenous researchers.[34]

There appear to be a number of labels attached to the various methodologies of research, which Indigenous and non-Indigenous academics alike deem appropriate when undertaking research within a context that places the researcher in the position of 'outsider'. In some instances, the term used is "decolonizing research" or "decolonizing methodologies",[35] in others

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[32] See e.g. Shawn Wilson, "What is an Indigenous Research Methodology?" (2001) 25:2 Can J Native Education 175 at 179 [Wilson, "Indigenous Research Methodology"]; Steinhauer, "Thoughts on an Indigenous", *supra* note 12 at 73; But see Aveling, "On Conducting Research", *supra* note 1.

[33] Aveling, "On Conducting Research", *supra* note 1 at 212 (though this author concludes that she should not; her conclusions "may not suit everyone, however, it is the approach of choice for me at this moment in time."); Vivienne Bozalek, "Acknowledging privilege through encounters with difference: Participatory Learning and Action techniques for decolonising methodologies in Southern contexts" (2011) 14:6 Intl J Social Research Methodology 469 at 469 [Bozalek, "Acknowledging Privilege"]; Kaitlin Jessica Schwan & Ernie Lightman, "Fostering Resistance, Cultivating Decolonization: The Intersection of Canadian Colonial History and Contemporary Arts Programming with Inuit Youth" (2015) 15:1 Cultural Studies Critical Methodologies 15; Heikkila, "Co-managed Research", *supra* note 28 at 78.

[34] Aveling, "On Conducting Research", *supra* note 1 at 204.

[35] Smith, "Decolonizing Methodologies", *supra* note 3; Aveling, "On Conducting Research", *supra* note 1; Sikes, "Review Essay", *supra* note 6.

it is "critical indigenous qualitative research",[36] or "social justice methodology", [37] "co-managed research",[38] or "participatory action research (PAR)". Though the name changes, and differences exist amongst these various methodologies, there is some accordance of principles, or ideals, among them for which researchers, who are 'outsiders', need to heed to ameliorate any colonizing effects of their proposed research.[39]

Though not exhaustive, the following list represents some of the common principles, or ideals, found amongst such research methodologies. To have a decolonizing effect, the research project should,

- recognize that it is both a moral and political project[40]
- be about action[41]
- combine Indigenous and critical methodologies[42]
- be emancipatory and empowering[43]
- be about social justice[44]
- benefit the Indigenous community or group being studied[45]

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[36] See Wilson, "Indigenous Research Methodology", *supra* note 32.
[37] Ruth Nicholls, "Research and Indigenous participation: critical reflexive methods" (2009) 12: 2 Intl J Social Research Methodology 117 at 117 [Nicholls, "Research and Indigenous"].
[38] Heikkila, "Co-managed Research", *supra* note 28.
[39] But see Wilson, "Indigenous Research Methodology", *supra* note 32 (critical indigenous qualitative research stands apart from these other listed methodologies as there are significantly more, and other, principles and epistemologies that are engaged within this type of research).
[40] Denzin, "Critical Methodologies", *supra* note 3 at 2 (wherein he states that *critical indigenous qualitative research* is always already political); Bozalek, "Acknowledging Privilege", *supra* note 33 at 469; Emily MS Houh & Kristin Kalsem, "It's Critical: Legal Participatory Action Research" (2014) 19 Mich J Race & L 287 at 263 [Houh, "It's Critical"].
[41] Houh, "It's Critical", *ibid* at 267.
[42] Denzin, "Critical Methodologies", *supra* note 3 at 2.
[43] Denzin, "Critical Methodologies", *supra* note 3 at 2 and 7; Nicholls, "Research and Indigenous", *supra* note 37 at 117; Houh, "It's Critical", *supra* note 40 at 273 and 311; Kovach, "Emerging from the Margins", *supra* note 11 at 21.
[44] Smith, "Decolonizing Methodologies", *supra* note 3 at 116; Aveling, "On Conducting Research", *supra* note 1 at 208; Nicholls, "Research and Indigenous", *supra* note 37 at 117.
[45] See Denzin, "Critical Methodologies", *supra* note 3 at 15; Heikkila, "Co-managed Research", *supra* note 28 at 61.

- privilege the Indigenous voice over the white, Western voice[46]
- criticize and demystify western science, particularly, positivist approaches[47]
- be participatory at every stage of the research process, allowing Indigenous persons, and participants, to define the scope of the study or project[48]
- be about relationships and asking the question throughout the research process: 'how am I, as a researcher, fulfilling my role in this relationship?' and 'what am I giving back to the community'?[49]
- promote self-determination of the Indigenous community and its participants[50]
- be accountable, as a researcher, to the Indigenous community and its participants[51]
- give access and control over the research findings to the Indigenous community and its participants, prior to Western academia[52]
- be about ceding control over the entire research process[53]

Ensuring that any research project includes all of these principles, and ideals, seems quite the daunting task, especially to this novice researcher. And, I am not alone in this estimation. Some researchers before me have questioned whether such a task, though "laudable", is ever

[46] Denzin, "Critical Methodologies", *supra* note 3 at 5-6; Aveling, "On Conducting Research", *supra* note 1 at 211 (wherein she states that being the 'best ally' possible means "not speaking for Indigenous peoples"); Houh, "It's Critical", *supra* note 40 at 263.
[47] Denzin, "Critical Methodologies", *supra* note 3 at 2.
[48] See Denzin, "Critical Methodologies", *supra* note 3 at 6; Nicholls, "Research and Indigenous", *supra* note 37 at 117 and 119; Heikkila, "Co-managed Research", *supra* note 28 at 62; Houh, "It's Critical", *supra* note 40 at 265 and 311.
[49] Nicholls, "Research and Indigenous", *supra* note 37 at 120-121; Houh, "It's Critical", *supra* note 40 at 273; Kovach, "Emerging from the Margins", *supra* note 11 at 30; Wilson, "Indigenous Research Methodology", *supra* note 32 at 177; Steinhauer, "Thoughts on an Indigenous", *supra* note 12 at 72.
[50] Denzin, "Critical Methodologies", *supra* note 3 at 2; Kovach, "Emerging from the Margins", *supra* note 11 at 23.
[51] Denzin, "Critical Methodologies", *supra* note 3 at 2 and 15 (wherein he states: "Makes the researcher responsible, not to a removed discipline (or institution) but rather to those studied.").
[52] Denzin, "Critical Methodologies", *supra* note 3 at 2.
[53] Nicholls, "Research and Indigenous", *supra* note 37 at 119; Houh, "It's Critical", *supra* note 40 at 263.

truly achievable.[54]

Regardless, I remain mindful of the following words of the authoritative voice of Linda Tuhiwai Smith:

> Whose research is it? Who owns it? Whose interests does it serve? Who will benefit from it? Who has designed its questions and framed its scope? Who will carry it out? Who will write it up? How will its results be disseminated?[55]

Despite the seemingly immense nature of the undertaking, it is my aim to meet as many of the PAR principles and ideals, as referenced above, to ensure that I minimize, to the extent possible, any colonizing effect that this research project may sustain. How this will be achieved, and any limitations of the research project in this regard, will be more thoroughly discussed in the next chapter.

CONCLUSION

After considering the sage words of researchers who have come before me and after considering the various methodologies, principles, and ideals that they deem fundamental to any research process undertaken by an 'outsider', I can only offer the following confession as an answer to the question: should I, a white, non-Indigenous, novice researcher, attempt to conduct research within an Indigenous context? I do not know. I do not know because the answer lies not in me, but in the process, which has yet to be fully negotiated.

It is a scary proposition (enter my second confession) to cede control, possibly having to shelve the research project altogether. Or, having to negotiate the entire research process with a

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[54] See Heikkila, "Co-managed Research", *supra* note 28 at 62, 63 and 79 (this author even goes so far as to refer to these ideals as "cliché's" given that the realities of the research often "deviate from these ideals".)

[55] Smith, "Decolonizing Methodologies", *supra* note 3 at 18; But see Denzin, "Critical Methodologies", *supra* note 3 at 18 citing Linda Tuhiwai Smith, "Kaupap Maori research" in Marie Ann Battiste, ed *Reclaiming indigenous voice and vision* (Vancouver: UBC Press, 2000) at 225 (wherein the author restates the questions as: "What research do we want done? Whom is it for? What difference will it make? How we want the research done? How will we know it is worthwhile? Who will own the research? Who will benefit.")

group of individuals who may very likely have a different agenda, ideas for research topics, conflicting goals, and time lines than what my own western academic institution would require of me as a LL.M. candidate. Not to mention navigating new relationships and building trust in me amongst strangers. This too is a scary proposition (enter my third confession). But, I have been assured that all these challenges are natural to any decolonizing project and that I should expect these known challenges.[56] I should also expect the unknown; challenges which I could never fully anticipate as a novice researcher.[57] So (enter my final confession); here I am, coming to you as I would come to any Indigenous person or community, whom I seek to study, with my "palms up and open",[58] willing to build relationships, but knowing some mistakes too may be made along the way.

[56] Heikkila, "Co-managed Research", *supra* note 28 at 79.
[57] Heikkila, "Co-managed Research", *supra* note 28 at 61.
[58] Blodgett, "In Indigenous Words", *supra* note 8 at 528.

CHAPTER FOUR: ACCOUNT OF METHODOLOGIES

Research, like life, is about relationships.[1]

INTRODUCTION

This study seeks to understand the right to education from the perspective of First Nation students (be it a treaty right, Aboriginal right, inherent right, or some other form of right). Consideration of this perspective is important for the effective realization of educational rights for these right holders.[2] It is possible that certain normative and legal orders not currently recognized by the Canadian government, such as First Nation legal traditions, have been overlooked in the development of today's education rights debates. This study aims to identify the 'recognized' and 'unrecognized' normative and legal orders that interact to inform the participants' perceptions of their educational rights.[3]

To educe findings to the specific research goals and questions of this study, as outlined at Chapters One and Five, several qualitative methodological approaches were applied throughout the study, including PAR principles and the grounded theory method. How these approaches were specifically employed and the extent to which they were utilized is discussed in Part I of this chapter. Part II offers descriptions of the sample size and the demographics of the sample and explains how the participants were recruited and interviewed. Part III provides an account of how the data in this study was collected, analyzed, and interpreted. Part IV discusses ethical

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[1] Margaret Kovach, "Emerging from the Margins: Indigenous Methodologies" in Leslie Allison Brown & Susan Strega, eds, *Research as Resistance: Critical Indigenous and Anti-oppressive Approaches* (Toronto: Canadian Scholar's Press, 2005) 19 at 30.

[2] Giselle Corradi & Ellen Desmet. "A Review of Literature on Children's Rights and Legal Pluralism" (2015) 47:2 J Leg Pluralism & Unofficial L 226.

[3] For the purposes of this study, and corresponding thesis, I have adopted William Twinning's position and treat legal pluralism as a species of normative pluralism, recognizing that in legal pluralism there is no settled classification or categorization of 'norms' versus 'rules' versus other related concepts. Thereby, referring to all as 'normative orders'. See William Twinning, "Normative and Legal Pluralism: A Global Perspective" (2010) 20 Duke J Comp & Intl L 473.

considerations, including issues with respect to confidentiality and anonymity. This chapter then concludes by providing some remarks about the specific challenges that I faced as the researcher conducting this study, as well as its scope and limitations.

PART I: METHODOLOGICAL APPROACHES APPLIED IN STUDY

Application of PAR Principles

As noted in Chapter Three, when an 'outsider' conducts 'insider' research within an Indigenous context, a research project can potentially serve as another form of colonialism causing irreparable harm to the community being studied.[4]

To ameliorate any potential colonizing effects that this research project may have on First Nation persons living in Thunder Bay and its surrounding communities, it was my aim to conduct this study, to the extent possible, in accordance with key goals and principles of a participatory action research project (PAR), with a particular focus on the dissemination of the preliminary and final results of this study to relevant community members. In particular, this study was able to meet the following principles of a PAR project, including:

- using critical methodologies
- privileging the Indigenous voice, over the white western voice
- adopting research methodologies that are contrary to positivist approaches
- remaining cognizant and reflective upon my role as a researcher throughout the study
- being accountable, as a researcher, to the participants, and Indigenous communities giving access and control over the research findings.

[4] See Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 2nd ed (London: Zed Books, 1999) at 1 and 9-12 [Smith, *Decolonizing Methodologies*]; Norman K Denzin & Yvonna S Lincoln, "Introduction: Critical Methodologies and Indigenous Inquiry" in Norman K Denzin, Yvonna S Lincoln & Linda Tuhiwai Smith, eds, *Handbook of Critical and Indigenous Methodologies* (Los Angeles: Sage, 2008) 1 at 4 [Denzin, *Critical Methodologies*].

Prior to submitting my project proposal to the research ethics board at the University of Manitoba, I reached out to seven relevant community groups, organizations, and persons in Thunder Bay ("Community Members"), via email, telephone, and in-person visits, seeking their potential collaboration and input on this study. Among other things, I invited them to comment on the design of the study, as well as its goals and interview questions. Of these Community Members, whose mandates concern or touch upon Indigenous justice or education initiatives and programs in Thunder Bay, or who provide political representation for First Nation communities in northern Ontario, or persons who have worked in these areas, three responded.

One Community Member responded saying that they would have to decline my invitation, though no explanation was provided as to why, and wished me well in my endeavours. A Cree Elder, who resides in Thunder Bay, and with whom I have a personal relationship, responded as well. This person expressed general support for the study and connected me with Aboriginal Initiatives at Lakehead University, which became the third Community Member to respond to my invitation.

Aboriginal Initiatives is a division of Lakehead University, as overseen by the Vice-Provost, which provides academic programming, student support services, community relations, and a culturally supportive environment for Lakehead University's First Nation, Métis, and Inuit students.[5] After an initial in-person meeting with the Vice-Provost, where I provided a draft proposal of the research project, including its goals and interview questions, Aboriginal Initiatives expressed interest in collaborating on the study.

More particularly, upon receiving appropriate ethics approvals, Aboriginal Initiatives helped to recruit participants for the study by communicating the study to its students through its

[5] Aboriginal Initiatives: Pathways to Lakehead, online: LU <www.lakeheadu.ca/future-students/faculty-enews-for-aboriginal-initiatives/node/28387>.

email listserv, and by way of attaching posters on its bulletin boards throughout Lakehead University's main campus. Upon further meetings with the Vice-Provost of Aboriginal Initiatives, it was further agreed that I would keep the Vice-Provost informed of the progress of the study, provide a copy of its preliminary findings for her comment and input, and collaborate with her office at the end of the study to find an effective means to communicate the findings in a meaningful way to affected students, and other interested persons, which could include presentations at workshops or conferences.

As anticipated at the outset of my research proposal, and as contemplated in Chapter Three, fulfilling all the various principles and ideals of a PAR project, though commendable, is often times an unachievable goal.[6] Given the realities of conducting qualitative research, often times PAR projects "deviate from these ideals".[7] This research project was no different. Despite my intentions to follow as many PAR principles and ideals as possible, this study, as it unfolded, did not meet all of these criteria.

A particular shortcoming of the study is that, despite my attempts to generate interest among the various Community Members and despite my invitations to participate in, and inform, every stage of the research process, including its design, goals, and research questions, no Community Member had accepted a role in these things. Rather, in the end, though having received general support for the study by a couple of the Community Members, the research was ultimately designed and conducted by me; an outsider.

As noted previously, despite this lack of participation by Community Members, this study was able to meet a number of other principles that are central to a PAR project.

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[6] See Chapter Three for a list of some of the common principles and ideals of a PAR project.
[7] Karen Heikkila & Gail Fondahl, "Co-managed research: non-Indigenous thoughts on an Indigenous toponymy project in northern British Columbia" (2012) 29:1 J Cultural Geography 61 at 62-63 and 79.

How this study meets these PAR principles, specifically, will be discussed throughout this chapter as they were incorporated into the methodological approaches utilized during the research process, including the analysis, coding, and interpretation stages of the study. I will leave the question as to whether this study has, or will, ultimately benefit the Indigenous community in Thunder Bay to be answered by the very groups and persons to whom this project was designed to benefit and accept that I will remain answerable to them.

Application of the Grounded Theory Method

In addition to the PAR principles applied in this study previously discussed, this study also draws upon the methodological principles of the grounded theory method, particularly, in regard to the manner in which the data was collected, analyzed, and interpreted. Grounded theory is an inductive approach often used in qualitative research, which allows theories to "emerge from the data" free from any predetermined hypothesis.[8] Theory is built up from the data as it is gathered, sorted, and analyzed by the researcher, rather than data being used to test a preconceived concept or hypothesis.[9]

Employing a grounded theory method in this study is beneficial as this qualitative approach is well adapted to circumstances where there is a gap in literature on the phenomena under study or where current theories about the phenomena is either inadequate or nonexistent.[10] As noted earlier, understanding the right to education for First Nation students, and particularly

[8] Anselm Strauss & Juliet Corbin, "Grounded Theory Methodology: An Overview" in Norm Denzin & Yvonna Lincoln, eds, *Handbook of Qualitative Research* (Thousand Oaks: Sage Publications, 1994) 121; See also Antony Bryant, "Chapter 7: The Grounded Theory Method" in Patricia Leavy, ed, *The Oxford Handbook of Qualitative Research* (Oxford: Oxford University Press, 2014) 116 at 126 [Bryant, "Grounded Theory"].
[9] Bryant, "Grounded Theory", *ibid* at 120.
[10] John Creswell, *Education Research: Planning, Conducting, and Evaluating Quantitative and Qualitative Research* (Upper Saddle River: Pearson, 2008).

understanding this right from the perspective of First Nation students, remains understudied, if not unstudied altogether.[11]

In grounded theory, notably in more recent reiterations of the approach,[12] the researcher is recognized as having a direct and active role to play. The researcher, while moving the data from the collection stages through to the coding stages of data analysis, elicits codes and categories based on "deliberate interpretation" of the data by the researcher.[13] This approach, in recognizing the active role of the researcher, directly contrasts positivistic approaches to research and aligns itself well with decolonizing methodologies and PAR principles.

In the former approach, the independence of the researcher is assumed and the researcher is viewed as a neutral observer capable of collecting and interpreting data in an objective manner.[14] This is in contrast to the latter approach, particularly when engaging in PAR, whereby the researcher is necessarily situated within a power dynamic, especially between the researched and the researcher, efforts are made to balance this power dynamic, and the voices and worldviews of those researched are privileged over that of the researcher's.[15]

Because "interpretations are often based on worldviews" and my worldview does not originate from, nor is it founded in, Indigenous epistemologies, it is decidedly important to be

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[11] See Chapter One: Introduction.
[12] See especially Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide through Qualitative* Analysis (London: Sage, 2006); Kathy Charmaz, "Grounded Theory in the 21st Century: A Qualitative Method for Advancing Social Justice Research" in Norman Denzin & Yvonna Lincoln, eds, *Handbook of Qualitative Research* (Thousand Oaks: Sage, 2005) 507 (wherein Charmaz asserts that a growing number of researchers aim to move the grounded theory method away from its positivist past towards a social constructionist method, which "emphasizes the studied phenomenon rather than the methods of study", and the researcher takes "a reflexive stance on modes of knowing…our collected renderings of [these realities]…*and* locating oneself in these realities").
[13] Bryant, "Grounded Theory", *supra* note 8 at 122 and 124.
[14] See Chapter Three; See Smith, *Decolonizing Methodologies*, *supra* 4 at 1; Denzin, *Critical Methodologies*, *supra* note 4 at 4; Nado Aveling, "'Don't talk about what you don't know': on (not) conducting research with/in Indigenous contexts" (2013) 54:2 Critical Studies in Education 203 at 210.
[15] Mike Evans et al, "Chapter 10: Decolonizing Research Practice: Indigenous Methodologies, Aboriginal Methods, and Knowledge/Knowing" in Patricia Leavy, ed, *The Oxford Handbook of Qualitative Research* (New York: Oxford University Press, 2014) 179 at 182 [Evans, "Chapter 10"]; see also Chapter Three.

continually aware of, and reflective upon, my active role as researcher, even at the coding, analysis, and interpretation stages of the research and to remain fully cognizant of the possibility (if not probability) that any interpretations of the data may (or will) be misconstrued.[16]

Another important feature of the grounded theory method, which is well suited to this study, is the recognition that language is central to understanding reality. In the grounded theory method, language is not "neutral or transparent; language is not simply a way of describing reality, it is actually a crucial part of how we constitute reality".[17]

Language is a relevant consideration in this study because most of its participants speak and understand, to some extent, Cree or Ojibway and it was expected that they may reference words, terms, or stories that originate from these languages during their interviews. Recognizing the central role that these languages could play in this study is important for two reasons. First, Indigenous languages (and cultures) are inextricably "tied up with the unique perspectives or worldviews derived from these sources".[18] Indigenous epistemologies are revealed through their respective languages. Second, language itself is a source of Indigenous law.[19]

Borrows, for instance, has demonstrated the central function that language can play in locating Cree law and legal traditions for the Cree. In this instance, Borrows asserts, "[t]he Cree language encodes many Cree legal principles and is a key to understanding their legal perspectives".[20] Similarly, Fletcher professes that for many Tribal communities, language has the "potential of being the finest source [of Indigenous law] available" and that "law is encoded right

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[16] I employ the term "interpretation" to mean "finding meaning in the data" as opposed to "analysis" to mean "summarizing what's in the data'. See Allen Trent & Jeasik Cho, "Interpretation Strategies: Appropriate Concepts" in Patricia Leavy, ed, *The Oxford Handbook of Qualitative Research* (Oxford: Oxford University Press, 2014) 639 at 640.
[17] Bryant, Grounded Theory, *supra* note 8 at 123.
[18] Evans, "Chapter 10", *supra* note 15 at 181.
[19] Hadley Friedland, Reflective Methods for Accessing, Understanding and Applying Indigenous Laws" (2012) 11 Indigenous LJ 1 at 9 [Friedland, "Reflective Methods"].
[20] John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 84.

into the language – and the stories generated from the language".[21] It is, therefore, imperative to design a study that can account for, and give meaning to, any terms, words, or stories referenced by the participants which would otherwise go unnoticed by an outsider and to remain alive to the fact that language is essential in accessing, understanding, and applying Indigenous epistemologies and laws.

PART II: PARTICIPANT SELECTION, RECRUITMENT, AND INTERVIEWS

Participant Sampling

As previously discussed, the overarching goal of this research project is to understand the right to education from the perspective of First Nation students with an emphasis on post-secondary education. To this end, purposive sampling was used. Individuals between the ages of 18 and 35 were invited to participate in the study, who self-identify as First Nations and reside in Thunder Bay.

It was initially hoped that between ten and twelve First Nation students would volunteer to participate in this project. It was also hoped that an equal number of students interviewed would be: (a) participants who were intending to go to post-secondary school, (b) participants who are attending post-secondary school, and (c) participants who had previously attended post-secondary school. As well, this study aimed to recruit an even mix of participants who had lived on-reserve versus those who had lived off-reserve and a balanced number of female and male participants.

By recruiting a more diverse range of participants, it was contemplated that a more representative and inclusive result may be garnered. Further, it was anticipated that with a more

[21] Matthew Fletcher, "Rethinking Customary Law in Tribal Court Jurisprudence" (2007) 12 Mich J Race & L 57 at 90; Friedland, "Reflective Methods", *supra* note 19 at 10.

diverse range of participants comparisons could be made between different groups, as it is surmised that participants may face certain challenges or barriers unique to their group (e.g. female versus males, on-reserve versus off-reserve, those who have attended post-secondary school versus those who have not), which would ultimately shape or inform the participants' understanding of their right to education.

In the end, four students participated in this study. Though small in number, the goal to reach a diverse group of participants was, generally, achieved. Three females and one male student participated. Each come from different First Nations within different Treaty territories, including Treaty 3, Treaty 8, Treaty 9, and Robinson-Superior. Two participants grew up, to varying degrees, on-reserve, whereas the remaining participants grew up off-reserve in a small town or city.

Unfortunately, a short fall or limitation of this study, is that I was not able to recruit any participant that could provide the perspective of someone who has no post-secondary experience, but intended on going to university or college. Nor was I able to recruit any participant who actively decided against pursuing their post-secondary education or any participant who may not have known that post-secondary education was an option at all. In the end, of the participants recruited, two successfully obtained university degrees, one is expected to receive his shortly (as he is nearing the completion of his undergraduate studies), while the remaining participant successfully obtained a college diploma.[22]

Because, as further described below and at Chapter Six, a much smaller number of students participated in this study, the level of participation ultimately impacted the scope and applicability of the study.

[22] See Part II: The Participants at Chapter Five for further details on the demographics of the participants.

Recruitment

Participants were, in large part, sought out and found through the efforts of Aboriginal Initiatives at Lakehead University, in conjunction with its related programs Aboriginal Cultural and Support Services (ACSS)[23] and Native Access Program (NAP).[24] Upon approval and support from the Vice-Provost of Aboriginal Initiatives,[25] and after seeking appropriate ethics approvals at the respective research ethics boards for the University of Manitoba and Lakehead University, emails were sent out to past and present students of these programs through an email listserv of ACSS. Additionally, posters, which received ethics approval, were posted throughout the main campus of Lakehead University as recommended and determined by Aboriginal Initiatives.

Upon the approval of the Dean of the Faculty of Law, posters were also attached to bulletin boards throughout the Faculty of Law, Lakehead University, which is situated at a different location, off-site from the main campus of Lakehead University. As per the suggestion of the NAP Program Coordinator, I also spoke to a class about the research project, in an attempt to recruit participants for the study. In this presentation, I explained the nature of the study, including efforts taken to ensure confidentiality and anonymity, what would be required of them as participants, including time commitments, and situated myself as a white, non-Indigenous, novice researcher, prior to inviting them to participate in the study.

Participants were also located by way of word-of-mouth, either as a result of referrals made from participants themselves to their friends, or by referral from personal colleagues who

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[23] The Aboriginal Cultural and Support Services (ACSS) is a program at Lakehead University that provides a variety of academic services to its Aboriginal students, including First Nation, Métis, and Inuit students, online: LU <www.lakeheadu.ca/current-students/student-services/tb/aboriginal-services/academic-services>.

[24] The Native Access Program (NAP) is "a program designed to increase opportunities and successfully integrate [mature First Nation, Métis, and Inuit] students into Lakehead University", online: LU <www.lakeheadu.ca/academics/other-programs/aboriginal-programs/native-access-program>.

[25] It should be noted that during the course of my research project, and thesis work, beginning in 2015 through to 2018, there were three different Vice-Provosts appointed at Aboriginal Initiatives, who I engaged regarding the research project.

were aware of the research project being undertaken. To this end, the sampling techniques ultimately relied upon in this study include both purposive and snowball sampling.

Recruitment was difficult for a variety of reasons such that four students, who self-identified as First Nations, participated in one-on-one interviews for this study. Some significant challenges that I faced in this regard included, unanticipated delays in the research ethics approval process, personal reasons, as well as my status as an 'outsider'.

First, in the initial stages of consultation and communication with Aboriginal Initiatives, it was not known that approval would be required from Lakehead University's research ethics board in addition to the approval required by my home university's research ethics board. It was only after obtaining approval from the University of Manitoba's ethics board, and while speaking with the Vice-Provost about how to solicit participants with the assistance of Aboriginal Initiatives, did it become known to us that, in order to call upon students of Lakehead University to participate in the study, separate approval from Lakehead University's research ethics board was also required. Thankfully, this was learned prior to any recruitment measures being undertaken.

Second, throughout the research project, and while undertaking my thesis work, I had significant changes in my family and professional lives. I became pregnant and got promoted at work, at the same time. During the second semester of my studies, and during the second trimester of my pregnancy, my employer called me back to work approximately three months shy of my expected return-to-work date; my employer had originally granted me a one-year educational leave from full-time employment to allow me to pursue a LL.M. at the University of Manitoba.

When I was called back to work, I was promoted to a significantly more senior and challenging position, which required a considerable amount of my time and energy, thereby, taking my focus away from my studies. The loss of time in my educational leave from work coupled with the loss of time as a result of my maternity leave from work and school resulted in further delays in getting appropriate approvals from the research ethics board at Lakehead University. Because of these delays, recruitment was pushed into the summer months when students were on break from their studies and away from campus.

Finally, though it is difficult to fully gauge this effect, my status as an 'outsider' may have had a direct impact in recruiting participants to this study. Given my new role at work and my new role as a mother, I was unable to undertake certain participatory practices as a researcher (such as attending classes and social activities), as originally envisioned when I embarked upon this study, to help better establish rapport with those who I was seeking to study and gain greater perspective as an 'insider'. This inability may have resulted in a lesser than optimal number of participants being recruited for the study.

Interviews

In depth, one-on-one interviews, conducted through face-to-face media, was chosen as the method of data collection for this study. It has been said that, in qualitative research, the interview is used to "understand experiences and reconstruct events" in which the researcher is unfamiliar and is a critical tool in "delv[ing] into important personal issues".[26] Interviews have

[26] Hebert Rubin & Irene Rubin, *Qualitative Interviewing: The Art of Hearing Data*, 2nd ed (Thousand Oaks: Sage, 2005) at 3-4.

been likened to conversations,[27] which are well suited to exploring "complicated processes".[28] In the grounded theory method, particularly, the one-on-one interview is promoted as the recommended approach to data collection (though it is recognized that is not the sole source of data) as they provide time for the researcher to reflect upon, analyze, and interpret the data.[29]

Each interview varied in length, ranging anywhere between one-half hour to two hours to complete, wherein open-ended, semi-structured questions were employed (see Appendix A: Interview Guide). Interviews were conducted at a place chosen by the participant, which included such spaces as their home, office, and a private room at a local coffee shop. These places were specifically chosen with a mind to providing a safe, convenient, and comfortable setting for the participant while ensuring privacy and confidentiality.

The interview guide was used to direct the interview (see Appendix A: Interview Guide), which included questions about the participants' perspectives on the meaning of a right to education, where that right comes from, and whether, through their own educational experiences, their right to education has (or has not) been met. The interview guide was vetted by the Vice-Provost of Aboriginal Initiatives prior to engaging in any recruitment activities and engaging in any interviews with participants, and received ethics approval from the University of Manitoba as well as Lakehead University.

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[27] The term 'conversation' in its Latin form means "dwelling with someone" or "wandering together". See Svend Brinkmann, "Unstructured and Semi-Structured Interviewing" in Patricia Leavy, ed, *The Oxford Handbook of Qualitative Research* (Oxford: Oxford University Press, 2014) 277 at 278.
[28] Hebert Rubin & Irene Rubin, *Qualitative Interviewing: The Art of Hearing Data*, 3rd ed (Thousand Oaks: Sage, 2012) at 3.
[29] Anselm Strauss & Juliet Corbin, *Basics of Qualitative Research: Grounded Theory Procedures and Techniques* (Newbury Park: Sage, 1990).

PART III: DATA COLLECTION, DATA ANALYSIS, AND MEMOS

Data Collection

As discussed earlier, the one-on-one, face-to-face interview was chosen as the best means to collect the data in this study. Each participant was interviewed for approximately one hour, wherein semi-structured, open-ended questions were asked of them. Each interview, with prior written consent from the participant, was audio recorded for the purpose of verbatim transcription and, later, data coding, analysis, and interpretation. These recorded interviews were stored on my secure, password protected personal computer hard drive. No qualitative data management software program was used during the course of this research, given the small size of the project and its sample. Further, no software was employed because novice qualitative researchers are recommended to keep to paper and pen when embarking on their first study so that they remain focused exclusively on the data and not on the software.[30] I heeded this recommendation.

Once the verbatim transcript was completed, and all identifying features of the interview were removed, each participant received a copy of their transcript so that they could delete or clarify any statements made in the course of their interviews that they did not wish to be included in the preliminary report, findings, or thesis. This also provided them with an opportunity to remedy any mistake or misinterpretation by me in the transcription of their interview.

Additionally, each participant, upon request, were provided with a copy of the preliminary report of my findings to allow them an opportunity to provide any insights as to my initial analysis and interpretation of the preliminary results. By returning to the interviewees, a process referred to as "member checking", to confirm their verbatim transcripts and by providing

[30] Johnny Saldana, "Chapter 28: Coding and Analysis Strategies" in Patricia Leavy, ed, *The Oxford Handbook of Qualitative Research* (Oxford: Oxford University Press, 2014) 581 at 603 [Saldana, "Chapter 28"].

copies of the preliminary findings to them, greater credibility and accuracy with respect to this research project and its findings was garnered.[31]

Data Analysis and Interpretation Procedures

As previously noted, the data coding, analysis, and interpretation procedures used in this research project originate from the grounded theory method. This approach to data analysis involves simultaneous data collection and analysis and is an iterative and comparative process.[32] Each successive phase of data collection and analysis informs the subsequent one, which informs the next, and so forth, to allow for the development of theoretical categories, rather than focus on preconceived categories or theories.[33]

In the grounded theory approach to data analysis and coding, there are at least two stages of coding: initial coding and focused coding.[34] Initial coding entails "closely reading the data" and "naming each word, line, or segment of data" with the aim of "remain[ing] open to all possible theoretical directions indicated by [my] readings of the data".[35] The second stage of data analysis, focused coding, involves "using the most significant and/or frequent earlier codes" to sift through the data with the goal of making "the most analytic sense to categorize the data incisively and completely".[36] To this end, I read each verbatim transcript and used line-by-line coding to allow the "worlds" of the participants to take shape without any "preconceived

[31] Kathy Charmaz, *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis* (London: Sage, 2006) at 46 [Charmaz, *Practical Guide*].
[32] Kathy Charmaz, "Chapter 7: Grounded Theory as an Emergent Method" in Sharlene Hesse-Biber & Patricia Leavy, eds, *Handbook of Emergent Methods* (New York: Guilford, 2014) 155 at 156 and 163-164 [Charmaz, "Chapter 7"].
[33] *Ibid* at 156.
[34] *Ibid* at 163.
[35] Charmaz, *Practical Guide, supra* note 31 at 46.
[36] Charmaz, *Practical Guide, supra* note 31 at 57.

theoretical notions being imposed upon their words and actions"; a concept that is central to the grounded theory approach.[37]

Additionally, while coding the data at the initial stage of analysis, I stayed as close as possible to the participant's own words and terms to provide "a more participant-centred form of coding" that honours the participant's stories "by maintaining the authenticity of speech in the analysis"; a process known as *in vivo* coding.[38] Given that my initial codes resulted in a large number of codes for each interview, ranging anywhere between 136 and 431 initial codes, I opted to use a theming approach at the second coding stage of analysis. In total, eight separate themes emerged from the data. But, as will be further discussed at Chapter Five, the three major overarching themes resulting from this study are: funding, curriculum, and discrimination and racism.

In addition to relying on the grounded theory approach and the initial and focused coding approaches to data analysis to find the emergent themes of the study, I also generated a data summary chart, which includes the participants' demographics. Even though a small number of students participated in the study, the data summary chart, regardless, proved helpful in establishing and validating the patterns that emerged from the data. As well, the chart helped to delineate those patterns that clearly emerged from the data from those patterns that could be described merely as suggestive.[39]

Analytic Memos

An essential aspect to the grounded theory method includes "memoing" by the

[37] Charmaz, *Practical Guide*, *supra* note 31 at 51.
[38] Saldana, "Chapter 28", *supra* note 30 at 590
[39] Linda Bloomberg & Marie Volpe, "Analyzing and Interpreting Findings" in *Completing Your Qualitative Dissertation: A Roadmap from Beginning to End* (Thousand Oaks: Sage, 2012) at 131.

researcher during the analysis and coding stages of the research project; even at the very beginning stages of coding.[40] "Memo writing is about capturing ideas in process and in progress", which gives researchers time to be reflective upon the process of data coding and analysis, and provides "the opportunity to stretch their thinking as they interrogate their data".[41] While analyzing the data, I undertook this approach of memoing.

Given that I am a novice researcher, processing a small number of verbatim transcriptions, I do not believe that the memos I produced are of a quality that could stand on their own. Often times my memos focused on my feelings throughout the analysis and coding stages and did not result in any fully conceptualized opinions or theories. However, my memos were useful when it came to comparing the data between each interview and elucidating themes that struck me as significant. These helped to inform the resulting primary and secondary themes of the study, as further discussed at Chapter Five.

PART IV: ETHICAL CONSIDERATIONS

Research Ethics Approvals

As previously stated, prior to engaging with any participant, and prior to undertaking any recruitment activities, approvals were sought and obtained at the Joint-Faculty Research Ethics Board at the University of Manitoba as well as the Research Ethics Board at Lakehead University. Prior to their interview, each participant was provided a written information sheet outlining the details of the project, including the nature of the study, time commitment required of participants (e.g. one-hour in-person interviews), and information regarding confidentiality, anonymity, and the complete voluntariness of their participation in the study. By providing this

[40] Bryant, "Grounded Theory", *supra* note 8 at 129.
[41] Charmaz, "Chapter 7", *supra* note 32 at 166.

information up-front and in advance of the interview, prospective participants were able to get better acquainted with the goals of the research project and determine, being fully informed, whether they wish to continue to participate in the project.

Consent

Confidentiality and anonymity was respected throughout the study and every effort was made to protect the privacy of the participants. The procedures that were followed are outlined within the consent form (see Appendix C: Consent Form). A copy of the consent form was provided to each participant in advance of their in-person interview. Participants were advised that even if they were to agree to participate in the study, and even if they signed a consent form, they were free to decline to answer any question during the interview and that they could withdraw from the study altogether at any time. An original signed copy of the consent form was provided to each participant at the interview. I too retained a copy of the same for my records. In addition to signing the consent form, all participants were asked, prior to the start of their interview, to consent to having their interviews audio recorded for the purposes of verbatim transcription.

Confidentiality and Anonymity

All documents and data that contain non-anonymized information, including the consent form, those portions of any audio recordings and interview transcripts with identifying features, and any master list of names and codes will be shredded, erased, or otherwise destroyed after successful completion of my thesis, which is expected to occur sometime in January 2019.

All documents and data that are anonymized (all identifying features, such as names and identities are removed), including those portions of audio recordings and interview transcripts, will be securely kept at the University of Manitoba for a minimum of 5 years (i.e. until January

2024), as per the approvals obtained at the research ethics boards at both the University of Manitoba and Lakehead University.

Participants have been assured that data will be saved on a password protected and encrypted USB key until they are destroyed. As well, electronic documents will be password protected (through Microsoft Word password protection). Any hardcopies of these materials, and the USB key on which these electronic materials are saved, will continue to be locked in a cash or security box, which cash or security box will be locked within a filing cabinet. Any analysis done (either through paper reports or presentations) will not include any identifying characteristics; pseudonyms will be used to protect the anonymity of participants.

I personally transcribed the audio recordings. No one but me has had access to participants' non-anonymized information. My thesis advisor will have access to the data, once my thesis is successfully completed, but only anonymized data. Participants were asked at the outset of their interviews not to use any names that would identify someone, but to refer to that person by relation (e.g. 'my friend', 'my co-worker', 'my family member', etc.). If by accident a name was identified during the course of an interview, the name was deleted from the digital data before transcription.

Given the small size of some of the First Nation communities in northern Ontario, which some of the participants came from, and the relatively small size of Thunder Bay, there is a possibility that participants could be identified based on their responses to the questions put to them in the interview (see Appendix A: Interview Guide). To protect the anonymity of the participants, I have taken care in reviewing the information provided to me, to ensure that I do not report on any information that has the potential to identify a participant, even if such information is relevant to the study. This required, upon occasion, to omit, not only the name of

the participant, but the name of the First Nations community from which he or she referenced in their interview. No identifying information (whether direct or indirect) has been made, nor will be made, public in any report or publication of the research results.

Compensation for participating in this project was not provided. However, to limit barriers to participating in this study, light refreshments, such as coffee or tea, during the interviews was offered to the participants, and where appropriate, incidental costs associated with participating, including such things as babysitting costs, parking fees, or bus fare, was offered. However, no participant requested such reimbursement for their incidental costs.

CONCLUSION

While this chapter highlighted a number of challenges that I faced as a researcher, other challenges arose due to the fact that I am not Indigenous, my worldview does not originate from, nor is it grounded in, Indigenous epistemologies, and I do not speak Cree, Oji-Cree, or Ojibway. Despite these challenges, given my active role as a researcher in this project, I will be required to analyze and render interpretations of Indigenous students' perspectives on their right to an education.

To help ameliorate this particular challenge and to better ensure that any interpretations rendered at the end of this study remains as authentic to the views and traditions of the participants who provided them, I have employed a more participant-centered form of coding (i.e. *in vivo* coding), created memos of the coding process throughout the analysis and interpretation stages of the study (to ensure that I remained reflective of my role as researcher), and engaged in member checking. It is hoped that a more authentic, reflective, and participant centred study has resulted from the adoption of each of these methods, approaches, and tools.

CHAPTER FIVE: FINDINGS

> The Europeans took our land, our lives, and our children like the winter snow takes the grass. The loss is painful but the seed lives in spite of the snow. In the fall of the year, the grass dies and drops its seed to lie hidden under the snow. Perhaps the snow thinks the seed has vanished, but it lives on hidden, or blowing in the wind, or clinging to the plant's leg of progress. How does the acorn unfold into an oak? Deep inside itself it knows—and we are not different. We know deep inside ourselves the pattern of life.[1]

INTRODUCTION

The purpose of this study was to explore how First Nation students give meaning to the concept 'right to education'. It was designed to identify and map the various sources of law that they draw on to inform their understanding on their educational rights whether those laws are 'recognized' or not by the Canadian government.

As espoused by Anishinaabe legal scholar John Borrows, Canada encompasses three legal traditions: civil law, common law, and Indigenous legal traditions.[2] The validity of any one of these traditions does not necessarily require recognition by any one of others, be it by acknowledging, accepting, deferring to, taking into account, or incorporating that other legal tradition into its own.[3] Rather, "the strength of a tradition" relies on "how well it develops and remains relevant under changing circumstances"; not "upon how closely it adheres to its original form".[4] This study is premised on this sociological fact. Canada is a legally pluralistic society

[1] National Working Group on Education and the Minister of Indian Affairs Indian and Northern Affairs Canada (INAC), *Indigenous Knowledge and Pedagogy in First Nations Education: A Literature Review with Recommendations*, prepared by Marie Battiste (Ottawa: 2002), online < http://www.afn.ca/uploads/files/education/24._2002_oct_marie_battiste_indigenousknowledgeandpedagogy_lit_review_for_min_working_group.pdf> [Battiste, "National Working Group"] (quoting President Eber Hampton of Saskatchewan Indian Federated College).
[2] John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 8 [Borrows, *Indigenous Constitution*].
[3] *Ibid.*
[4] *Ibid.*

wherein any one of its legal traditions may be used by the participants to inform their perceptions on their right to education as First Nation students.

This study also employs critical legal pluralism. This socio-legal approach views individuals as legal subjects who are both "law abiding" and "law inventing".[5] People are capable of situating themselves within an assortment of legal traditions and other normative orderings (such as religions, customs, and social norms) while simultaneously interpreting, understanding, and creating the laws to which they feel bound. By applying critical legal pluralism to this study, its participants are placed squarely within the role of lawmaker: "as active legal agents we constitute law rather than being subjugated to it".[6]

The stop sign aptly explains this legal phenomenon.[7] The letters S-T-O-P alone cannot compel a driver to physically stop her vehicle as she approaches an intersection. Nor can legislation, such as the *Highway Traffic Act*, induce her to stop; "a line of text cannot stop a moving car".[8] Rather, each driver determines what she is legally obliged to do at any given time and in any geographical space using more than just 'recognized' state laws to inform her decision to stop. Other normative orders and influences inform it too. For instance, she may feel a moral obligation to stop at the intersection so as to avert critically injuring or killing a pedestrian. Or, she may recall her own experience of living through a fatal car accident and wish to avoid triggering any emotions of grief. Or, she may want to maintain relations with her parents and avoid their disappointment by not coming home with a traffic ticket. The individual driver

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[5] Martha-Marie Kleinhans & Roderick A Macdonald. "What is a *Critical* Legal Pluralism?" (1997) 12:2 CJLS 25 at 39.
[6] Sepideh Golzari, *A Legal Geographic perspective on Critical Legal Pluralism* (LLM Thesis, McGill University Faculty of Law, 2009) [unpublished] at 6.
[7] See Wendy Adams, ""I Made a Promise to a Lady": Critical Legal Pluralism as Improvised Law in *Buffy the Vampire Slayer*" (2010) 6:1 Critical Studies in Improvisation, online: <www.criticalimprov.com/index.php/csieci> at 2 (this example of the stop sign to explain critical legal pluralism is directly taken from this article).
[8] *Ibid*.

gives legal meaning to the stop sign by drawing on more than just what the written state law requires of her; "[a] law-creating legal subject's act of obligation does not originate with…a rule-book in the sky, but rather with the social construction of legal meaning".[9]

Using a pluralist perspective, this chapter presents the key findings that emerged from four in-depth interviews conducted with First Nation students. Part I of this chapter provides a brief demographic description of the individuals who participated in this study. Part II outlines the three major themes that emerged through the participants' in-depth interviews, which will be used to inform the conclusions and recommendations set out at Chapter Six. Part III concludes the chapter by presenting the findings of this study, which are organized according to the study's specific research goals as set out at Chapter One and reproduced here in question format for convenience:

1. What does a right to education mean for First Nation students?
2. To what extent does their right to education differ from non-Indigenous students' rights?
3. Based on their educational experiences, to what extent has their right been fulfilled?
4. What legal traditions do they draw on when conceptualizing their right to education?
5. Are they acting as legal agents actively engaged in the creation of their rights when contemplating or calling upon their right?

Even though a small number of students agreed to participate in this study, a significant amount of rich, introspective information was generated through my discussions with them. It was difficult, especially as a novice researcher engaging her first research project, to determine what stories to focus on and what ones to omit from this thesis. Feelings of unease ensued. I did

[9] *Ibid.*

not want to dishonour the participants or the stories they entrusted me with by leaving something of significance to them out. I want to ensure their voices are heard.

The process in making these decisions, though difficult, was to some extent defined. Stories, themes, or concepts that were most frequently raised in the interviews and shared amongst the majority or all of the participants are reported. When identifying the frequency of these things, the term 'majority' is used to mean that three of the four participants share the view or perspective being described, whereas the term 'some' is used to mean two of the four participants. And, of course, 'one' and 'all' are also used, which terms are self-explanatory. Some stories, themes, or concepts are also reported even though they may not be a shared experience amongst the participants. In these instances, I report them on the basis that they remain significant (or "important, meaningful, or potentially useful") to the study in that they either increase understanding of the phenomenon being studied ('right to education') or contribute to the theoretical underpinnings of the study (legal pluralism and critical legal pluralism).[10]

To the extent possible, in presenting the findings to each of the specific research questions and in discussing the major themes in Part III, the participants' own words will be used and extensive samples of quotations will be reported, as is typical in most qualitative studies.[11] By providing "thick descriptions",[12] their realities, voices, and worldviews as First Nation students will be better understood. But, more importantly, their words and voices will be

[10] See Linda Bloomberg & Marie Volpe, *Completing Your Qualitative Dissertation: A Roadmap from Beginning to End* (Thousand Oaks: SAGE Publications, 2012) at Chapter Five: Objectives at 6.
[11] See Linda Bloomberg & Marie Volpe, *Completing Your Qualitative Dissertation: A Roadmap from Beginning to End* (Thousand Oaks: SAGE Publications, 2012) at Chapter Four: Analyzing Data and Reporting Findings at 36.
[12] Joseph Ponterotto, Brief Note on the Origins, Evolution and Meaning of the Qualitative Research Concept Thick Description" (2006) 1:3 The Qualitative Report 538 at 547 (here I use the term "thick description" to mean, in the context of presenting the results of the study, as using "long quotes from the participants or excerpts of interviewer-interviewee dialogue" to ensure that the "'voice' of the participants" is heard and "the reader can visualize the participant-interviewer interactions and get a sense of the cognitive state of the interviewee (and interviewer)").

privileged over the white, Western voice that is mine; a principle that is central to decolonizing methodologies and the participatory action research (PAR) model.[13] I hope the manner in which I present the following themes and findings is meaningful and respectful to the participants and their stories honoured.

PART I: THE PARTICIPANTS

The four individuals who volunteered to participate in this study (and identified in this chapter using pseudonyms), though small in number, are diverse in lived experiences.

General Demographics: Three of the participants are female. One is male. Three of them grew up in low-income households, describing their socio-economic status' as 'poor', 'low-income', and as having lived on 'welfare' and 'in housing'. The remaining participant describes his family's socio-economic status as 'middle-income'. The participants' profiles are similar to some extent in that they are all in their thirties, had attended or were in the process of attending post-secondary school, and living in Thunder Bay at the time of their interviews. However, this is where their similarities seem to diverge.

Communities: All participants identify as First Nations (one of them also identifies as Métis), but each come from different communities and treaty lands. One participant grew up in foster homes, lived in several cities across Canada, and identifies her home community as being within Treaty 8 lands. Another participant grew up on a small reserve within Treaty 9 territory, but then later moved to a small town to attend high school where she lived in multiple boarding homes and, on occasion, with an extended family member. Another participant grew up in a

[13] See e.g. Norman K Denzin & Yvonna S Lincoln, "Introduction: Critical Methodologies and Indigenous Inquiry" in Norman K Denzin, Yvonna S Lincoln & Linda Tuhiwai Smith, eds, *Handbook of Critical and Indigenous Methodologies* (Los Angeles: Sage, 2008) 1 at 5-6; Nado Aveling, "'Don't talk about what you don't know': on (not) conducting research with/in Indigenous contexts" (2013) 54:2 Critical Studies in Education 203 at 211.

small town and identifies his First Nation as being within Robinson-Superior territory. The remaining participant's childhood was split between living in a city and her reserve, which resides in Treaty 3 territory. One participant also identifies as belonging to the 'LGTB' community.

Languages: All of the participants understand and speak English and, with the exception of one participant, have some knowledge of Cree or Ojibway in that they speak the language to some degree or they understand it when it is spoken to them. One participant, aside from English, also has a functional ability understanding and speaking French.

Levels of Education: Two participants graduated with university degrees. Of these participants, one went on to do her graduate studies, which she is in the midst of completing, while the other wanted to return to university for a second degree, but was financially barred from doing so. Another participant is in the midst of completing an undergraduate degree. Afterwards, he intends to continue on to a professional program. The remaining participant has a college diploma. She too intends to continue her post-secondary education within a professional program.

Transition between Secondary and Post-Secondary School: Only one of the participants entered her post-secondary education directly from high school. The remaining three participants had to 'upgrade' to obtain their high school diplomas or 'bridge' by taking a few college courses to access their desired post-secondary schools. Of these latter participants, one 'dropped out' of high school, another 'got kicked out' of high school, and the other was 'short a university prep credit', which, if he had it, would have permitted him to enter the university of his choice directly from high school.

Funding for Post-Secondary Education: One participant had her tuition fully funded, while the other three participants were funded to some extent by their 'reserve', 'band', or 'First

Nation'. Of the latter three participants, one was initially denied funding for reasons that remain unknown to her. She had to take out a loan to cover her educational expenses for her first semester; her reserve only started funding her education while she was in her second semester. Another participant had to fund his own educational expenses for a period of time by obtaining provincial student loans and earning an income through full-time employment, while he attended college on a part-time basis. His band did not cover costs associated with part-time studies or inter-sessional courses. Once he started attending university full-time, his First Nation began to fund his post-secondary education. The remaining participant was not funded by her First Nation at all because she is a 'non-status Indian'. She had to fund her own post-secondary education by supplementing her income with bursaries, scholarships, and provincial student loans.

PART II: EMERGENT THEMES

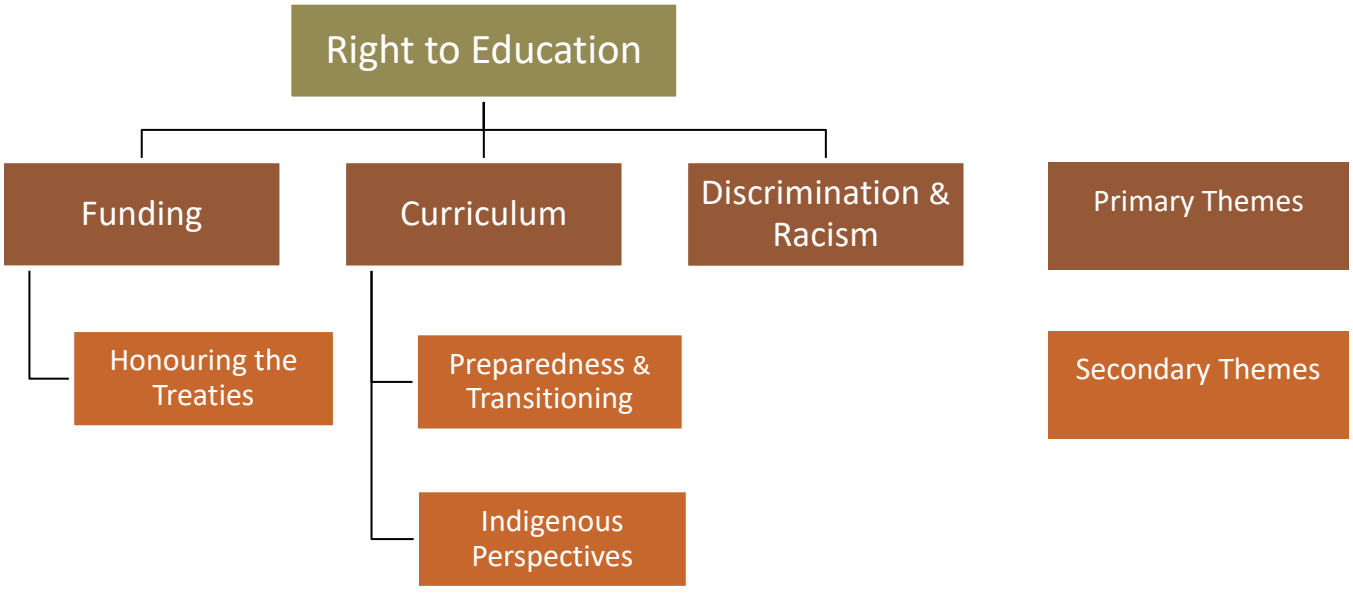
The three main overarching themes that emerged from the questions put to the participants (see Appendix A: Interview Guide) and the responses shared by them in this study are: (1) funding, (2) curriculum, and (3) discrimination and racism. I will refer to these categories as the 'primary themes' throughout this chapter.

Secondary themes or sub-categories also emerged from the data, specifically, around the topics of funding and curriculum. With respect to the former sub-category, the need to honour the Treaties was intimately intertwined with discussions about funding. For the majority of the participants, Treaties arose when discussing the challenges they faced in securing funding for their post-secondary educations and when providing their views on what a right to education means for First Nations. With respect to the latter sub-category, my conversations with the participants turned on two issues. One, the need to better prepare high school students for their transition to college or university. And, two, the need to include Indigenous perspectives and

worldviews in the curriculum at all levels of education. I will refer to the following categories as 'secondary themes' throughout this chapter: (a) honouring the Treaties, (b) preparedness and transitioning, and (c) Indigenous perspectives.

With respect to the primary theme of discrimination and racism, I did not see any indication in the data to suggest that a further secondary theme or sub-category was necessary in presenting the findings. However, distinctions were made by the participants during their interviews between experiencing individual instances of discrimination or racism and systemic instances within the formal education system. This is likely as a result of how the question was posed to them, which specifically sought a distinction between the two (see Appendix A: Interview Guide). As will be further discussed, both were cited as problematic by the participants, but most discussions focused on the participants' experiences with individual or overt instances of racism and discrimination as perpetrated by their classmates and peers.

For ease of reference, a diagram is provided to highlight the themes that emerged from the participants' answers during their in-depth interviews and to more easily identify the 'primary' and 'secondary' themes of this study (Figure 1: Emergent Themes).



Funding and Honouring the Treaties

All participants experienced difficulties in securing adequate funding for their post-secondary educations. Whereas one student had difficulty covering indirect educational expenses, such as clothing, while going to college and living on campus, the remaining participants had issues securing funding to cover their direct educational expenses, including tuition. Each of the participant's unique set of circumstances and the challenges they faced in securing post-secondary education funds is central to their understanding of what a right to education means for First Nations. As will be borne out through excerpts of their interviews, as reproduced later in this section, significant discussion was had with the majority of the participants about Treaties, their role in defining or circumscribing their right to education, and the need for Canada to honour them.

Post-secondary education funding for First Nation students

Each of the participants' challenge in obtaining funds for their post-secondary education manifested in different ways. Using direct quotes from the participants, I provide the following descriptors to capture each of their unique situations: 'ticking off a box', 'fell between the cracks', 'system pretty broken', and 'pleasure being an Indian with you'.

Ticking off a box: This phrase was used by Sarah to describe her particular challenge in securing funds for her post-secondary education as a First Nation 'non-status Indian'. During her interview, Sarah uses several labels to indicate her identity to me, being that her mother is Cree and her father non-Indigenous, including: 'non-status', 'in the middle', 'the colonized and the colonizer', 'stuck walking in two worlds', and 'half-white'. She also discusses, to some extent, the disconnect with her culture while growing up and having to learn about it at university because her mom never spoke to her about their Cree heritage. Knowing she was 'non-status',

Sarah had to be creative in seeking out alternative sources of income to pay for her post-secondary education. This included seeking out bursaries and scholarships, speaking with her 'welfare worker', and obtaining provincial student loans. Her situation was particularly exacerbated given that fact that she was also a single mother and 'on welfare' at the time she was looking to go to university. Sarah's challenge in securing post-secondary education funds as a non-status Indian are best summed up through the following passages from her interview.

> **Sarah:** …because I'm not status it was, oops, um, student loans, so actually when I first decided to go to university I was a single mom, um, so me and my now husband had split and I was on welfare, so, I walked in, I remember I walked into the student lounge at the [university] and I'm like "I want to go to university, but I don't know what to do", so they sat down and they helped me try and figure out how to pay for it 'cause they knew I wasn't status and they went as far as talking to my welfare workers to see if they would fund me, but that didn't work through. Um, so then they told me about a bursary…that was, covered books and tuition for five years. So, I applied for it, and I ended up getting it, which was really cool. But, I also had to go on…student loans then because, excuse me, uh, just because I couldn't live raising…kids on my own and going to school. So, basically, and I applied for some bursaries and scholarships and I got a few of those, so that's good.
>
> …
>
> **Sarah:** …I was lucky enough to get some bursaries and scholarships. But, being in the middle like I am, being the colonized and the colonizer, I don't think that right is met, or opportunity, or whatever it is. Does ticking off a box saying that your Indigenous, or one of those three groups, is that the opportunity? I don't know? Does it probably help? Yeah, I bet it does in getting those bursaries and scholarships. But, yeah.

Sarah's challenge in securing funding for her post-secondary education centres on her Indian status (or lack thereof). As will be seen by the next participant's experience (and, as acknowledged by Sarah later in her interview as well) financial challenges also arise for students

who are seeking post-secondary education funds even when they are deemed to be status Indians by the Canadian government.

Fell between the cracks: This phrase was used by Sam to describe the consequences that flow through the inflexible funding policies of his First Nation in conjunction with the rigorous financial eligibility requirements associated with the provincial student loans program in Ontario (otherwise referred to as the Ontario Student Assistance Program or "OSAP"). As a result of being diagnosed with clinical depression and social anxiety, and upon consultation with his 'care team', he was advised to engage in part-time studies, rather than take on a full course load each semester during his post-secondary schooling. His band, however, does not cover part-time studies. Nor does it cover inter-sessional studies, such as summer courses. And, when he sought out provincial student loans he was denied there too because, at the time, he was still considered to be a dependent of his parents. Being a dependent, the province took his parents' income into account when considering his financial eligibility, thereby, putting him over OSAP's financial eligibility threshold. Once Sam 'got himself well', 'sorted himself out', and started attending school on a full-time basis, his First Nation began funding him. Sam most aptly describes his challenge in accessing funds for his post-secondary education through the following exchange.

> **Patty**: Now moving to post-secondary education, uh, how was it funded?
>
> **Sam**: Primarily through my First Nation. So, some First Nations would, um, be in like an education council…my isn't. My First Nation handles all of their own education funding themselves. Yeah. So, it all comes from my First Nation. But, that being said there are certain things that my First Nation doesn't cover, and I've had to go out and supplement that myself. So, for example, I'm doing a spring, I did a spring course this year, and I'm doing a summer course this year, they don't fund inter-sessional courses, no. So, I went out and got OSAP to cover it. And, because I'm, like, single and dependent and, like, I wouldn't say low-income; I'm a student, so like I have a limited income. I, like, meet the criteria for OSAP, and I am eligible for OSAP funding.

> **Patty**: Anything else that the First Nation doesn't cover other than the…?
>
> **Sam**: Part-time.
>
> **Patty**: Part-time studies. Okay.
>
> **Sam**: So, when I was at the [university], and, like, you don't have to redact any of this, when I was at the [university] I was diagnosed with clinical depression and social anxiety, and it impacted what I was able to do, or the amount I was able to do with the medical issues that I was struggling with, and so in consultation with my care team, which included a psychologist and a psychiatrist it was recommended that I go to part-time studies, two courses at a time, every semester, and my band didn't fund part-time studies. And, because of my parents income, and me still being a dependent of them, I wasn't eligible for OSAP. So, I kind of, I guess if you want to say I fell between those cracks, I did, because aside from going out and taking out a loan to do part-time studies for whoever knows how long, I withdrew from school and went back to [my home town] to, like, get myself well and sort myself out…So, I…went to [my home town] got myself well, went to [the city] worked full-time at a minimum wage job, while going to school part-time. And, those courses I was paying for on my own because my band didn't fund part-time education. So, those courses at [college] I was paying for myself.

Whereas Sam's particular challenge in accessing post-secondary education funds is focused on the inflexible funding policies of his First Nation (though, later in his interview, he also attributes this to inadequate government funding and the strict funding criteria imposed upon First Nations), the next participant's challenge is focused on the uncertainty around her reserve's application process for accessing funds.

System pretty broken: These are the words used by Elizabeth to describe her challenge in accessing post-secondary education funds from her reserve. Though Elizabeth spent several years living on her reserve as a child, attending school there during her first two years of elementary school, she later moved to the city with her family where she finished the remainder of her elementary and secondary schooling. She describes not understanding how the system

works on her reserve and having 'not much contact' with it since she left as a child. When it came time to apply for university, she found it difficult in ascertaining who to contact at her reserve and how to apply for funding to cover her post-secondary education expenses. The following exchange relays the specific funding challenge she faced.

> **Elizabeth**: So, the first semester I actually got denied funding from my reserve, um, so I had to pay, take out a loan for my first semester.
>
> **Patty**: And, why were you denied?
>
> **Elizabeth**: That I don't know…[t]o be honest. And, then somehow, they started funding me my second semester, and they funded me for my whole university…degree after that.
>
> …
>
> **Patty**: Okay. Um, and did you have to apply to them again, after the second semester? Or, did they come back to you with a decision?
>
> **Elizabeth**: They came back to me with a decision that they were going to fund me.
>
> **Patty**: Okay. So, you got a loan just for the first year, and thereafter, for the remaining three and a half years…they funded.
>
> **Elizabeth**: They funded.
>
> …
>
> **Elizabeth**: …because I lived in the city, trying to figure out who I contacted at the reserve in order to apply for funding, um, and like I said, it's a lot of times it's not fair the way they, I don't know how their system works, but I know it's pretty broken in terms of how they fund people. Like they'll fund their family first, opposed to people who actually want to go to school.
>
> …
>
> **Patty**: …so the financial barrier was there, were there any others, I guess, language, communications with the staff, filling out forms, I was thinking…
>
> **Elizabeth**: Ah, I don't recall that, to be honest. I don't recall that there was any sort of, um, I didn't have much contact with them, in, after they started funding me, right, they just kind of sent me

> my monthly cheque, and then it would resume again September first type thing, after it finished in April. Like I never had to do anything.
>
> **Patty**: Would it be fair to say that it was, so the two things, maybe the financial, and then figuring out how to communicate with your reserve…
>
> **Elizabeth**: Right, and who the right people were, 'cause they kind of changed all the time.

The stories of Sam and Elizabeth highlight the unique challenges they faced when seeking out educational funds from their respective First Nations. Ultimately, to some extent, they had to financially supplement their own post-secondary educations through other means, including loans, student loans, and employment income. Dissimilarly, the next participant does not raise the issue of funding directly as she was 'sponsored' by her reserve throughout her college education, but describes other financial challenges she faced as a student.

Pleasure being an Indian with you: In her interview, Rachel did not raise accessing educational funds directly as an issue. When questioned about funding and her post-secondary education she responds that she was 'sponsored by her reserve'. And, when asked what a right to education means with respect to funding, she mentions that First Nations are underfunded.

> **Rachel:** I don't know, like, 'cause I haven't been back yet, but it feels like the Aboriginal Initiatives office has made some inroads with changing the system, so it acknowledges that communities are underfunded….

Though Rachel does not raise the issue directly in her interview, her particular financial challenge came to light when she later mentions a discriminatory incident she experienced during her time at college where she had to access a bursary to cover costs associated with replacing her clothing because they were intentionally destroyed by her campus roommate. This would suggest that even though she was 'sponsored' by her reserve, the funding that she received was not adequate in meeting all of her expenses associated with attending college. For this

reason, I suggest that she too had some difficulties in securing adequate funds for her post-secondary education.

Later in her interview, Rachel raises the issue of 'collecting her Indian Act money', which she never personally collected in the past, but recently sought out because she was 'super broke' and 'really needed the money'. Here she relays her views on the inadequate amount of 'treaty payments' allotted to First Nation persons from which I derive the descriptor for her story.

> **Rachel:** But, if they were to adjust it for inflation, I think it would be $182 or something like that, right, yeah. It was funny. Last year, I went to, I've never collected my Indian Act money, yeah, I went there and I was super broke and I really needed the money…so then I went, and I think it was like $70 or something, it was like $4 from 18 until I was 38, so twenty years. Twenty times four, what's that? $80? Yeah, so I got $80, and then, uh, [my child] was [age], so that's like $18, ah yeah, so I got like that's about 100 bucks, a 100 something, and that was funny 'cause [name], who was like, she does the status card registration, but she does the treaty payments on treaty days, so then, she was like giving me all the money, and I was like, 'thank you, it's been a pleasure being an Indian with you'. And, [name] was there, her husband, and he was just laughing his ass off. It was a really good laugh, 'it's been a pleasure being an Indian with you' [laughter].

Though it would seem that at a cursory glance Rachel did not face a funding challenge during her post-secondary studies to the same extent as the other participants in this study, it would be erroneous to presume that all First Nation 'status Indians' receive funds for their post-secondary educations. In fact, some of the participants directly emphasized this point during their interviews, calling on the broader Canadian community to change its erroneous view. After asking Sarah if she experienced any discrimination or racism while attending school, part of her answer centres around the need to dispel the stereotype that all 'Natives' get funding for school, which was 'put in her face' when it came to her post-secondary studies.

> **Sarah:** I think, um, I guess people not understanding where you are coming from was like, hard you know, like, the people who are like, 'Oh you're Native so you must be funded for school' you know that whole, whatever it's called, stereotype, or whatever, but it's like, 'well, no, it's not true'.

Similarly, after asking Elizabeth how she would describe her right to education with respect to funding, she too raises this common 'misconception'.

> **Elizabeth**: So, again, I mean, it's nice that the funding is available to most First Nation people, but it's not necessarily something that you get automatically, which I think is a misconception a lot of people have, is that, 'oh, you know, I can't believe they're not going to school because they get free funding', well, if they only knew that that's actually, each reserve is allotted so much money to like, to send students to university or college, and if they run out of funding they can't fund you, so.

A fundamental aspect to the majority of the participants' views, with respect to the issue of funding and their right to an education, includes the need for Canada to honour the educational clauses within the Treaties. These participants opine, collectively, that honouring the Treaties means: (a) affording all First Nation students access to post-secondary education, who choose to continue their educations beyond high school, (b) providing sufficient funds to First Nation communities so that they can send their students to university or college, and (c) respecting First Nations' rights to self-determination and adhering to the intentions of their 'ancestors' who negotiated the educational clauses within the Treaties.

Honouring the Treaties

Some of the participants, when asked about the meaning of the right to education for First Nations, speak about the right to access post-secondary education and the need for the government to financially support First Nations. When asked where this right comes from, these participants make quick reference to the Treaties.

In her interview, Sarah speaks to the need to provide the 'opportunity' of university or college to First Nations youth even though 'not everyone wants to come to post-secondary'; 'some people are perfectly happy and fine being in their communities and just working on the ground'. Sarah goes on to explain that because education is 'written in the Treaties' the 'opportunity' to attend university or college 'needs to be honoured'. In her opinion, this means providing more educational funds to, and supports for, First Nations so that they can send students to their desired post-secondary schools.

> **Sarah:** I think, yes, because [education] was written in treaties that the opportunity needs to be honoured to be able to go to school, like, if this is what people want, which means they have to change the policies, right, even though, I was just reading that 90 million dollars was poured into the [Post-Secondary Student Support Program] and the entrance preparatory, for like, [access] programs…right.
>
> …
>
> **Sarah:** So, and when I was reading that, it said 90 million dollars was poured into it and this is just like on the INAC website, so the opportunity now for 4600 more students, Indigenous students to go to university and it's like well there's way more students who…want to have that, right.
>
> …
>
> **Sarah:** …I think that because of the treaties, I think that First Nations status people should all have the right to go, to get funding. I think there could be more supports for those who are non-status, you know, Métis, I think, I believe, Inuit people have, like, some sort of fund too, if I was reading that correctly…and then non-status people are just, get left out. So, I think it is important, and if we want to educate our people better then we need to be able to provide the funds and the resources to do that. Only 10 percent of us have university degrees, right, so we need to, we need to blow that number out of the water.

Sam echoes the sentiments of Sarah, emphasizing the need to provide access to post-secondary education to First Nations students 'without financial barrier'.

> **Sam**: Yes. In that treaties spoke specifically to education, some treaties spoke specifically to education…
>
> …
>
> **Sam**: Children in the province of Ontario have a right to education and so because of that we have a public school system, and children attend public school without the barrier of having to pay tuition, and education is mandatory up to the age of 16, and so because of their education up to that age is provided tuition free. I haven't read into the treaties extensively, but if there is a right to education enshrined within the treaties then that should be without barrier, and if, and that would include financial barriers, as well…

For Rachel, when asked whether she is comfortable with the term 'right' and where the right to education comes from, her discussion too turns to the topic of access to education and the need to honour the Treaties. But, she broadens the discussion to include the intent of her 'ancestors' who negotiated the educational clauses within the Treaties.

> **Rachel:** And, the other thing, is like, uh, it's something that we definitely negotiated for in our treaties, um, because Shingwauk, who originally negotiated the pre-confederation treaty in the Sault Ste. Marie territory, I think that's Robinson-Huron, uh, so, when he negotiated that treaty he definitely asked for it, and his original vision was to have, uh, our Indigenous people be able to walk in both worlds, and to be able to be successful in both worlds, but while also respecting that. However, like, the government of the day created legislation that once you signed on to a treaty this legislation came into force, but they didn't tell the Indigenous people that, um, and what it did it created…
>
> **Patty:** You are referring to the Indian Act?
>
> **Rachel:** Yeah, it created the Indian Act, well there are other pieces of legislation that was pre-confederation, as well…those two specific pieces of legislation were combined together, and then formed the Indian Act, but the Gradual Civilization of Indians Act wanted Indigenous people to be English speaking, Christians and farmers. And, the Enfranchisement Act wanted to extinguish Indigenous peoples', uh, status as Indigenous people, right. And, uh, so if you took up arms for the British Crown, you lost your status. If you went to study university or became a lawyer, anything like that, um, then you lost your status…
>
> …

> **Rachel:** I mean that it's something that our ancestors negotiated for us, uh, what they didn't negotiate, what they didn't ever give up was like their own self-determination, or when they negotiated those treaties and in that was access to an education, uh, they didn't negotiate, uh, giving away, or being indoctrinated or assimilated that was never something that they had asked for, or agreed to. However, they did want to be able to co-exist in a way where they understood what the other was doing, and how to work and live together, to co-exist peacefully means to understand and know each other really well and have a relationship that understands one another really well, and, um, that has never been the goal, like even before that it was assimilate, expropriate, extinguish, and that is still the goal because if you read the Indian Act now, there is that section on blood quantum levels, and that's genocide on paper because of the way it, uh, its goal is ultimately extinguishment.

Through the above-noted excerpts taken from the verbatim transcripts of their interviews, it is apparent that each of the participants' unique challenge in securing funding for their post-secondary educations, however their challenge manifested, directly informs their perceptions on their right to education. It is also evident, through the majority of the participants' interviews, that the right to education is inextricably tied to the educational clauses contained within the Treaties. To borrow the words of Sam, when describing his thoughts on the matter, if education is 'enshrined' within the Treaties, it must follow that First Nations youth are to be granted 'equal access' to education 'without any financial barriers'.

Curriculum: Preparation, Transition, and Indigenous Worldviews

The second primary theme that emerged from the data in this study, as the participants discussed their thoughts on what it means to have a right to education, is the topic of curriculum. The two areas that the majority of participants specifically mention, in this regard, include the need to: (a) prepare high school students for their transition to college or university, and (b) incorporate Indigenous perspectives and worldviews into the curriculum.

Preparing and Transitioning High School Students

Two streams of thought were conveyed by the participants when speaking about the need to transform the curriculum at the high school level. The first stream spoke to the need to provide high school students with the knowledge that they can go to university or college in the first place; that post-secondary education is an option for all First Nations youth.

> **Sarah:** ...So, if you are looking specifically at First Nations, many of them don't have the opportunity to take academic routes to university, so many of them are, not by their own choice, taking applied…there is even research out there that says that many of our students just get tracked for applied, even if they are here in the city, right and that, I believe that has to do with systemic racism, right. So. That, um, happens a lot…

> **Elizabeth**: Um, I feel like maybe interviewing people who are sort of pre-university or college, right, to see like what their thoughts are on going forward, or if they feel like that's an option for them, um, 'cause I don't know, necessarily, if they're told that that's an option for them, like I don't know what the system is like, on a reserve, for instance, um, if people decide if they want to go further than…

Once the option of post-secondary education is established, then greater information and appropriate supports are required to help students understand how to get to there and how to navigate the education system. Some of the participants speak about 'wondering how they ended up in university' and 'being just lucky' in finding their way to university or college at all as they did not, among other things, 'understand the process'. Sarah best exemplifies this sentiment.

> **Sarah:** So, basically I was given, back then, it was a big course calendar, so they gave it to you to look at, and I remember looking through it and reading like the descriptions and, they sound really smart, right, so when you are coming from a place of being a, just a graduate from Grade 12 as an adult you don't know what all that stuff means, so I felt like I wasn't smart enough to do any of that and I remember having that really sick feeling in my stomach, like 'I don't think I can do this, I'm not smart enough'. So, the whole understanding that really, like, university is for anyone, and then understanding the process of how to do it, like, so that's why, I knew there was an Aboriginal Student Centre at the [university], so I just walked in because I was like 'I don't know what I am doing,

> and I need help figuring out how this all works', right? I didn't realize how much it cost. I didn't know there was an application fee. I didn't know, like, you know, you have to get all your transcripts, and all of that kind of stuff. So, it was, like, one big huge learning experience.
>
> …
>
> **Sarah:** …even with the whole aspect of trying to figure out school, walking into the…Aboriginal Student Centre, was probably the best thing that I ever did because I think, and I do think that in that process we lose a lot of students, Indigenous students because they don't know and they don't understand how it, how the system works, it's so different, and high school does not prepare you for a place like this at all.

The second stream of thought conveyed by one participant, in particular, was around the issue of high schools not offering a greater variety of 'university prep credits'. A particular challenge Sam faced was that all of the university preparatory courses offered to him were math or science based; very little was offered in terms of the arts or humanities. He felt that the high school curriculum did not allow him to 'use his spirit and energy and channel it in an academic setting' that he would have been 'decent at'. He goes on to recount a time when he 'begged' his parents to allow him to move to another city to enroll at a larger high school with an arts program (where his interests laid), but to no avail. He then describes doing the best he could with the 'cookie cutter education' that he was provided; having to 'bridge' through college to get to the university where he ultimately wanted to be.

> **Patty**: Yeah. Any comments on the teachers and staff? Or, the curriculum?
>
> **Sam**: Uh, the curriculum was really math and science based. And, if I was a math and science student, I would have easily gotten, like, the six university level prep credits that you need for like direct entry to university 'cause it was like two different kinds of math, bio, chem, physics, and, like, that's not me at all. There weren't a lot of humanities courses. I took what I was able to, but like it wasn't enough to, like, make the six, which is why I had to go to college first.

…

Patty: Yeah. That's a significant barrier. Financial barrier. Were there any other barriers that you faced when, um, applying to college or university, um?

Sam: Um, aside from kind of, like, a lack of academic like university-slash-academic prep curriculum at the high school level, which would have enabled me to do a direct entry to university and then the financial barriers of, like, funding my own part-time education, I wouldn't say so.

…

Sam: So, were my rights to education met? Well, like, I was provided an education. Like here is your cookie cutter education, take it or leave it, right. I did, I mean I did the best that I could with what I was given. Um, but, like, there were barriers again curriculum wise, and there were barriers, financial barriers, that I've spoken to, so, like, have my rights been met? Yes. Without condition? No.

Better preparing and transitioning high school students to allow for greater and more direct access to post-secondary schools was a theme that emerged from the data specific to the high school curriculum. The next topic that was raised in my discussions with the participants also touches on the need to reform the curriculum, however, it was not limited to any specific level of education.

Indigenous Perspectives and Worldviews

When the issue of curriculum arose throughout their interviews, the topic that garnered most attention by the participants was the need to 'Indigenize the academy' and 'acknowledge different ways of transmitting Indigenous knowledge' throughout the education system. A majority of the participants expressed their views that the curriculum either outright ignored the stories of Indigenous people; 'the '80s and 90s having really sucked' in this regard. Or, when the curriculum did include stories of Indigenous peoples, it 'transmitted messages' that were

inaccurate, untruthful, disingenuous, and damaging. Lessons were taught throughout their schooling, particularly, during their high school years, that portrayed the Indigenous peoples of Canada as 'pagans and heathens', 'savages', 'grunting cave men', who were 'feral', 'really pathetic', 'needing saving', and as 'dependent individuals' who were 'not organized'. All of this despite the fact that 'there was a lot of structure, and there was a lot of organization, and there were things like systems of law, authority, and all of that. But, none of that [being] reflected in a lot of the curriculum'.

> **Sam**:…when you look at that curriculum, it's written from a very Western perspective where the role of First Nations people, and Métis, and Inuit, are really downplayed, like really downplayed. And, almost so, where they're seen, they're portrayed as being very dependent individuals, not organized, feral, when really when you study Indigenous communities, and Indigenous people there was a lot of structure, and there was a lot of organization, and there were things like systems of law, and authority, and all of that, but none of that is reflected in a lot of the curriculum.
>
> **Rachel:** …And, the story was told, the narrative that these were people who needed saving, and who were really pathetic, and so they were really like grunting cave men, or something, you know what I mean, who didn't have complex governance systems and societies and economic systems, and all of those things, even though they did exist. You know, so, um, it has done a lot of damage when it comes to, uh, mutual understanding, and diversity, and respectful relationships, right, there is an over inflated sense in the broader community about who Indigenous people are and how they fit and how important they are to the story of the creation of what has become this nation, right, um, and it is really unfair, and we have a lot of work to do to if we are going to fix that story…

A majority of the participants expressed their concern and dissatisfaction with the curriculum as it is 'written from a very Western perspective'. They assert the curriculum needs to be reformed. The stories of Indigenous peoples need to be 'honoured' and 'respected' and, to this end, Indigenous people need to see themselves and their worldviews 'reflected' in the curriculum. Sarah asserts that there is hope that the curriculum is changing. She calls the younger

generation, her own children, 'lucky' in that they will be the 'most educated generation' who will 'know the truth'.

> **Sarah:** …kinda what I said before that if you don't see yourself reflected in, where you are at, not just the people, but the ideas and the worldviews, I think it makes it really hard for you to connect, right…I think that's important being able to see our world views reflected.
>
> …
>
> **Sarah:** …I mean things are changing now, right, this generation of students, if we're looking at elementary, high school, are getting the best of, you know, Indigenous world views and stuff 'cause it's finally, I always say, even to my [children], you guys have, you guys are so lucky because you guys are going to be the most educated generation on these issues, right, and you are going to know, and you are going to know the truth, and it's going to be your job to make things better.

Whereas Sarah expresses hope that the curriculum is changing, Sam and Rachel are less optimistic. Sam asserts that the curriculum is outdated and that the education system is slow to change. He says that it was not too long ago that he was in elementary and secondary school learning the 'Western colonialist, settler' curriculum. He points to the recent issue of the Ontario health and physical education curriculum, the one that 'conservative, religious people had a problem' with, to exemplify the slow pace of curriculum change. The curriculum here, he stresses, was set in 1998 and then only updated again eighteen years later in 2016. Rachel contends, however, that even when the curriculum does change to include Indigenous perspectives, it only serves to 'soften the blow' of how problematic Canada's relationship has been with Indigenous peoples. She cites the recent changes made to the curriculum after the release of the TRC, where writers came together in answer to its Calls to Action to rewrite the curriculum only to fail in communicating 'how deep and profound and how explicitly rape-y like the whole system was'.

> **Rachel:**…in the education system they transmit messages and narratives and even ways of behaving, and it, and it indoctrinates people to have a sense of pride, right. So, they teach you about the Canadian flag, they teach you about the song, the Flanders Fields, about the wars, and they give you this image that Canada is a peace keeper abroad, blah, blah, right, and it, so it instills a sense of nationalism, you know, and that is transmitted to Native kids just as much as it is transmitted to kids in the broader community, right. But then they told tell us the stories about the raping, and the stealing, and lying, all of that stuff, right, and how much it happened, and then so, um, like after following the Truth and Reconciliation Commission's report that came out, um, curriculum writers came together and said okay that we are going to honour that story, and we are going to tell it, right, and then I saw some research releases of the latest of what they have put out, and they are still trying to soften the blow of how deep and profound and how explicitly rape-y like the whole system was, right…it's still in denial, I guess I would say, the curriculum writers, they have a lot of work with that.

Like Sarah and Sam, Rachel stresses the need for the curriculum to 'honour' their stories and finally 'tell the truth' of Canada's relationship with Indigenous peoples; a burden, she says, that is too often placed on Indigenous people themselves. She understands that 'Native kids' need to see themselves accurately and positively portrayed in the curriculum because, just like kids from the 'broader community', messages of 'pride', 'nationalism', and 'ways of behaving' too are 'transmitted' to them through the curriculum. Unlike the other participants, however, Rachel spends a significant portion of her interview discussing the need to focus, not on the education of 'Native kids', but on the rest of Canada, whether such education takes place within or outside the education system.

When asked whether her educational rights had been met in her experience and what can be done to ensure the right to education is met for all First Nations youth, Rachel flips the burden of education onto the broader Canadian community. She asserts only when people understand the historical 'imbalance of power', 'succeed at knowing the violence' against Indigenous people, and realize how these things 'created consequences and all this fall out' will everyone be able to

'succeed in moving forward together' in the spirit of truth and reconciliation. In the following passages from her interview, she cites an 'urgency' in 'getting everyone else caught up'. She employs this term, 'caught up', at various points throughout her interview to identify a process of reconciliation. In her view, only by engaging in the 'relentless pursuit of truth', 'pulling back the veil on all the bullshit stories that have been told', and 'telling the truth as ugly as it is' can Canada's Indigenous peoples 'succeed' and true reconciliation be achieved.

> **Rachel:** So, from that perspective, I mean, uh, because from this perspective this is a new realm and territory for education, it's a revolution, right, um, because that this is the current reality our children will continue to be more likely to go to jail than graduate from high school, prenatal care will be terrible, child welfare, you know, we're still going to see high apprehensions, all of those things, because if the collective community consciousness doesn't catch up, because this is the story that I tell that, we were all colonized, every single one of us, even the people from the broader community, it's just how we were colonized, and how that looks, and how we are made to fit in the context of the overall social fabric is going to look different depending on how we were colonized, right, and, uh, there's such an urgency in this work to be able to get everybody else caught up because they represent the larger share in the population, and once they know, this is my honest belief is that, uh, because people ultimately are kind and good and they, when we are all born, we want to succeed, and we want to see others succeed, and we do love people, right, and once they actually know and understand the real story, I think they will want to see change so that we can all succeed move forward together. And, that's the barrier right now. And…this is what I was talking about, it was about bad this, or bad that, it's just a system that is designed to keep us apart. Yeah.
>
> …
>
> **Rachel:** Okay, so, um, it's going to be a multi-pronged approach that needs understanding and support at all levels from front line workers, to teacher assistants, uh, even the people who light up the schools and maintain the buildings, right, because all of those people are important to creating a safe space, a barrier free space, to an education for all of the people, right, um, and so everybody needs to be caught up at the same time, and the other thing too is that legislators also need to have this training, people in government need to have this training, bureaucrats need to have

> this training so that they can understand what it is that is at stake collectively, right. Because, ultimately, our economies are also going to be affected by this.

Throughout my discussions with a majority of the participants, it became evident that the curriculum needs to change to include Indigenous perspectives and worldviews to fulfill or better meet their right to education as First Nation students. The education system at all levels needs to become 'Indigenized' so that Indigenous youth see themselves accurately and positively 'reflected' in the curriculum and true reconciliation achieved in Canada. The topic of curriculum also arose in one participant's interview in the context of discrimination and racism. When asked whether she ever felt discriminated against while attending school, Sarah talks about her personal struggle 'trying to figure how to navigate' an education system that is 'based on colonialism' and 'trying to fit in' and 'match' her thinking to it. She specifically identifies post-secondary institutions as a site of 'systemic racism' in education, which is the topic of the next section.

Discrimination and Racism

The third primary theme that emerged from the participants' answers to the questions put to them on their right to education was that of discrimination and racism. Every participant responded that they encountered discrimination and racism while in school. Examples of individual and systemic instances were amply provided. Though, the majority of the participants, cited their peers and classmates as the main source of the discriminatory or racist activity. Each story was unique in that the participants were targeted by their peers on differing grounds, including race, sexual orientation, and/or Indigenous ancestry.

Rachel reports being singled out and 'socially isolated', specifically, because she was 'Native'. She describes becoming a 'social pariah' and experiencing 'that whole mean girls thing' in college, once people found out she was 'Native'. During her college years, she says she

had ‘the hardest time socially’. Her classmates would have ‘mixers and stuff’ where she would not be extended invites. They also had ‘a little homework club’ from which she was specifically excluded. She cites one particularly upsetting discriminatory incident where her roommate intentionally ‘put shit in her laundry’ causing all of her clothes to ruin. She reflects upon this experience in the following passage.

> **Rachel:** Well, I’m glad I made it through. Yeah, because like when I look back it now, it really helped me to become a stronger person, you know, um, and to know that racism is, like it can be a really fucked up thing, you know, and it does, it destroys people’s lives, and their aspirations, and their sense of self-worth, and they feel voiceless and powerless to make change, um, I personally believe that social exclusion and social isolation, um, is a real spirit killer and people can deny that that’s what they are doing, you know, they can say it’s for other reasons, and that’s the thing about racism, a lot of people deny that it exists, but until you lived and experienced it, it really is something else. Yeah.

Another participant recalls his experience in elementary school where he was targeted by his classmates, not because of his ‘race’ or ‘Indigeneity’, but because of his ‘perceived sexuality’. Though acknowledging he may have been the ‘Indian in the class’ at times, Sam could not think of any incident associated with his Indigenous ancestry that he ‘considered significant enough’ to ‘really stand out in his mind’.

> **Sam**: …I was relentlessly bullied in elementary school because of my perceived sexuality. Absolutely. Yeah, and was it awful? Yeah, it was. Like, it was completely awful. Kind of, like, died down when I got to high school because teenagers are really like self-involved, so like I wasn’t, I didn’t matter anymore ‘cause they cared more about themselves, like the vanity set in, and they were all about themselves and their friends. And, I think, like, high school, the structure of high school, it’s set up such that it is easier to, kind of like, slide to the periphery, I guess. And, in high school, I was kind of on auto-pilot a lot, ‘cause I just wanted to get done, and like, I knew it was like four more years and I can go, three more years and I can go, two more years and I can go, and I thought, I’m going to leave, and it’s going to be, like, ‘fuck-you’ to the whole town, and I’m never going to be back, and, like, I totally went back, and it was totally fine, right, like I had gone away, and I

> had figured myself out, and accepted myself, and did all of that, right. And, went back to a really embracing community, it was night and day, and I think my perceptions of things had a lot to do with that too, but I also think, like, societal evolution had a lot to do with it too. But, in my education have I ever felt discriminated against because of my race? No, not because of my race.

Whereas Sam did not feel discrimination because of his race, another participant did. When asked whether she experienced racism or discrimination while in primary or secondary school, Sarah recalls a racist incident where a classmate specifically targeted her because of the colour of her skin.

> **Elizabeth**: Uh, not really, to be honest. I had a pretty lucky childhood, uh, 'cause obviously when you look at me you can tell that I'm obviously, ah [laughter] not white, um, but I never, I was never made fun of, I was never an outcast, I kind of just sort of lucked out in that sense, like, I do remember one incident in public school where a girl did call me the N-word, and I remember crying and going to my teacher, and he like basically embarrassed her, not embarrassed her, but like called her out in front of the whole class and basically made her apologize to me, and uh, he was one of those teachers that like slam one of those rulers on the desk, and that's what he did to her, and like scared the crap out of her, obviously, and she never name-called me again, I mean we were never besties, but, yeah, that was probably the only time I was ever called a name growing up.

Elizabeth seems to downplay or dismiss this particular instance of racism, in her interview, highlighting it as it the only time she was 'ever called a name growing up'. She says, aside from this one moment, she was 'pretty lucky'. She was 'never made fun of' or made 'an outcast' in school. However, when asked the same question in the context of her post-secondary education, Elizabeth becomes more sombre while describing a period of time when she was repeatedly targeted by her university instructor; an issue that she ended up having to take to the Dean.

> **Elizabeth**: So the one that stands out for me is one of my…instructors was, I believe, pretty, probably racist, I would say, in that she kept failing me on assignments. And, to help, like, basically trying to fail me out…and I then I got someone who passed the project that she wanted me to complete, I had them do it

> to see, and she still failed, even though they did it, just to see, and then I had, I had to go to the Dean with it…She, I think she failed me like three times on this one assignment, and I was like, 'I'm not doing anything different than anybody else'.
>
> **Patty**: Yeah.
>
> **Elizabeth**: And, so I had a girl do it that was in my [class] just to prove that she was doing it on purpose.
>
> **Patty**: What did the school do, if anything?
>
> **Elizabeth**: Um, they didn't do anything. They kind of just like, 'okay, we'll just pass you on to the next'.
>
> **Patty**: …instructor?
>
> **Elizabeth**: Yeah, I think I ended up getting a…different… instructor, but they never did anything about her failing me on any projects. And, that's pretty much the only one that I remember.

Elizabeth later relays, in her interview, that this specific discriminatory encounter with her university instructor was the 'one incident' where she felt her right to education was not met. Otherwise, on the whole of her schooling, she believes the 'education system did [her] okay, minus this one incident', but that she did not let it 'hold her back' or 'stop her'. As will be further discussed in the next part of this chapter, the participants had mixed responses to the question, whether, through their own educational experiences, their right to education had been met. The findings to this specific research question as well as the others will be addressed in the following section.

PART III: FINDINGS

The following findings of this study are taken from the answers of the participants in response to the specific research questions posed to them during their in-depth interviews (see Appendix A: Interview Guide). These findings are, in part, ascertained using the data summary chart that was prepared at the analysis stage of this study as noted at Chapter Four. The findings

are also informed by the primary and secondary themes. Whereas the data yielded one answer for some of the specific research goals, others have multiple findings.

Meaning of a Right to Education

Finding 1(a): All participants are comfortable using the term 'right' in the context of discussing their right to education as First Nation students

Given that the notion of a 'right' originates from Western legal traditions and is rooted in the autonomy of the individual versus that of the group or community,[14] which is seen by some Indigenous scholars as problematic for Indigenous peoples, particularly with respect to their right to self-determination,[15] the participants of the study were asked whether they were comfortable using the term 'right'. Though one participant acknowledged that the term may have a 'cultural aspect' to it, all were comfortable in adopting the term to circumscribe the discussions they were having on the topic of a right to education for First Nations.

> **Sarah:**…I mean for First Nations people, specifically, yes, it is written in the treaties, and I think those need to be honoured.
>
> **Rachel:** Yeah, no, no, I am comfortable with it. Because, when we talk about self-determination we always talk about rights and title and so I am very familiar with that language, and I agree with it…And, the other thing, is like, uh, it's something that we definitely negotiated for in our treaties…
>
> **Elizabeth**: I don't even know if there is another word. I guess it is, everyone's right. Like, I don't know that that's the wrong word, I just don't know necessarily it just should be for First Nations, like,

[14] Thomas McMorrow, *""Critical to what? Legal for whom?" Examining the Implications of a Critical Legal Pluralism for Re-imagining the Role of High School Students in Education Law* (DCL Thesis, McGill University Faculty of Law, 2012) [unpublished] at 148.

[15] See e.g. Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto*, 2nd ed (Oxford: Oxford University Press, 2009) at 176. But see Borrows, *Indigenous Constitution, supra* note 2 at 37 (who argues that Indigenous persons and communities should "guard against stereotypes" that see the application of Indigenous laws as stuck in time, "backwards" and "violating individual rights". Borrows would not accept a failure by his First Nation to respect human rights. In this regard he states: "a large number of Indigenous people would likely not accept the double standard of expecting colonial governments to respect international human rights while their own governments failed to recognize similar principles". Further, "[f]or Indigenous peoples to be persuasive in declaring and developing law they must incorporate human rights principles in some form within their legal systems").

> to say it's their right to an education. Because I feel like everyone should be entitled to an education.

As noted by the participants in these interview excerpts, some draw their comfort in using the term specifically because First Nations negotiated for the right to education in the Treaties. One participant suggested, however, that his comfort using the term may be as a result of having been educated in a 'Western system'.

> **Sam**: I understand the concept because I've studied and learned in Western systems so I'm comfortable using it, but I can understand the concern, I can understand how it might not be the most culturally appropriate term, not that it's necessarily culturally inappropriate. I think that there is a cultural aspect to it, maybe, a cultural understanding to the word, um, but I'm comfortable with that term.

While speaking to the participants about their perceptions on the meaning of their right to an education, a second significant finding emerged regarding its scope and length.

Finding 1(b): All participants believe their right to education is life-long

As discussed more thoroughly at Chapter Two, First Nations traditionally understood learning to be a holistic, life-long event or process that never stops.[16] Learning began before birth, continued through to old age, and was aimed at developing "all aspects of the individual and community", including their "emotional, physical, spiritual and intellectual" well-being.[17] When the educational clauses to the numbered Treaties were negotiated, in the late 1800s and early 1900s, First Nation leaders specifically negotiated a right to education that would allow them to maintain, among other things, this educational tradition. Particularly because they

[16] See especially *Report of the Royal Commission on Aboriginal Peoples*: *Gathering Strength*, vol 3 (Ottawa: Supply and Services Canada, 1996) at 414 [*RCAP,* vol 3].
[17] Canadian Council on Learning, *The State of Aboriginal Learning in Canada: A Holistic Approach To Measuring Success* (Ottawa: CCL-CCA, 2009), online: <www.ccl-cca/sal2009> at 8-11; *RCAP,* vol 3, *ibid* at 404 and 414.

believed, like their own systems of education, "the white man's education was for life" too.[18] In contemporary times, however, debate endures as to the scope and length of the right to education under the Treaties. Whereas, First Nations believe it to be "free at all levels", including post-secondary education, the Canadian government maintains the contrary.[19] Even twenty years after the release of *The Royal Commission on Aboriginal Peoples*, which called on the federal government to "recognize and fulfill" its Treaty obligations by "supporting a full range of education services, including post-secondary education, for members of treaty nations where a promise of education appears in treaty texts, related documents or oral histories", the federal government continues to deny First Nations a right to post-secondary education.[20]

Given this enduring debate and denial of Treaty rights, participants were specifically asked how long they believe they hold a right to education and to what levels of education it applies. Their answer was unequivocally: life-long. Or, in their own words, the participants responded that they believe their right to education lasts 'til the end', 'as long as you want', 'life-long', and 'forever'. On this point, their answers were quick and succinct.

> **Sarah:** Why not to the end 'til the end? So, PhD, if that's what you want to do, why not?...
>
> **Elizabeth**: I mean, I think everyone, you could go to school as long as you want, I mean if you want to be a forever student…if that's your thing where you want a higher education and you are kind of addicted to school then, I mean, I guess that's your right.
>
> **Sam**: I don't think there should be a time limit on that. Education is life-long…

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[18] Sheila Carr-Stewart, *Perceptions and Parameters of Education as a Treaty Right within the Context of Treaty 7* (PhD Philosophy Thesis, University of Alberta Department of Educational Policy Studies, 2001) [unpublished] at 233 (though this study centres around educational rights under Treaty 7, which covers five First Nations in southern Alberta, the findings of this study has general applicability to the other numbered treaties, including Treaties 3, 5, and 9).

[19] Treaty 7 Elders and Tribal Council, *The True Spirit and Original Intent of Treaty 7* (Montreal: McGill-Queen's University Press, 1996) at 302; Sheila Carr-Stewart, "A Treaty Right to Education" (2001) 26:2 Can J Education 125 at 128.

[20] *RCAP,* vol 3, *supra* note 16 at 471 (see Recommendation 3.5.20).

> **Rachel:** Forever. Like, uh, Indigenous people always say this, that we are put on this plane to learn, right…

The participants' views that their right to education is life-long could be influenced by a couple of things. First, the participants' answers to this question may reflect their own educational experiences and desires as a majority of them have completed (one is very close to completing) their post-secondary educations and all have expressed a desire to return to university to pursue a second degree (one being in the midst of completing graduate studies). Second, the participants' answers may be an undeviating reflection of their First Nations' heritages; directly drawing on those First Nation educational traditions noted at the outset of this section. This is most evident in the answers of Sam and Rachel, whose answers to the question are more fully reproduced here.

> **Sam**: I don't think there should be a time limit on that. Education is life-long. Learning is life-long. So if there is someone in their later years that wants to go back and pursue that, they should be given, the should be enabled to.

> **Rachel:** Forever. Like, uh, Indigenous people always say this, that we are put on this plane to learn, right. Uh, we come here with a specific, and this is what they say, before you're born, you speak with Creation and Creation will tell you the whole story, what you are going down there to learn, right, and, uh, you are told everything you are going to experience, and…we are supposed to grow spiritually, as a result of having this lived experience, right, and then when we go back to Creation we will have ascended further into Creation and being-ness until eventually we've fully ascended, right. So, we keep coming back until we've learned the things that we do…And, the whole goal of your existence, as a living being, is to learn, and grow.

It is beyond the scope of this thesis, as well as my knowledge, experience, and expertise to determine whether these influences, particularly any First Nation traditions of learning and education, in fact, constitute normative orderings that are treated as law by First Nations or the participants themselves, in accordance with legal pluralism. I will merely point out that

education as a life-long event or process could very well be 'law'. However, as will be further discussed at Chapter Six, such an exercise, regardless, may be counterproductive to the goals of the study, which aims to better understand the right to education for First Nations youth using a pluralist perspective to measure the effectiveness of the current education mandate and carry out meaningful education reform.

Difference between First Nation and Non-Indigenous Rights to Education

Finding 2: ***Most of the participants believe that the right to education should be equal for First Nation and non-Indigenous students, but they recognize that in its application, First Nation students are denied the right to its full extent***

When asked the question whether the right to education differs between First Nation students and non-Indigenous students, most of the participants intimated a belief that the right should be equal, but that it has been disproportionately or discriminatorily applied. Elizabeth's response is the most direct on the point; there should be no difference between the two groups of students and their right to education.

> **Elizabeth**: Um, I don't necessarily see that there should be a difference in, you know, I mean obviously it's nice when you do get funded because you don't come out with, obviously, a big debt at the end of it. But, I mean people still end up coming out with debt even if they are First Nation, if they don't get the funding. Like I could have ended up with a hundred-thousand-dollar loan, uh, loan at the end, if they didn't end up funding me.

Rachel and Sam similarly intimate during their interviews that everyone should have equal access to education. Rachel cites the 'UN' as guaranteeing this right, while Sam references the Treaties as enshrining 'equal access' to education for First Nation students.

> **Rachel:** Okay, so. Like, in the, uh, I mean the UN guarantees that we are going to get an education, right, and everybody, uh, and this is the mistaken belief is that, everyone has access and rights to an education, uh, all through school, right, but how they receive that, certainly in the early years, it is very, very different, right, 'cause I didn't have access to second and third level services, so, um, the

> ability for the people doing the education, and transmitting that knowledge to us, so that we can be successful and then become gainfully employed and participants in the economy, it was almost as it was deliberately, strategically set up that way, uh, so that we could fail. We didn't fail the system. The system failed us…
>
> **Sam**: Yes. In that treaties spoke specifically to education, some treaties spoke specifically to education. I don't think that that's necessarily though that non-First Nations students didn't have a right to education. But, I think when the treaties were negotiated there was an understanding for First Nations people that if it was in the treaty, then that right would be enshrined, that it was something that they could go back to say, 'we deserve equal access', or 'our children deserve access the same as your children deserve', so I don't think it was to exclude people that the treaty didn't apply to, I think it was to ensure access to the people that the treaty encompassed.

Though the participants note that the right to education should be equal between the two groups of students, they go on to assert that it continues to be unfairly applied to the detriment of First Nation students. Rachel makes specific reference to 'lack of support', 'racism', 'residential schools', and the 'curriculum', among other things, as examples of how the right to education has been disproportionately or discriminatorily applied between Indigenous and non-Indigenous groups of persons.

> **Rachel**: …and, when we come out to school to attend it, not only do we have to contend with culture shock, with the racism, those are added layers of social complexity that put children, and these are children, at an unfair disadvantage, right, because they have to get caught up on like social norms that everybody else has, but everybody else who goes to schools in these communities also have very strong, existing networks of support to support their learning, to support their well-being, to support their language, and their sense of safety, when we come out, we leave all that behind. So, it's unfair from that perspective, right…and then come to a place where there is intense racism, um, there's a lot of soul searching that you have to do, feeling that you are less-than, and you're not as important, and then sometimes you even experience that from the people who are supposed to protect you, your teachers, in that space, because they haven't had cultural awareness training, things, right, and so, it can be even further demeaning and devaluing, and it has, like, I mean, the Truth and

> Reconciliation Commission came out saying that Indigenous people, um, because they couldn't understand why, like, when the residential schools said that they were pagans and heathens, um, why the rest of society was that, and what they found in doing their research and looking at how books were put out, they used the word 'savage' and all of those things in text books, and 'squaw', right, so what they found was that same message was being transmitted in the public, provincial school systems, and that's how the collective Canadian consciousness has come to where it has, right, because that knowledge of expropriation, and oppression, and assimilation was muted or silenced in order to give the sense…

Sarah cites the lack of 'opportunity' and 'support' for First Nation students attending post-secondary education, as well as the fact that a number of First Nation students in northern Ontario have to leave their home communities to attend high school in Thunder Bay or Sioux Lookout, as examples of this unequal application of the right to education. She also cites, among other things, the differences in support between First Nation and non-Indigenous students living in urban centres to support her view that First Nation students do not have equal access to education like their non-Indigenous counterparts.

> **Sarah:** So, I guess, it would differ because if you look at the opportunities for education that First Nations people have, right, and not even just First Nations, also Inuit and Métis people, right, or non-status people who don't have the opportunity of education that is supported through bands, um. I think that many of us, and if you look at the statistics, we don't have high graduation rates, right, it's like, I don't know, somewhere in between 30 and 40 percent…So, if you are looking specifically at First Nations many of them don't have the opportunity to take academic routes to university, so many of them are, not by their own choice, taking applied, many of them don't go past Grade 8, there are some reserves, of course, that have, are lucky enough to have high school and stuff, but many of our students in Thunder Bay they come from up North and they go to DFC (Dennis Franklin) or PFC (Pelican Falls). So, um, I think having that right to up their educational goals is really important and because if you look at a non-Indigenous person who usually lives in an urban environment, they have all these opportunities and supports from their families, and their friends, and their relatives, and just being in the city and having the option…I think the opportunity is really important and it is very different from the non-Indigenous person, you know, and

> realizing, that whole piece of not having mentors or people to look up to, right, to see them, like, "Oh, I can be a teacher, or I can be a nurse, or a doctor, or a lawyer", right. I think that we miss out on a lot of those places, Indigenous people…

Though some of the participants do not specifically or directly cite the Treaties when asked whether they believe the right to education differs between First Nation and non-Indigenous students, I suggest that it is appropriate to infer from the participants' interviews that the one exception to their view that the right should be equal between the two groups is the funding of post-secondary education. As more thoroughly described at Part I of this chapter, most of the participants understand their right to education includes adequate funding of their post-secondary educations because their ancestors negotiated for this right within the educational clauses of the Treaties; an educational right that does not extend to or 'encompass' their non-First Nation counterparts.

Extent to which the Right to Education has been Fulfilled

Finding 3: None of the participants feel that their right to education has been fully met; the primary themes (funding, curriculum, and discrimination and racism) are cited as the reasons why

When asked whether they believe their right to education has been met, or not, based on their own educational experiences, one participant responded that her right has not been met at all, while the remaining participants stated it has been met to some extent. When discussing the underlying reasons as to why they believe their right has not been fully met, the primary themes of this study become central to the participants' answers.

Though Sarah, Sam, and Elizabeth similarly respond that their right has been met to some extent, or in their own words, their right has been met 'somewhat', 'at times', and 'minus one incident', the reasons as to why their right has not been fully met is varied. Sarah and Sam

directly cite the primary themes of funding and the curriculum as their reasons, which are more thoroughly articulated at Part II.

> **Sarah:** Somewhat, I guess. I mean things are changing now, right, this generation of students, if we're looking at elementary, high school, are getting the best of, you know, Indigenous world views and stuff…[but] I didn't hear a lot about Indigenous peoples or our world views or anything in school at all, so, I mean, that wasn't very good, I don't think…Well, financially, if we are talking about that, finically, no. I mean, I was lucky enough to get some bursaries and scholarships…

> **Sam**: It's been met at times, but again like I'll reiterate that I have met some barriers in terms of, um, what's been offered to me curriculum wise at the high school level, was, the options that were available to me in the setting in which I was learning, were not the options that would have been available to me at a larger school, um…So, were my rights to education met? Well, like, I was provided an education. Like here is your cookie cutter education, take it or leave it, right. I did, I mean I did the best that I could with what I was given. Um, but, like, there were barriers again curriculum wise, and there were barriers, financial barriers, that I've spoken to, so, like, have my rights been met? Yes. Without condition? No.

Whereas Elizabeth's answer is premised on the primary theme of discrimination and racism. In response to the question whether she believes her right to education has been met (or not), she responds that her right was met, but for the 'one incident' she experienced while undertaking her post-secondary studies. As previously discussed at Part II, that 'one incident' was the time she was discriminatorily targeted by her university instructor, who continually attempted to fail her on class assignments.

> **Elizabeth**: I mean, I think it has been. I was able to get a good job with the schooling that I went for, um, so I feel like the education system did me okay, minus that one incident. But, I mean I didn't let that sort of stop me, or hold me back.

Unlike the other participants, Rachel was the only one who stated that her right to education had not been met at all. Her reasons are premised on the primary theme of curriculum and centers on

the need to measure the successes of reconciliation and 'catching people up' within the 'broader community', as more thoroughly discussed at Part II.

> **Rachel:** No. It feels like there are so many barriers, like, and then there's non-traditional ways of accessing education too, right, in the realm of reconciliation recently there is no way to measure the outcome of deliverables and it's really interesting to me that there's no pressure to, um, have people succeed at knowing what the violence was, and how it created consequences and all this fall out and then how to respond and how to fix it, there's no requirement on the flip side that, that this group, this community, the broader community be successful in that, you know what I mean? So, like, what the fuck is that?

Though the participants have attained a certain level of success throughout their respective educations (when such success is measured using the traditional western standard of graduation from a post-secondary institution) no one participant actualized their right to education to its full extent. The basis for this lack of educational success from a rights based perspective will be significant in informing the conclusions and recommendations that are set out at Chapter Six.

Legal Traditions Used to Inform the Right to Education

Finding 4(a): A majority of the participants draw on the Treaties to inform their views on the right to education

As previously and more thoroughly discussed at Part II, a majority of the participants refer to the Treaties to inform their perceptions on their right to education. The participants rely on the Treaties to assert that their right to education includes: (a) access to post-secondary education, (b) adequate funding of their post-secondary educations, and (c) adherence to the intentions of First Nation leaders, who negotiated the educational clauses within the Treaties, including providing an education that enables First Nation students to find successes in both Indigenous and western worlds. The participants call upon the Canadian government to honour the educational clauses of the Treaties in these respects.

Finding 4(b): A majority of the participants draw on international law, such as the CRC and UNDRIP, to inform their views on their right to education

When discussing the nature of their right to an education, how their right may differ from that of non-Indigenous students, and what legal traditions or laws inform their understanding on their right, a majority of the participants refer to international bodies and human rights instruments to support their views. Three human rights instruments are specifically mentioned by the participants when discussing the right to education for First Nations, being the *Universal Declaration of Human Rights*, the *Convention on the Rights of the Child* (CRC), and the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

Rachel asserts the United Nations (UN) 'guarantees education as a human right', particularly for First Nation students. She specifically references the *Convention on the Rights of the Child* (CRC) and the *Universal Declaration of Human Rights* to support her view that every child has a right to access education, but that it is not equally applied between First Nation and non-Indigenous persons in Canada.

> **Rachel:** Uh, I know that there is like there is the Children's Charter and the United Nations' Declaration on education, and it is recognized as a human right…
>
> ...
>
> **Rachel:** Okay, so. Like, in the, uh, I mean the UN guarantees that we are going to get an education, right, and everybody, uh, and this is the mistaken belief is that, everyone has access and rights to an education, uh, all through school, right, but how they receive that, certainly in the early years, it is very, very different, right…

Sam too raises the CRC, as he discusses his views on where he thinks his right to an education may originate.

> **Sam**: The other part I wanted to mention when you talk about international law and where do rights come from, well, there's like the UN Charter of the Rights of the Child, it's that what it is called? But, then there is also, like, the UN something Indigenous,

> and I can't remember the name of it, the name is escaping me, but there's those two international documents, as well, that would speak to child rights, and within that education.

Sarah focuses her attention on UNDRIP when discussing the legal traditions that help inform her understanding on the right to education for First Nations.

> **Sarah:** Well, yeah, so treaties for sure. And, then, I guess if you look at international law, I don't remember all the articles of UNDRIP, but, even if you look at UNDRIP, I believe, you can correct me if I'm wrong, but somewhere in there it talks about us being able to practice our…I can't remember what the words are, ah, I used to have that book, but I don't have it right now. But, yeah, I think UNDRIP is a part of that right being able to, you know, do the things we want to have a good life and a better life, right. I'm sure in Canadian law, there is something in there, I'm not that good at law, so.

Of particular interest with respect to Sarah's use of international law, however, is how she uses it to inform her right. Unlike the other participants, she does not cite any international human rights law as being a source of her right to education. Rather, she uses UNDRIP as a means to corroborate her view that, as an Indigenous person, she has the right to 'practice' the tradition of living a 'good life' and a 'better life', which, in her view, is integral to education.

As will be discussed in the next section, this concept of the 'good life', which Sarah references throughout her interview, is an Anishinaabe fundamental legal principle known as *Mino-bimaadiziwini*.[21] Sarah uses UNDRIP to reinforce, bolster, or legitimize this First Nation legal principle as she contemplates her right to an education. This finding is particularly significant to legal pluralism, which forms the underlying theoretical approach to this study; implicating the relationship between the global legal order (or international human rights law) and the local ordering (or First Nations law) as one of compatibility.

[21] Janine Seymour, *Manitoo Mazini'igan: An Anishinaabe Legal Analysis of Treaty No. 3* (LLM Thesis, University of Manitoba, Faculty of Law, 2016) at 83 [unpublished] [Seymour, *Manitoo*].

It has been said that "international human rights law is one of the legal orders that is applicable today in practically every social field".[22] The present study evidences that in the context of First Nation students vis-à-vis the right to education, this social field is no different. The majority of the participants in this study rely on several international human rights instruments, most notably the CRC and UNDRIP, to justify their views of what the right to education is for First Nation students. But, unlike the trend in the body of legal pluralism research that evidences a relationship of competition and incompatibility between legal pluralism and international human rights law,[23] in that non-state legal orders are shown in these studies as causing human rights harms, including discriminatory practices, particularly to the detriment of women and children,[24] this study evidences one of compatibility.

The relationship between legal pluralism and international human rights has been described as "strange bedfellows",[25] "ambivalent",[26] and "complex and multifaceted",[27] and has been categorized into two main scenarios. The first scenario characterizes the relationship between local law and international human rights law as one "in opposition to each other"[28] or "inherently incompatible".[29] While the second characterizes the relationship as "mutually reinforcing".[30] In the context of the rights of Indigenous people and peoples, particularly, the

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[22] Ellen Desmet, "Legal Pluralism and International Human Rights Law: A Multifaceted Relationship" in Giselle Corradi, Eva Brems & Mark Goodale, eds, *Human Rights Encounter Legal Pluralism* (Oxford: Bloomsbury, 2017) at 43 [Desmet, "Legal Pluralism"]; Helen Quane, "Legal Pluralism and International Human Rights Law: Inherently Incompatible, Mutually Reinforcing or Something in Between?" (2013) 33:4 Oxford J Leg Stud 675 at 676 [Quane, "Pluralism and International"].
[23] Quane, "Pluralism and International", *ibid* at 678.
[24] Quane, "Pluralism and International", *ibid* at 678; Giselle Corradi, "Can Legal Pluralism Advance Human Rights? How International Development Actors Can Contribute" (2014) 26:5 European Journal of Development Research 783 at 783 [Corradi, "Can Legal Pluralism?"].
[25] Desmet, "Legal Pluralism", *supra* note 22.
[26] Desmet, "Legal Pluralism", *supra* note 22.
[27] Quane, "Pluralism and International", *supra* note 22 at 675.
[28] Desmet, "Legal Pluralism", *supra* note 22 at 47.
[29] Quane, "Pluralism and International", *supra* note 22 at 677.
[30] Desmet, "Legal Pluralism", *supra* note 22 at 47; Quane, "Pluralism and International", *supra* note 22 at 677.

trend or the "common perception" has been that local orderings belong within the first scenario as they "fit uneasily with international human rights standards" or "stand in contrast" to this global ordering.[31] However, as is evidenced by the results of this study, in the context of educational rights for First Nation students, particularly, the relationship between local law (particularly, the Anishinaabe legal principle that is *Mino-bimaadiziwini*) and international human rights laws (particularly, UNDRIP), falls within the second scenario.

This is especially evident in the answers provided by Sarah during her interview, as she relies on UNDRIP to assert that she has a right to 'practice' *Mino-bimaadiziwini* which, in her view, is integral to education. As previously noted at Chapter Two, pursuant to Article 14 of UNDRIP, Indigenous individuals have a right to all levels and all forms of education and have a right to access education in their own culture.[32] While at Article 15, Indigenous peoples "have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education…".[33] Both of these human right standards leave room for, even invites, the practice of *Mino-bimaadiziwini*, thereby, evidencing the mutually reinforcing relationship between UNDRIP and *Mino-bimaadiziwini*.

In the context of the right to education for First Nation students, it could be said that international human rights law is "on the same line" as First Nation law;[34] these legal orderings mutually reinforce one another. This particular finding will be significant in informing the conclusions and recommendations that are set out at Chapter Six.

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[31] Desmet, "Legal Pluralism", *supra* note 22 at 51.
[32] *Declaration on the Rights of Indigenous Peoples*, 13 September 2007, GA Res 61/295, UN Doc A/Res/61/295 (voted against by Canada 17 September 2007) [UNDRIP].
[33] UNDRIP, *ibid*.
[34] Desmet, "Legal Pluralism", *supra* note 22 at 51.

Finding 4(c): Participants draw on First Nations legal traditions, such as **Mino-bimaadiziwin***, to inform their views on their right to education*

Mino-bimaadiziwini is "a fundamental concept that is widely understood and practiced by Anishinaabe", which generally means "to live your life in a good way in fulfillment of Creator's purpose" or "a quest to fulfill our purpose".[35] More particularly, it has been described as follows,

> According to Anishinabe teachings, on our way through life, we experience "good" and "bad", but we keep on going. The concept of *Meno-bimaadiziwin* teaches us that we must stop and reflect upon each experience so that we fully know the difference between right and wrong, and can therefore make better decisions in other parts of our journey through life. This reflexive approach, premised upon reflection in response to life through *Meno-bimaadiziwin* requires that we be active participants in life, working to make things better for ourselves and all others as we see fit, collectively. Simply stated, *Meno-bimaadiziwin* means combining active participation in life, reflection, and work for a common good.[36]

A central concept of *Mino-bimaadiziwini* is relationships, which has been cited as the distinguishing feature of the Anishinaabe legal system (or *Anishinaabe inaakonigewin*).[37] Whereas, the western legal system is aimed at protecting "private property and individualism", *Anishinaabe inaakonigewin* is focused on relationships and *Mino-bimaadiziwini* or "ensuring a good life for [Anishinaabe] children".[38]

To varying degrees, all participants, when contemplating their right to education, reference some aspect of this Anishinaabe legal principle. In her interview, Elizabeth seems to draw on its notion of betterment when asked what education means to her. To this question, she

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[35] Seymour, *Manitoo*, *supra* note 21.
[36] Christy Bressette, *Understanding Success in Community First Nation Education Through Anishinabe* Meno-Bimaadziwin *Action Research* (PhD Philosophy Thesis, University of Western Ontario, Graduate Program in Education, 2008) [unpublished] at 102.
[37] Aimée Craft, *Ki'inaakonigewin*: Reclaiming Space for Indigenous Laws, Prepared for: the Canadian Administration of Justice Conference, *Aboriginal Peoples and Law*: "We Are All Here to Stay", October 14-17, 2015, Director of Research, National Centre for Truth and Reconciliation at 6.
[38] *Ibid* at 5-6.

responds that she and her generation have an obligation to 'better themselves' as their parents' and grandparents' generation did not have the same opportunity.

> **Elizabeth**: What does education mean to me? I mean, I feel it is important for people to have an education, um, in order to, sort of, make anything in life, I mean, if you don't have education, then you can't, you don't really have means to do a whole lot to improve in anything you do.
>
> …
>
> **Elizabeth**: I mean, I think for, I think more so that our parents' generation, or our grandparents' they never had that opportunity to better themselves, and, uh, I think our generation almost have that obligation to be better than what they were, so I think that's kind of where the right to education comes from.

Sam references the notions of learning from your relations and relationships, which are also embedded within the concept of *Mino-bimaadiziwini*, and he speaks to learning through reflexivity, when asked what education means to him.

> **Sam**: Well, like, education is learning. And, I think learning can take place in a number of different forms, and a number of different settings, so there is the formalized systems of education, like we see in school systems, elementary, secondary, post-secondary. Um, but I also think that there is education that happens, within families, kind of, from parent to child, but also from child to parent, 'cause you hear a lot of parents say, like, that 'I've learned just as much from my child as I've been able to teach them'. Um, you learn from your relatives, you learn from your peers, you learn from the people that you are around, you learn from things that happen to you, and then you also learn from experiences that don't happen, as well.

Rachel too references the importance of relationships, when asked what education means to her and how long she holds her right to education. She also speaks to fulfilling one's purpose in life through education, as bestowed upon her by the Creator, which is another central aspect of *Mino-bimaadiziwini*.

> **Rachel:** To me it represents freedom. Um, it's a vehicle and a tool for becoming gainfully employed…and being able to represent yourself, your children, your family, your people…
>
> …
>
> **Rachel:** Uh, we come here with a specific, and this is what they say, before you're born, you speak with Creation and Creation will tell you the whole story, what you are going down there to learn, right, and, uh, you are told everything you are going to experience…we keep coming back until we've learned the things that we do…And, the whole goal of your existence, as a living being, is to learn, and grow.

Given my 'outsider' status, in addition to my lack of my knowledge, experience, and expertise, it is difficult to ascertain with any conclusive certainty whether Elizabeth, Sam, and Rachel are, in fact, drawing on the concept of *Mino-bimaadiziwini* when discussing their right to education as First Nation students in the above-noted excerpts of their interviews. When Sarah speaks about her right to education as a First Nation student, however, it becomes much more evident to me that this fundamental Anishinaabe legal principle is being utilized by the participants to inform their right to education. Sarah directly, and more fulsomely, cites the concept ('good life') throughout her interview. The following passages from her interview best exemplify her use of *Mino-bimaadiziwini* when discussing her right to education.

> **Sarah:** Education means opportunity. To have a good life for yourself and your family. It means relationships, whereas maybe not so many, maybe people in places like that don't see that, right. And, it means, it really does mean looking at the whole person holistically, you know, their emotional, physical, spiritual, and total well-being, and trying to figure out, I think I missed one in there, but trying to figure out, like, how do we reach all these places? 'Cause this place is meant just for your brain, right. And, its changing slowly, people are realizing that if we are not doing well in every part of our way, then how do we do good, right. So, I'm just trying to…yeah. And, being able to, like, you know, have opportunity for your family. 'Cause it's not just about us. To me getting educated means that I can have better things for my family, and my community, and for other Indigenous people, to be a role model, and to show them that, you know, we can do this, and that

> we need to be in places like this in order to make the change that needs to happen.
>
> …
>
> **Sarah:** I just think, like, that as human beings, right, like we need to have the opportunity to make our lives as good as we can, right and to live our purposes, whatever they may be, or whatever we think they are, right. And, if we have that opportunity then we can live a good life, like, there is all this research, and people know, that the better educated you are, the better life is…

The use of *Mino-bimaadiziwini* by the students during their interviews is a significant finding of this study, in and of itself, but it also has meaningful implications for the theoretical approach of legal pluralism.

First, this finding is significant as it further evidences the continued existence and survival of First Nation laws, despite the imposition of the (seemingly) centralized legal authority that is Canada and its ongoing attempts to "legally acculturate" Indigenous peoples.[39] In the context of First Nation students and their right to education, as reflected in the words of Eber Hampton that are reproduced at the outset of this chapter, despite the interruption of their legal traditions by the colonial project that is Canada, the seeds of First Nation laws laid hidden under the snow or "clinging to the plant's leg of progress", living on, allowing the students to draw upon them, today, to inform their perceptions on their right to education.[40] In this context, First Nations law, particularly, *Mino-bimaadiziwini* has not "atrophied".[41] Rather, it evidences an adaptation of law to meet the realities of modern life for First Nation students, which is where the strength of any legal tradition resides.[42]

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[39] Ghislain Otis, "Individual Choice of Law for Indigenous People in Canada: Reconciling Legal Pluralism with Human Rights?" (2018) 8 UC Irvine L Rev 207 at 211 [Otis, "Individual Choice"].
[40] Battiste, "National Working Group", *supra* note 1.
[41] Otis, "Individual Choice", *supra* note 39 at 212.
[42] John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 8, citing Katherine Bartlett, "Tradition, Change and the Idea of Progress in Feminist Legal Thought" (1995) *Wisconsin Law*

Second, this finding is significant given its implications for legal pluralism, more generally. As previously discussed in the preceding part of this chapter, the First Nation students, who participated in this study, squarely situate themselves within a plurality of normative and legal orderings, including the global legal ordering that is international human rights law. They also situate themselves within the legal ordering that is First Nations law. In this latter instance, it would seem that a more classic approach to legal pluralism is at play; "non-state law [is] co-existing with but separate from state law", which is "operating in a semi-detached way from the state".[43]

Whereas, the participants specifically reference the Treaties, international, and First Nations law to inform their right to education, the final finding to the specific research goal of identifying the legal traditions that the participants draw on when conceptualizing their right to education is grounded less on what they actually say, but more on what they do not say during their interviews.

Finding 4(b): None of the participants draw on Canadian legal traditions to positively substantiate their perceptions on their right to education

The final significant finding to the research goal of identifying and mapping the legal and normative orders that First Nation students draw on to inform their right to education is that the participants do not rely on Canadian law to positively substantiate their beliefs on what their right to education ought to be. The participants either refrain from citing any Canadian law whatsoever, or when they do cite a Canadian law during their interviews, such as the *Charter* or

Review 303 at 331 ("The strength of a tradition does not depend on how closely it adheres to its original form but on how well it develops and remains relevant under changing circumstances").
[43] Quane, "Pluralism and International", *supra* note 22 at 681.

the *Indian Act*, they struggle to specify how it ensures their right or they use it to describe what their right to education ought not be, respectively.

For instance, when asked where her right to education comes from, Sarah, in part, responds is that she is 'sure in Canadian law there is something in there' too, aside from UNDRIP, which allows her to 'practice' *Mino-bimaadiziwini*. However, she has difficulty citing any specific Canadian legislation to reinforce her view and ends up reducing this difficulty to the fact that she is just 'not that good in law'. This is noted in her interview transcript above at Finding 4(b). Similarly, Sam's only reference to Canadian law during the full of his interview is to that of the *Charter*, which he raises when asked what legal traditions he looks to inform his perceptions on his right to education. But, he too cannot reference how the *Charter* substantively informs his right.

> **Sam**: Well, there's like natural law, like there's the idea of natural law. And, natural law comes down from a deity, or something that's just in existence naturally, but then there are also certain rights that are enshrined. There are treaty rights that speak to education, um, I think, I think, correct me if I'm wrong, but, like, there are rights that are enshrined within, like, the Canadian Charter of Rights and Freedoms, that speak to education. And, I'm not entirely sure, but I think educational rights were spoken to within the Royal Proclamation, as well. So, it's like a mix of natural law, and then actual legislative law.

Rachel also references Canadian laws when speaking about her right to education, such as the *Indian Act* and two of its predecessors, being the *Gradual Civilization Act* and the *Gradual Enfranchisement Act*. However, she does not use these laws to support her claim as to what her right to education ought to be. Rather, she uses them to exemplify how Canadian laws, historically and contemporarily, detrimentally affect Indigenous persons, their families, and communities across Canada. She references the *Indian Act*, in particular, to corroborate her view that Canadian law only serves to abrogate the educational provisions under the Treaties, contrary

to the intentions of her ancestors, and 'assimilate, expropriate, extinguish' Indigenous persons; a piece of legislation she refers to as 'genocide on paper'. The full of our exchange, in this regard, is reproduced above at Part II under the secondary theme of honouring the Treaties.

Elizabeth, on the other hand, aside from her seeming use of *Mino-bimaadiziwini* as noted above at Finding 4(c), does not specify any legal tradition or law, including any Canadian law to substantiate her views. In fact, she outwardly discounts all 'recognized' legal traditions from informing her right to an education.

> **Patty**: Right. Um, looking at what forms your idea of what a right to education is, where does that right come from, in your opinion?
>
> **Elizabeth**: I mean, I think for, I think more so that our parents' generation, or our grandparents' they never had that opportunity to better themselves, and, uh, I think our generation almost have that obligation to be better than what they were, so I think that's kind of where the right to education comes from.
>
> **Patty**: Would any of the, like, international laws, Canadian laws, treaties, any of those things, that you would use to inform the right to education?
>
> **Elizabeth**: Well, I mean I think it's just, I don't know if I would use any of those really. I don't think so.

It comes as no surprise to learn that the participants of this study do not rely on Canadian law to inform their right to education in any substantive manner. As outlined at Chapter Two, the current education mandate for First Nation students in Canada has been collectively described as a "pandemic gridlock" leaving an "inexcusable educational-rights vacuum" for which First Nation students, their families, and communities continue to pay a "heavy price".[44] Canadian law in particular, such as the *Indian Act*, has been pointedly described by academics as providing very little, or nothing at all, to First Nation students with respect to their right to education.

[44] Jerry Paquette & Gérald Fallon, "First Nations Education and the Law: Issues and Challenges" (2008) 17:3 Education LJ 347 at 350.

> Judged against virtually any relevant comparative standard, the *Indian Act* offers First Nations students in Canada astonishingly little, virtually nothing in fact, in the way of substantive educational rights. It would be unthinkable, within either contemporary societal *mores* or within the political and social-value realities of the twenty-first century, for a Canadian province or territory to offer students and parents within its jurisdiction only the educational-rights vacuum that currently exists within the *Indian Act*. Such an absence of justiciable rights in education is both reprehensible and embarrassing in our time…[45]

The fact that Canadian law is not substantively relied upon by any of the participants (at most it may be said that the participants reference it in an abstract manner with no particularization as to how it offers them any substantive rights) is not surprising because any Canadian legislation that touches on educational rights for First Nations remains vacuous.

This finding is significant to legal pluralism in a couple of ways. First, like research that has been undertaken in the context of "indigenous land, territorial and resource rights", in the context of educational rights for First Nations, the findings of this study indicate that Canadian law is fitting uneasily with international human rights standards; it is "state law that stands in contrast with both international human rights and indigenous/customary law".[46] While First Nations law, as noted earlier, is finding itself "on the same line" as international human rights standards.[47] Second, given this uneasy relationship between state law and Indigenous law, and international human rights laws, in the context of the right to education for First Nations there is an opportunity to incorporate these other legal orderings and their standards into state law to better promote human rights; state law "could be an important vehicle of implementation of

[45] *Ibid* at 349.
[46] Desmet, "Legal Pluralism", *supra* note 22 at 51.
[47] Desmet, "Legal Pluralism", *supra* note 22 at 51.

human rights".[48] This particular finding will be significant in informing the conclusions and recommendations that are set out at Chapter Six.

First Nation Students as Legal Agents

Finding 5: The participants act as legal agents and call upon their right to education when they feel it is not being met

There is evidence to suggest that the participants are actively interpreting their right to education and have acted while going through the formal education system by calling upon it when they felt it was not being met. The participants as legal agents is most aptly evidenced when, during their interviews, the participants describe the degree to which they felt their right to education was being met (or not) through their own educational experiences and the actions they took to bring the matter to light or to remedy or mitigate the situation. For instance, Sarah speaks of having to 'really speak up for herself' to ensure her right was met in accessing and funding the post-secondary education she desired by 'going to different resources', including seeking out various scholarships and bursaries and 'talking to welfare', something she says is a 'hard thing' for any student, First Nations or otherwise. Recall, Sarah felt her right to an education was met only 'somewhat' because, though she ultimately graduated from a post-secondary education, she was denied her full right to education as she was significantly challenged in securing funding for it. In her words, she was only able to access a post-secondary education due to 'luck' in getting 'some bursaries and scholarships'.

> **Sarah:** Okay, I guess I tried to seek out other sources of income, I mean, in the big picture of things, I couldn't really be, like, "Hey, I'm half Indigenous, give me some money to go to school", right, so it was just, yeah, the scholarships, bursaries, going to different resources, talking to welfare, even with the whole aspect of trying to figure out school, walking into the ACS, or the Aboriginal Student Centre, was probably the best thing that I ever did because

[48] Desmet, "Legal Pluralism", *supra* note 22 at 48.

> I think, and I do think that in that process we lose a lot of students, Indigenous students because they don't know and they don't understand how it, how the system works, it's so different, and high school does not prepare you for a place like this at all. You have to be able to really speak up for yourself and, if you know what you want, just really go out and get it, and I think that's a hard thing, not just for Indigenous students, but all students, right.

Rachel too speaks of having to act to address the fact that her right to education was not being met. As discussed earlier at Finding 3, as above, Rachel intimates during her interview that she felt her right to education was not met because the 'broader community' has yet to be 'caught up'; a term she employs to describe a process of reconciliation between Canadian and Indigenous peoples. To remedy the situation, she describes having to take on the 'burden of doing the work' in her personal capacity, as well as her professional capacity as an 'anti-racism worker', and having to be 'much more built to withstand the violence and pain' that is directed at her and others as they 'speak their truth and try to catch people up'.

> **Rachel:** Like, sadly, as Indigenous people, the burden is on us to do the work, you have to bigger, faster, higher, stronger, and you have to be much more built to withstand the violence and pain that is going to be directed at you over the course of you speaking your truth and trying to catch people up, and then even trying to get the funding to support this education is going to be a monumental task, you know what I mean, so, and then from among the Indigenous people and then even the government people coming together to say, well, how do we measure this, how do we track this, how do we support this, how do we put the onus on, you know, from that perspective I think that on its own, it's an important question, and it's definitely an interesting one, and it's definitely one where I would say that there is a lot urgency to have it answered, um, yeah.

But, the example that evidences most clearly the present finding that the participants are acting as legal agents in the context of interpreting and calling upon their right to education, when it is not being met in accordance with their perceptions of their right, is that of Elizabeth.

Though when asked whether she took any action to address any situation where she felt her right to education was not being met, Elizabeth responds in the negative, she earlier describes

an incident during her university schooling where her right was not being met for which she took action. Elizabeth's direct response to the question, in this regard, is as follows.

> **Elizabeth**: No, only because, probably, believe it or not, I am pretty shy, in terms of that sense, I mean now I'm probably a little more outspoken than I was when I was younger, and so, like, when you're the only one, you kind of feel alone, and it is kind of hard to fight that battle on your own.

However, Elizabeth relays earlier in her interview a specific racist encounter with a university instructor who was intentionally trying to fail her on assignments, as previously reported at Part II. With respect to one particular project, which the instructor wanted Elizabeth to complete, Elizabeth enlisted the help of a classmate, who had previously passed the same project, to do it in her stead 'just to prove that [the instructor] was doing it on purpose'. Despite the project being completed by a classmate, Elizabeth's instructor still gave her a failing grade. So she takes the matter to the Dean, who then 'passes' Elizabeth on the assignment and transfers her to another instructor. Elizabeth ultimately passes the course. Despite Elizabeth's incongruous response to the initial question posed to her, whether she had ever taken any action to address a situation where her right was not being met, Elizabeth does, in fact, act. Our full exchange on this incident is more fulsomely reproduced at Part II.

CONCLUSION

This study explored how First Nation students give meaning to the concept 'right to education' and identified and mapped, to some extent, the various sources of law that they draw on to inform their perceptions. Each of the participant's unique set of circumstances and the challenges they faced while engaged in the formal education system, at every level, but more particularly at the post-secondary level, informs their understanding on their right to an education.

A summary of the key findings that emerged from the four in-depth interviews conducted with the participants of the study will be provided in the next chapter, in addition to the findings of the study's specific research goals, which will be significant in informing the conclusions and recommendations that are set out in the following chapter.

CHAPTER SIX: CONCLUSION

I was just one of the lucky ones that was able to just be in the city, and go to school, and not even think of [education] as a right, but more of just a part of growing up. ~ Elizabeth

INTRODUCTION

First Nations youth in Canada, particularly those who live on-reserve, are facing an education crisis. It is currently estimated that it will take at least 28 years for First Nation students to catch up to the national average and graduate high school at the same rate as their non-Indigenous counterparts.[1] In 2011, the national graduation rate for youths living on-reserve was 35.3 percent, while the average rate for the rest of the country's youth was 78 percent.[2] Additionally, significant discrepancies exist between the funding of First Nations' elementary and secondary education programming as compared to provincial education programming. As well, inequities continue to persist in the funding of post-secondary education.

It is estimated that the federal government funds First Nation communities 20 to 50 percent less than what the federal government funds the provinces.[3] In Ontario, specifically, this funding shortfall is even greater; First Nation communities here are estimated to receive 53 percent less per student.[4] With respect to post-secondary education, these funding mechanisms too are established on an inequitable basis. The actual number of eligible students per First Nation are not accounted for when the federal government funds these communities, leaving

[1]Canada, Office of the Auditor General of Canada, *Status Report of the Auditor General of Canada to the House of Commons*, Chapter 4: Programs for First Nations on Reserves (Ottawa: Office of the Auditor General of Canada, 2011) at 13 [Auditor General of Canada, *Status Report*].
[2] Don Drummond & Ellen Kachuck Rosenbluth, "The Debate on First Nations Education Funding: Mind the Gap" (2013) School of Policy Studies, Queen's University No 49.
[3] Auditor General of Canada, *Status Report*, *supra* note 1 at 3.
[4] Auditor General of Canada, *Status Report*, *supra* note 1 at 10 (wherein graph shows Provincial Divisions receiving $17,000 per student as opposed to First Nation Divisions receiving $9,000 per student for "instructional services", e.g. core educational services, which includes professional staff salaries, cultural and language instruction, counseling, books and supplies, etc.).

eligible youth without sufficient funds and resources to attend college or university.[5] Current estimates show "a backlog of 10,000 First Nation students waiting for post-secondary funding", which requires "an additional $234 million to erase that backlog and meet current demands".[6]

Funding discrepancies in the education programming of First Nations youth, as compared to that of non-Indigenous youth, at both the secondary and post-secondary levels, as well as lower graduations rates, seriously and gravely impact First Nation persons and their communities. Education influences income levels, employment, and general economic well-being.[7] Education is a key determinant of health.[8]

At the national level, Indigeous people have lower incomes, are more likely to experience unemployment, and are more likely to collect employment insurance and social assistance.[9] At the local level, in northern Ontario, First Nations youth face greater educational challenges than their non-Indigenous counterparts. Residual effects of residential school, including alcoholism and other health problems, present within their families and home communities, which serve to act as barriers to successfully completing their education, as do limited finances, insufficient academic preparation, difficulties adjusting to the urban environment, experiences of racism and discrimination, and community and cultural challenges, including disruption of culture, language, and identity, to name but a few.[10] In Thunder Bay, particularly, the effects of these

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[5] Auditor General of Canada, *Status Report*, *supra* note 1 at 14.
[6] *Final Report of the Truth and Reconciliation Commission of Canada*, vol 1 (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) at 151.
[7] *Ibid* at 146-147; Canada, Canadian Human Rights Commission, *Report of Equality Rights of Aboriginal People* (Ottawa: CHRC) at 34 [CHRC, *Report of Equality*].
[8] CHRC, *Report of Equality*, *ibid*; Canada, "Social determinants of health and health inequalities" (Ottawa: 25 August 2018), online: <www.canada.ca/en/public-health/services/health-promotion/population-health/what-determines-health.html>.
[9] CHRC, *Report of Equality*, *supra* note 7.
[10] See Jan Hare & Michelle Pidgeon, "The Way of the Warrior: Indigenous Youth Navigating the Challenges of Schooling" (2011) 34:2 Can J Education 93; Angela Nardozi, "Perceptions of Postsecondary Education in a Northern Ontario First Nation Community" (2013) 5:1 First Nations Perspectives 1; Robert Animikii Horton, *A Seventh Fire Spare: Preparing the Seventh Generation: What are the Education Related Needs and Concerns of Students from Rainy River First Nations?* (MA Thesis, Lakehead University Department of Sociology, 2011)

educational transgressions, including those related to the inequitable funding mechanisms of on-reserve education, has had profound consequences, directly factoring into the deaths of seven First Nation youths who were forced to move from their remote northern communities to the city to attend high school.[11]

Such disparities between Indigenous and non-Indigenous youth are a direct result of Canada's historical and ongoing colonization and assimilation of First Nations, Métis, and Inuit. Though it is beyond the scope of this thesis to fully outline the myriad of ways in which the Canadian colonial project manifests itself within the educational context to the detriment of Indigenous youth and their communities, I posit that so long as the education of First Nations youth continues to be interpreted and mandated by the current legal order, these education gaps and transgressions will continue to persist; ultimately leaving young First Nation students and their communities left to pay the "heavy price".[12]

To this end, Part I identifies some of the study's limitations and provides recommendations for further research on the right to education for First Nations youth. Part II then briefly recaps the primary and secondary themes, as well as the key findings of the study that emerged from the in-depth interviews conducted with four First Nation students who participated in the study. Part III then provides some parting thoughts on the study and its

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[unpublished]; Gail Diane Winter, *Breaking the Camel's Back: Factors Influencing the Progress of First Nation Postsecondary Students Studying in Thunder Bay, Ontario, Canada* (EdD Dissertation, University of Toronto, Department of Adult Education, Community Development, and Counselling Psychology, 1996) [unpublished]; Andrea J Williams, *Sioux Lookout District First Nations Education: Factors Influencing Secondary School Success* (MA Thesis, Trent University, Faculty of Arts and Science, 2000) [unpublished].

[11] *Inquest into the deaths of Seven First Nations Youths: Jethro Anderson, Reggie Bushie, Robyn Harper, Kyle Morrisseau, Paul Panacheese, Curran Strang, Jordan Wabasse*, Verdict Explanation, 2016 CanLII 66257 (ON OCCO), online: <www.aboriginallegal.ca> at 7-8 and 11 (wherein the jury found that the funding model for education delivery was an "underlying reason" for the deaths of the seven First Nation youths, and recommended funding to be "needs-based, adequate, predictable, sustainable and outcome-driven" to help "reduce the risk of future deaths of high school students from remote First Nations").

[12] Jerry Paquette & Gérald Fallon, "First Nations Education and the Law: Issues and Challenges" (2008) 17:3 Education LJ 347 at 350 [Paquette & Fallon, "First Nations Education"].

implications on legal pluralism as a socio-legal approach to understanding the right to education for First Nations. Part IV concludes this thesis by setting out a number of recommendations that have educational law, policy, and practice implications, which are supported by the study's findings.

PART I: LIMITATIONS OF STUDY AND SUGGESTED FURTHER RESEARCH

Prior to summarizing the emergent themes and key findings of the study, it is important to first note the study's limitations.

Limitations of Study

First, the findings of this study may not be generalizable or representative of the experiences of all First Nation students, particularly given the small sample size of the study and its focus on students in northern Ontario; specifically students living in Thunder Bay. As previously noted, though this study aimed to attract between ten and twelve individuals, only four students, in the end, participated in the study.

Second, though all levels of schooling were contemplated in the design of the study and though it was intended that a more diverse group of participants would be canvassed in terms of their levels of education, some groups were missed. Recent high school graduates who had intentions of going to university or college, but were unable to for whatever reasons were not involved in the study. Nor were students who actively decided against pursuing their post-secondary education. Nor were those who may not have known that post-secondary education was an option, at all, for them. These significant voices are missing from the study.

Third, though this study aimed to understand what the right to education means more generally at all levels of education, the resulting focus of the study became the right to education in the context of post-secondary education. This was likely driven, first, by the design of the

study; its interview questions, in retrospect, were largely focused at the university and college level. Second, the few students who volunteered to participate in the study, though diverse in other aspects of their lives, did not exhibit diversity in this regard. All participants had attended university or college to some extent and, with the exception of one participant who recently entered his final year of undergraduate studies, all successfully graduated from their respective post-secondary programs. Moreover, all participants were either engaged in graduate studies at the time of their interview or had desires to return to university in the future to pursue a professional degree. These educational experiences and desires of the participants likely influenced their views on what a right to education means for First Nation students and, consequently, the study's results.

Fourth, though it was contemplated (even expected) that my 'outsider' status as a white, non-Indigenous, novice researcher would, to some extent, inhibit my ability to access, interpret, and apply Indigenous law, my status as an 'outsider' remains a possible limitation of this study. Despite the study's initial intentions, I was not able to clearly demarcate law from non-law in all instances where First Nation traditions were potentially considered by the participants. This was exemplified at Chapter Five, for instance, when contemplating whether the concept of education as a life-long event is in fact 'law' in accordance with First Nation legal traditions and laws. Nor can it be said that I was able to conclusively identify all First Nation laws that may have been at play when the participants were contemplating their right to an education during their interviews, beyond that of the concept of *Mino-bimaadiziwini* (or good life).

The extent to which this remains a limitation of the study is debatable, however, if one were to adopt the rationale of legal pluralist, William Twinning. As more thoroughly discussed at Chapter Two, he suggests that this concern of demarcating law from non-law may be

"unnecessary" in that such an exercise provides "little or no practical importance".[13] In the end, what remains remarkable or significant to the study is the fact that the participants, themselves, understand these concepts (whether law or not) to be central to their right to education. Arguably, therefore, these concepts should inform any debates on educational policy and law reform regardless of their legal characterization.

Fifth, although this final observation is not necessarily a limitation of the study, per se, in terms of its validity and generality, during the course of my interviews with the participants, I also contemplated the ramifications of employing critical legal pluralism as a theoretical underpinning to this study. By placing the site of normativity within the individual, I wondered whether the results of this study could be interpreted as absolving the federal and provincial governments from addressing the "inexcusable educational-rights vacuum" that currently exists 'on the books' for First Nation students in Canada.[14] Though the study explores the extent to which 'recognized' state laws play into students' perceptions of their educational rights and provides room for them to draw on other legal traditions and normative orderings, I did not want to certainly suggest that law reform is not a worthy endeavour or that state law cannot be effective in filling this legislative vacuum. In fact, as will be later discussed, the findings of this study suggest the opposite. As previously stated, one goal of this study was to gauge the effectiveness of the 'recognized' education mandate from the perspective of First Nation students to better understand how it ought to be reformed, acknowledging that it could be a determining factor of First Nation students' educational experiences, perceptions, and successes.

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[13] William Twinning, "Legal Pluralism 101" in Brian Z Tamanaha, Caroline Sage & Michael Woolcock, eds, *Legal Pluralism and Development: Scholars and Practitioners in Dialogue* (Cambridge: Cambridge University Press, 2012) 112 at 114-115.
[14] Paquette & Fallon, "First Nations Education", *supra* note 12.

Recommendations for Further Research

Given the limitations of the study, in addition to the lack of current research on the right to education as a treaty or inherent right, as noted at Chapter One, it is recommended that the following research be undertaken to better understand the right to education for First Nation communities and individuals in northern Ontario:

- Engaging Elders from Treaties 3, 5, and 9 communities to determine the intent and purposes of the educational clauses within the numbered Treaties, which could be used to help substantiate a Treaty right to education under section 35(1) of the *Constitution*.[15]
- Engaging Elders from Treaties 3, 5, and 9 communities, as well as Robinson-Superior Treaty communities, to determine any First Nation normative orderings and laws that address education, which could be used to help substantiate an Aboriginal or inherent right to education under section 35(1) of the *Constitution* or otherwise assist in further identifying and demarcating First Nation educational laws regardless of any section 35(1) considerations or assertions.
- Participatory action research with First Nations youth (including those under the age of eighteen), who exemplify diversity in their levels of education to better understand what a right to education means from their perspective and the extent to which the current education mandate has been successful or not in their experiences.

The following additional recommendations for further research on the right to education for First Nations youth are informed by the suggestions of the participants, who were directly

[15] See e.g. Sheila Carr-Stewart, *Perceptions and Parameters of Education as a Treaty Right within the Context of Treaty 7* (PhD Philosophy Thesis, University of Alberta Department of Educational Policy Studies, 2001) [unpublished].

asked what steps for further research they would recommend to better understand the meaning of a right to education for First Nations youth:

- Research with First Nations youth on the right to education that employs focus groups as the main method of data collection. A group dynamic may generate more nuanced views and perceptions on the right to education in addition to providing a greater means of empowerment for the First Nation students who attend the focus groups.
- Research with First Nations youth at the high school level, or with those who are pre-university or pre-college, to determine whether they feel as though post-secondary education is an option for them, at all, and whether they intend to pursue a post-secondary education.
- Research to determine how to educate First Nations youth at the secondary level in a manner that does not require them to leave their communities to attend high school and that provides them with appropriate learnings and tools to 'flourish' and be 'successful' in their home communities.

PART II: SUMMARY OF FINDINGS

It was the aim of this study, among other things, to understand how First Nation students perceive their right to an education and determine the extent to which they believe, based on their own educational experiences, whether their right to education was actualized. By applying the socio-legal approaches of legal pluralism and critical legal pluralism, it was anticipated that a unique perspective would be gained in assessing, to the extent possible, the effectiveness of the current 'recognized' education mandate. I suggest that this study has been successful in these regards, which is borne out by the following key findings.

Emergent Themes on the Right to Education

The three major themes that emerged from the in-depth interviews of the four individuals who participated in this study on the right to education for First Nation students are as follows:

(a) **Funding and Honouring the Treaties:** a right to education includes adequate funding for all First Nation students who intend to pursue their post-secondary education, which right necessarily includes honouring and respecting the educational clauses of the Treaties.

(b) **Curriculum:** a right to education requires reformation of the curriculum, at all levels, to incorporate Indigenous perspectives and worldviews, which present Indigenous persons and peoples in an accurate and respectful manner. As well, a right to education requires sufficient preparation of high school students to transition them to university or college, for instance, by providing them with the knowledge that university or college is an option for them and providing them with sufficient information and supports to help get them there.

(c) **Discrimination and Racism:** a right to education means ensuring that all First Nation students have access to an education that is free from discrimination and racism, which necessarily includes providing a school environment that is free from discrimination on any prohibited ground under human rights legislation, including Indigenous ancestry, race, sexual orientation, or otherwise.

Findings to Specific Research Questions

In addition to attempting to understand what a right to education means from the perspective of First Nation students, generally, this study also sought to understand: (i) the extent to which the right to education differs between First Nation students and non-Indigenous

students, (ii) the extent to which First Nation students believe their right to education has been fulfilled, (iii) the extent to which they act as legal agents, and (iv) identifying the legal traditions First Nation students draw on when conceptualizing their right to education.

The general findings to these specific research goals, which are more thoroughly discussed at Chapter Five, are as follows:

- all participants are comfortable using the term 'right' in the context of discussing their right to education as First Nation students,
- all participants believe their right to education is life-long,
- with the exception of any educational rights encompassed within the Treaties, such as the right to funding for post-secondary education, most of the participants believe that the right to education should be equal between First Nation and non-Indigenous students alike,
- while recognizing the right to education should be equal, most of the participants believe that it is disproportionately or discriminatorily applied against First Nation students,
- none of the participants feel that their right to education was fully actualized due to one or more of the following reasons,
    a. they were provided insufficient post-secondary funds,
    b. the high school curriculum failed to prepare or transition them for university or college,
    c. the curriculum, at all levels of education, failed to include Indigenous perspectives and worldviews, which promoted understanding and respect for Indigenous persons and communities, and/or

d. they faced discrimination and racism while at school,

- the participants act as legal agents and call upon their right to education when they feel it is not being met, particularly, when it comes to inadequate post-secondary education funds and discrimination and racism in the classroom or greater school environment.

The remaining specific research goal of the study sought to identify the 'recognized' and 'unrecognized' legal orders that First Nation students draw on when conceptualizing their right to education. The findings associated with this specific research goal requires a more detailed discussion, given the greater implications of this particular research question in relation to the resulting recommendations for educational law, policy, and practice reform, as outlined later in this chapter.

Identifying, Mapping, and Investigating the Legal Traditions

With respect to the specific research goal that asks, what legal traditions First Nation students draw on when conceptualizing their right to education, this study yielded several significant findings.

First, the participants rely on the Treaties when considering their right to an education, particularly, as it relates to accessing and funding post-secondary education. This finding is supported by the primary and secondary themes of funding and honouring the Treaties, which emerged through the answers provided by the participants during their interviews, as more thoroughly discussed at Chapter Five.

Second, the participants rely on international instruments to inform their understandings on their right to an education; most notably, the *Convention on the Rights of the Child* (CRC) and the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

Third, there are clear signs that First Nation legal traditions are also being utilized by the participants to inform their right to an education, particularly the Anishinaabe fundamental legal concept of *Mino-bimaadiziwin* (or the 'good life').

Fourth, the participants do not rely on Canadian laws, such as federal legislation, to inform their perceptions on their right to an education. Any reference to Canadian laws in my discussions with the participants mostly occur in the context of explaining the long-term, damaging impact that these laws, particularly the *Indian Act*, has had, and continues to have, on Indigenous peoples in Canada.

PART III: IMPLICATIONS FOR LEGAL PLURALISM

The findings of this study, *How the Acorn Unfolds in Education,* evidence that First Nation students find themselves at an intersection of a plurality of legal orderings and laws, which they draw on when conceptualizing their right to education. Most notably, the students who participated in this study situate themselves in the global legal order that is international human rights laws, particularly the CRC and UNDRIP, and the local legal order that is First Nations law, particularly the Anishinaabe legal concept of *Mino-bimaadiziwin*, even though these laws are not necessarily validated or recognized by Canada through official state law.

The findings of this study also evidence a relationship of compatibility between international human rights law and First Nations law in that they are mutually reinforcing, whereas the relationship between state law and international human rights law and state law and First Nations law, in the context of educational rights for First Nations, remains uneasy. At most it may be concluded that the participants of the study reference Canadian law, in this context, in an abstract manner with no particularization as to how it offers them any substantive rights as

students. This is not surprising, given that, as previously noted, the current education mandate for First Nations remains an 'inexcusable educational-rights vacuum'.

Given the significance that First Nation students place on international human rights standards and First Nations law to inform their understandings as to what a right to education means for them, the following recommendations specifically focus on the opportunity that this study presents (perhaps even necessitates) for Canadian law to recognize and incorporate these other legal orderings into state laws to better promote the right to education for all First Nation students.

PART IV: RECOMMENDATIONS

The following recommendations echo and support a number of recommendations that have previously been made by various governmental commissions and inquests (in some instances, over twenty years ago), particularly *The Royal Commission of Aboriginal Peoples* (RCAP), the *Truth and Reconciliation Commission of Canada* (TRC), and the *Seven First Nations Youths Inquest*, which all had as part of their mandates an Indigenous education component.

The recommendations provided below represent, to some extent, reiterations of these governmental bodies' initial recommendations, but are expanded upon to provide a more nuanced approach to their recommendations that arise from the unique findings and specific context of this study, which the emergent themes and key findings directly support.

- **Recommendation No. 1 (Funding and Honouring the Treaties):** The federal government fulfill its obligations under Treaties 3, 5, and 9, with particular attention paid to honouring these Treaties' educational clauses, which necessarily includes providing

adequate funding for post-secondary education for all First Nation students, who are eligible to attend a post-secondary institution (see RCAP Recommendations 3.5.20 and 3.5.21; TRC Calls to Action 11 and 45; *Seven First Nations Youths Inquest* Recommendation 7).

- **Recommendation No. 2 (Funding):** The federal and provincial governments and First Nation communities in northern Ontario collaborate to implement flexible education funding policies and approaches to funding so that all First Nation students, who are eligible to attend a post-secondary institution, do not 'fall between the cracks' and have access to adequate funding for university or college regardless of whether they intend to pursue full-time or part-time studies and regardless of whether they live on-reserve or off-reserve (see RCAP Recommendation 3.5.21; TRC Call to Action 11).
- **Recommendation No. 3 (Funding):** The federal and provincial governments consider implementing a funding regime, whether through a scholarship or grant program or otherwise, that would provide sufficient funds to Indigenous students, who reside in northern Ontario, and who are eligible to attend a post-secondary institution, regardless of whether they are considered by the government to be a 'status Indian' in accordance with the provisions of the *Indian Act* (see RCAP Recommendation 3.5.22).
- **Recommendation No. 4 (Curriculum – Indigenous Perspectives):** The federal and provincial governments collaborate with First Nation communities as well as educational institutions, including universities and colleges, and First Nation education mandated organizations and schools in northern Ontario to develop appropriate curriculum at all levels of education that incorporates Indigenous perspectives and worldviews into the curriculum with the aim of promoting respect and understanding of First Nation persons

and peoples in Canada and achieve meaningful reconciliation (see RCAP Recommendations 3.5.5 and 3.5.24; TRC Calls to Action 62 and 63; *Seven First Nations Youths Inquest* Recommendations 9, 140, and 141).

- **Recommendation No. 5 (Curriculum – Preparedness & Transitioning):** The federal and provincial governments collaborate with First Nation communities as well as educational institutions, including universities and colleges, and First Nation education mandated organizations and schools in northern Ontario to develop appropriate curriculum and programs at the high school level that promotes and encourages access to post-secondary institutions by First Nation applicants and adequately prepare them for their transition to a post-secondary institution (see RCAP Recommendation 3.5.24).
- **Recommendation No. 6 (Discrimination & Racism):** The federal and provincial governments collaborate with First Nation communities and education institutions at all levels in northern Ontario with the aim of implementing effective measures, which may include the development and implementation of educational resources, curriculum, and programs, that combat racism and discrimination, recognizing that a right to education necessarily includes the right to be free from racism and discrimination in an educational environment or system (see TRC Call to Action 63; *Seven First Nations Youths Inquest* Recommendation 141).
- **Recommendation No. 7 (Education Legislation):** The federal government draft and implement new education legislation with the full participation and informed consent of Indigenous communities, including First Nations, that incorporates, at a minimum, the following principles, in addition to those principles previously enunciated in TRC Call to Action 10 and the *Seven First Nations Youths Inquest* Recommendation 136:

i. recognition and integration of Indigenous legal traditions and laws in the new education legislation, such as the First Nation fundamental legal concept of *Mino-bimaadiziwini*,

ii. recognition that the right to education is both a collective right of Indigenous communities, which includes the right to self-determination, as well as an individual human right,

iii. recognition that the right to education includes the right to access to post-secondary education, which necessarily includes adequate funding of post-secondary education, and

iv. effective and meaningful implementation of the educational provisions of relevant human rights international instruments, including the *Universal Declaration of Human Rights*, the *Convention on the Rights of the Child*, and the *United Nations Declaration on the Rights of Indigenous Peoples*,

(see TRC Calls to Action 10, 43, 44, and 45; *Seven First Nations Youths Inquest* Recommendation 136).

CONCLUSION

Whereas education has historically been used by the Canadian government and religious institutions as a means to eradicate and assimilate Indigenous persons and peoples, today education has taken on new meaning. Education, particularly post-secondary education, has evolved to become an "instrument of empowerment" for First Nation persons and their communities.[16]

[16] Blair Stonechild, *The New Buffalo: The Struggle for Aboriginal Post-Secondary Education in Canada* (Winnipeg: University of Manitoba Press, 2006) at 2 [Stonechild, *New Buffalo*].

To have a right to education means having access to a university or college. This is not a new idea or recommendation: "Aboriginal citizens, treaty or otherwise, have legitimate entitlements to funded post-secondary education, both as individuals and in terms of controlling their own institutions".[17] And, as was borne out through the answers put to them in their interviews, this is the expectation of the participants in this study.

However, often times, when the right to education is discussed within the context of First Nations education, the discussion tends to centre around the right to self-determination, including the right of First Nations to control education over their own people; a right that is held collectively at the community level. Whereas, consideration of the individual human right to education in debate and discussion often gets lost in the foray or is ignored all together.

A significant conclusion that can be drawn from this study, which may provide a unique perspective in future educational debates and discussions, is that First Nation students are not only comfortable using the term 'right' when discussing their right to an education, but it may, in fact, be their expectation. Their individual human rights are to be considered and adhered to by all relevant governments that are involved in their education. Canadian governments, as well as First Nation communities, have an obligation to ensure that their human right to education is adhered to through whatever education mandate dictates their educations. This was evidenced in the study when the participants drew on international human rights instruments such as the *Universal Declaration of Human Rights*, the *Convention on the Rights of the Child*, and the *United Nations Declaration on the Rights of Indigenous Peoples* to justify and inform their right to an education.

[17] Stonechild, *New Buffalo*, *ibid* at 138.

It is not surprising that this latter international instrument, particularly, is relied upon by the participants of the study, given that "UNDRIP is an Indigenous document" that "was created broadly by Indigenous peoples" and "negotiated for more than 30 years at the United Nations",[18] which affirms Indigenous people possess human rights as individuals.[19]

It is also significant to note that, though the participants rely on international human rights standards to determine the meaning of their right to education, at the same time, they have not abandoned or forgotten First Nations legal traditions and laws. Rather, to the contrary, it is possible that every participant of the study used First Nation legal traditions when informing their right to an education, which was exemplified by their use of the Anishinaabe concept of *Mino-bimaadiziwin* (or the 'good life').

Relatedly, another significant conclusion that may be drawn from the results of this study is that First Nation legal traditions and laws, as well as western concept of rights, are not frozen in time. Nor do they remain in stasis. Rather, rights, such as the right to education for First Nations, whether considered collectively or individually, need to adapt to the realities of modern life. Any legal traditions or laws that touch upon a right to education needs to reflect what is required to survive in the modern world, which in the context of educational rights for First Nation students today requires consideration of their right to an education in terms of human rights. In making this final conclusion, I remain mindful of the following words: "[t]he strength

[18] John Borrows, "Revitalizing Canada's Indigenous Constitution: Two Challenges" in Centre for International Governance Innovation, *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws: Special Report* (Waterloo: CIGI, 2017) at 25, online: <www. https://www.cigionline.org/publications/undrip-implementation-braiding-international-domestic-and-indigenous-laws>.
[19] *Declaration on the Rights of the Indigenous Peoples*, 13 September 2007, GA Res 61/295, UN Doc A/Res/61/295 (voted against by Canada 17 September 2007) at art 1 [UNDRIP].

of a tradition does not depend on how closely it adheres to its original form but on how well it develops and remains relevant under changing circumstances".[20]

[20] John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 8, citing Katherine Bartlett, "Tradition, Change and the Idea of Progress in Feminist Legal Thought" (1995) *Wisconsin Law Review* 303 at 331.

APPENDIX A: INTERVIEW GUIDE

[Complete consent first.]

I am interviewing First Nation persons from Northern Ontario communities, who are between the ages of 18 and 35, and who are intending to enrol, are currently enrolled, or have been enrolled, at a university or college as a student.

I would now like to ask you questions about your thoughts on what it means to have a right to an education, where this right comes from, what this right looks like (or should look like) and how, through your own educational experiences, this right to an education has (or has not) been met.

In answering these questions, you may use examples. Please do not use names of persons in your examples, rather I would ask you to refer to these people by your relation to them (e.g. "my friend", "my co-worker", "my family member", etc.). You can base your answers on your own personal experience or your knowledge of your peers' experiences too. You are free not to respond to any question or stop this interview or withdraw from this study completely at any time. Please know that if you experience any distress, attached to the consent form is a list of resources that you can contact.

1.	**Introductory Questions**	**Prompts**
	(a) What is your age? (b) What community (or communities) do you identify as being from? (c) What languages do you speak? (d) How would you describe your family's socio-economic status?	 Is English your second language?
2.	**Availability and Access to Education (All-Levels)**	**Prompts**
	(a) What is your level of education? (b) What schools did you attend (including pre-primary, primary, secondary, post-secondary)? Where are they located?	 Did you have to leave home to attend any of these schools? Was transportation provided? What were your living accommodations like?

	(c) Would you consider the conditions and resources adequate at the schools you attended?	Schools' physical conditions? Extracurricular activities? Resources provided? Qualifications of teachers/staff? Content of curriculum/lessons?
3.	**Post-Secondary Education and Barriers**	**Prompts**
	(a) How was your post-secondary education funded?	
	(b) What barriers, if any, did you face when applying to post-secondary schools?	Language? Financial? Communications with staff? Filling out forms?
4.	**Discrimination and Racism**	**Prompts**
	(a) Have you ever felt discriminated against while pursuing your education? Or, while attending school? Please tell me about any of these incident(s), but only if you are comfortable doing so.	Education system? Education law and policies? Teachers? Staff? Peers?
5.	**Defining Right to Education**	**Prompts**
	(a) What does education mean to you?	How do First Nations traditions of learning, if at all, factor into your definition?
	(b) What does it mean to you to have a right to education?	
	(c) Are you comfortable with the term 'right'? Is there another word that you feel would more aptly describe the concept?	
	(d) Where does this right come from?	First Nations law? Treaties? International law? Canadian law?
	(e) How does your right to education differ, if at all, from any right to education that non-First Nations or non-Aboriginal youth may have? Please explain.	What role does culture, tradition, or identity have? What role does language have? What role do parents, Elders, others have?

	(f) How would you describe your right to education with respect to the curriculum or lessons?	Who, or what, are your teachers? Locations of schools? Conditions of schools? Resources of schools? Extracurricular activities? Instructional approaches (e.g. classes out-of-doors, experiential learning, etc.)?
	(g) How would you describe your right to education with respect to its funding?	
	(h) How would you describe your right to education with respect to the learning environment?	
	(i) How long do you hold this right to education? What levels of education does it apply to?	
	(j) You have described what this right to education means to you. Would you say that through your own educational experiences whether this right has been, or has not been, met? Please explain.	
	(k) Where you feel that your rights were not being met, did you take any action to try to bring the matter to light, or to remedy or mitigate the situation? Please explain.	
	(l) What should be done, and by whom, to ensure that this right to education is met for all First Nations youth?	
6.	**Concluding Questions and Remarks**	**Prompts**
	(a) What steps for further research would you recommend in determining and pursuing the right to education for First Nations youth?	
	(b) Is there anything further that you would like to add that we have not already covered?	
	(c) Do you have any questions of me?	
	(d) I would like to remind you that there is a list of resources, which is attached to the consent form,	

	should you want to discuss your emotional reactions to participation in this study?	

APPENDIX B: RESEARCH ETHICS BOARD APPROVALS

UNIVERSITY OF MANITOBA | Research Ethics and Compliance
Office of the Vice-President (Research and International)

Human Ethics
208-194 Dafoe Road
Winnipeg, MB
Canada R3T 2N2
Phone +204-474-7122
Fax +204-269-7173

APPROVAL CERTIFICATE

October 12, 2016

TO: **Patricia Robinet** **(Advisor: David Milward)**
Principal Investigator

FROM: **Lorna Guse, Chair**
Joint-Faculty Research Ethics Board (JFREB)

Re: **Protocol #J2016:057 (HS19884)**
"How the Acorn Unfolds in Education: Mapping the Legal and Normative Orders that Interact to Inform First Nations Youth's Right to Education through Legal Pluralism and Critical Legal Pluralism"

Please be advised that your above-referenced protocol has received human ethics approval by the **Joint-Faculty Research Ethics Board**, which is organized and operates according to the Tri-Council Policy Statement (2). **This approval is valid for one year only and will expire on October 12, 2017.**

Any significant changes of the protocol and/or informed consent form should be reported to the Human Ethics Coordinator in advance of implementation of such changes.

Please note:

- **If you have funds pending human ethics approval, please mail/e-mail/fax (261-0325) a copy of this Approval (identifying the related UM Project Number) to the Research Grants Officer in ORS in order to initiate fund setup. (How to find your UM Project Number: http://umanitoba.ca/research/ors/mrt-faq.html#pr0)**

- **if you have received multi-year funding for this research, responsibility lies with you to apply for and obtain Renewal Approval at the expiry of the initial one-year approval; otherwise the account will be locked.**

The University of Manitoba may request to review research documentation from this project to demonstrate compliance with this approved protocol and the University of Manitoba *Ethics of Research Involving Humans*.

The Research Ethics Board requests a final report for your study (available at: http://umanitoba.ca/research/orec/ethics/human_ethics_REB_forms_guidelines.html) in order to be in compliance with Tri-Council Guidelines.

UNIVERSITY OF MANITOBA | Research Ethics and Compliance

Human Ethics
208-194 Dafoe Road
Winnipeg, MB
Canada R3T 2N2
Phone +204-474-7122
Email: humanethics@umanitoba.ca

RENEWAL APPROVAL

Date: September 20, 2017 **New Expiry: October 12, 2018**

TO: **Patricia Robinet** (Advisor: David Milward)
Principal Investigator

FROM: **Kevin Russell, Chair**
Joint-Faculty Research Ethics Board (JFREB)

Re: **Protocol #J2016:057 (HS19884)**
"How the Acorn Unfolds in Education: Mapping the Legal and Normative Orders that Interact to Inform First Nations Youth's Right to Education through Legal Pluralism and Critical Legal Pluralism"

Joint-Faculty Research Ethics Board (JFREB) has reviewed and renewed the above research. JFREB is constituted and operates in accordance with the current *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans.*

This approval is subject to the following conditions:

1. Any modification to the research must be submitted to JFREB for approval before implementation.
2. Any deviations to the research or adverse events must be submitted to JFREB as soon as possible.
3. This renewal is valid for one year only and a Renewal Request must be submitted and approved by the above expiry date.
4. A Study Closure form must be submitted to JFREB when the research is complete or terminated.

Funded Protocols:

- **Please mail/e-mail a copy of this Renewal Approval, identifying the related UM Project Number, to the Research Grants Officer in ORS.**

Lakehead UNIVERSITY

Research Ethics Board
t: (807) 343-8283
research@lakeheadu.ca

November 1, 2017

Principal Investigator: Dr. David Milward
Co-Investigator: Patricia Robinet
University of Manitoba
#300G Robson Hall
Faculty of Law
University of Manitoba
224 Dysart Road
Winnipeg, MB R3T2N2

Dear Dr. Milward and Ms. Robinet:

Re: REB Project #: 071 17-18 / Romeo File No: 1466048
Granting Agency: N/A
Agency Reference #: N/A

On behalf of the Research Ethics Board, I am pleased to grant ethical approval to your research project titled, "How the Acorn Unfolds in Education: Mapping the Legal and Normative Orders that Interact to Inform First Nations Youth's Right to Education through Legal Pluralism and Critical Legal Pluralism".

Ethics approval is valid until November 1, 2018. Please submit a Request for Renewal to the Office of Research Services via the Romeo Research Portal by October 1, 2018 if your research involving human participants will continue for longer than one year. A Final Report must be submitted promptly upon completion of the project. Access the Romeo Research Portal by logging into myInfo at:

https://erpwp2.lakeheadu.ca/

During the course of the study, any modifications to the protocol or forms must not be initiated without prior written approval from the REB. You must promptly notify the REB of any adverse events that may occur.

Best wishes for a successful research project.

Sincerely,

Dr. Lori Chambers
Chair, Research Ethics Board

/sm

APPENDIX C: CONSENT FORM

UNIVERSITY OF MANITOBA

Faculty of Law
Robson Hall
224 Dysart Road
Winnipeg, Manitoba
Canada
R3T 2N2
[redacted]@myumanitoba.ca
[redacted]

Appendix E: Consent Form

You are invited to participate in an one-hour interview as part of a research project entitled, "**How the Acorn Unfolds in Education: Mapping the Legal and Normative Orders that Interact to Inform First Nations Youth's Right to Education through Legal Pluralism and Critical Legal Pluralism"**. This research project is part of a Master's thesis, which is being conducted by myself, Patty Robinet, a student in the Master of Laws (Aboriginal Law) program at the University of Manitoba. You can reach me at [redacted] or [redacted]@umanitoba.ca. You can also reach my thesis advisor, Dr. David Milward at [redacted] or by email at [redacted]@umanitoba.ca.

> [Verbatim] This consent form is only part of the process of informed consent. It should give you the basic idea of what the research is about and what your role is as as a participant in this project. If you would like more detail about something mentioned here, or information not included here, you should feel free to ask. Please take the time to read this carefully and to understand any accompanying information. You will be given a copy.

Purpose of the Research:

The purpose of this research is to better understand First Nations' right to education from the perspective of First Nation young adults. I will ask you questions about your thoughts on what it means to have a right to an education, where this right comes from, what this right looks like (or should look like) and how, through your own educational experiences, this right to an education has (or has not) been met. The results may be published in academic and popular media, both in print and electronically, and presented at academic and community conferences, including MSpace at the University of Manitoba. You are being asked to participate in this study because as a young First Nations person yourself, you have knowledge of the subject matter.

What is involved?

An interview will be scheduled for approximately one hour. Open ended and semi-structured questions will be asked by me, Patty Robinet, such as "What does it mean to you to have a right to education?" and "Where does this right come from?". These interviews will be audio recorded with your consent using a digital device and later will be transcribed in whole or in part for analysis. You will be asked not

to give names that would identify someone, but rather to refer to that person by relation (i.e. "my friend", "my co-worker", etc.).

Some participants, including yourself, may be from a small First Nations community, so there is a possibility that you could be identified based on your responses to any of the questions put to you. To protect your identity and privacy, I will not identify you by your name or by the specific First Nations community that you may come from in any report or publication of the research results. Please note that even if you agree to participate and sign a consent form, you are free to decline any questions and you can withdraw at any time. You can ask me, at any time prior to the publication of the results, not to use some or all of the information from your interviews. You will have an opportunity to review the full transcript of our interview to clarify, correct, or delete any statements that you may have made in the interview, and wish not to be included in any reporting or publications of the results. It should also be noted that there I some risk that you will feel distress because you may reveal sensitive information during your interviews. Attached is a list of resources you can consult should you experience any distress.

Your views and findings will help in advancing knowledge about education rights for First Nations persons. This research may be used to help inform current legal debates on the subject (e.g. court litigation and treaty negotiations), provide information to educational service providers, schools, and policy makers, contribute to the body of research on the subject, and help inform other researchers how to design further detailed and focused projects in the future.

Your participation in the study is completely voluntary and you may choose to stop participating at any time without giving a reason. Your decision to stop participating, or to refuse to answer any particular question, will not affect your relationship with the researcher, University of Manitoba, or any other group that may be associated with this project.

Confidentiality

All information provided during the research will be held in confidence and your name will not appear in any report or publication of the research. Any statements made by you that are used in the report will be attributed anonymously. The data will be stripped of identifying features such as names and the names of First Nations communities that participants may be from. All data will be stored in such a way that maintains confidentiality. For instance, the USB key on which the data will be saved, will be locked in a cash or security box, which cash or security box will be locked within a filing cabinet. Further, I will personally be transcribing the audio tapes. No one but me will have access to your non-anonymized information. My thesis advisor, Dr. David Milward, will have access to anonymized data (i.e. he will not know your name or identity). All documents and data that contain non-anonymized information, including this consent form, those portions of any audio recordings and interview transcripts with identifying features, such as names and identities, will be shredded, erased or otherwise destroyed after successful defense of my thesis, which is expected to occur in October 2018. All documents and data that are anonymized (all identifying features, such as names and identities, are removed), including those portions of audio recordings and interview transcripts, will be securely kept at the University of Manitoba for a minimum of 5 years. **Confidentiality cannot be maintained in the event of disclosure of matters related to abuse or violence against vulnerable persons such as children or elderly people. I am obliged by law to report such instances.**

Getting Results

If you wish, I will send you a preliminary report of findings, which I anticipate will be in summer 2018. You will have an opportunity to provide further feedback, including a request to modify or delete any statements which you made that are used in the report. Such requests should be made within 30 days after receiving the preliminary report because after that time I will circulate the preliminary report more widely, including to my academic advisor, participating community members, and other persons at the University of Manitoba.

Questions about the Research?

If you have any questions about the research in general or about your role in the study, please do not hesitate to contact me by email at [redacted]@myumanitoba.ca or by phone at [redacted].

[Verbatim] **Your signature on this form indicates that you have understood to your satisfaction the information regarding participation in the research project and agree to participate as a subject. In no way does this waive your legal rights nor release the researchers, sponsors, or involved institutions from their legal and professional responsibilities. You are free to withdraw from the study at any time and/or refrain from answering any questions you prefer to omit, without prejudice or consequence. Your continued participation should be as informed as your initial consent, so you should feel free to ask for clarification or new information throughout your participation.**

Confidentiality cannot be maintained in the event of disclosure or matters related to abuse or violence against vulnerable persons such as children or elderly people. We are obligated by law to report such occurrences.

The University of Manitoba may look at your research records to see that the research is being done in a safe and proper way.

This research has been approved by the Joint-Faculty Research Ethics Board at the University of Manitoba. If you have any concerns about this project, you may reach Patty Robinet, her thesis advisor, Dr. David Milward, or the Human Ethics. Coordinator at (204) 474-7122 or by email at humanethics@umanitoba.ca.

This study has also been approved by the Lakehead University Research Ethics Board. If you have any questions related to the ethics of the research and would like to speak to someone outside of

the research team, please contact Sue Wright at the Research Ethics Board at [redacted] or [redacted]@lakeheadu.ca.

If you agree to each of the following, please place a mark in the corresponding box.

	Yes	No
I have read or had read to me the details of this consent form.	☐	☐
	Yes	No
My questions have been addressed.	☐	☐
I agree to have the interviews audio recorded.	☐	☐
I agree to have the findings (which may include quotations) from this project published or presented in a manner that does not reveal my identity.	☐	☐
Do you wish to receive a preliminary report of the findings?	☐	☐

Email or mailing address where this preliminary report should be sent:

_____

Participant's Signature: _____ Date: _____

Researcher's Signature: _____ Date: _____

Appendix E: Consent Form (Continued)

List of Resources

There is some risk that you will feel distress as a consequence of participating in this study because you may provide information that may be of a sensitive nature. Here is a list of resources you can consult should you experience distress.

- Lakehead University – Aboriginal and Cultural Support Services (Individual Services) at (807) 343-8084 or by email at acss1@lakeheadu.ca. Website: www.lakeheadu.ca/current-students/student-services/tb/aboriginal-services/individual-services.

- Confederation College – Negahneewin Aboriginal Student Services at (807) 475-6252. Website: www.confederation.on.ca/negahneewin/supports.

- Thunder Bay Indigenous Friendship Centre – Aboriginal Healing and Wellness Program at (807) 345-5840. Website: https://tbifc.ca/program/aboriginal-healing-wellness/.

- Ontario Native Women's Association (ONWA) at (807) 623-3442 or toll-free at 1 (800) 667-0816. Website: www.onwa-tbay.ca.

- Thunder Bay Counselling Centre at (807) 684-1880 or by email at community@tbaycounselling.com. Website: www.tbaycounselling.com.

APPENDIX D: RCAP, TRC, AND INQUEST RECOMMENDATIONS

The Royal Commission of Aboriginal Peoples: Recommendations

3.5.5.

Federal, provincial and territorial governments collaborate with Aboriginal governments, organizations and educators to develop or continue developing innovative curricula that reflect Aboriginal cultures and community realities.

3.5.20

The government of Canada recognize and fulfil its obligation to treaty nations by supporting a full range of education services, including post-secondary education, for members of treaty nations where a promise of education appears in treaty texts, related documents or oral histories of the parties involved.

3.5.21

The federal government continue to support the costs of post-secondary education for First Nations and Inuit post-secondary students and make additional resources available

(a) to mitigate the impact of increased costs as post-secondary institutions shift to a new policy environment in post-secondary education; and
(b) to meet the anticipated higher level of demand for post-secondary education services.

3.5.22

A scholarship fund be established for Métis and other Aboriginal students who do not have access to financial support for post-secondary education under present policies, with…[(a) – (c)]

3.5.24

Public post-secondary institutions in the provinces and territories undertake new initiatives or extend current ones to increase the participation, retention and graduation of Aboriginal students by introducing, encouraging or enhancing

(a) a welcoming environment for Aboriginal students;
(b) Aboriginal content and perspectives in course offerings across disciplines;

(c) Aboriginal studies and programs as part of the institution's regular program offerings and included in the institution's core budget;
…
(f) active recruitment of Aboriginal students
(g) admission policies that encourage access by Aboriginal applicants
…
(l) cross-cultural sensitivity training for faculty and staff

The Truth and Reconciliation Commission of Canada: Calls to Action

Education

10) We call upon the federal government to draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples. The new legislation would include a commitment to sufficient funding and would incorporate the following principles:

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

11) We call upon the federal government to provide adequate funding to end the backlog of First Nations students seeking a post-secondary education.

Reconciliation

43) We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.

44) We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to

achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*.

Royal Proclamation and Covenant of Reconciliation

45) We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments,

i. Repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and *terra nullius*.
ii. Adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation.
iii. Renew of establish Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
iv. Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and implementation processes involving Treaties, land claims, and other constructive agreements.

Education for Reconciliation

62) We call upon the federal, provincial, and territorial governments, in consultation and collaboration with Survivors, Aboriginal peoples, and educators, to:

i. Make age-appropriate curriculum on residential schools, Treaties, and Aboriginal peoples' historical and contemporary contributions to Canada a mandatory education requirement for Kindergarten to Grade Twelve students.
ii. Provide the necessary funding to post-secondary institutions to educate teachers on how to integrate Indigenous knowledge and teaching methods into classrooms.
iii. Establish senior-level positions in government at the assistant deputy minister level or higher dedicated to Aboriginal content in education.

63) We call upon the Council of Ministers of Education, Canada to maintain an annual commitment to Aboriginal education issues, including:

i. Developing and implementing Kindergarten to Grade Twelve curriculum and learning resources on Aboriginal peoples in Canadian history, and the history and legacy of residential schools.
ii. Sharing information and best practices on teaching curriculum related to residential schools and Aboriginal history.
iii. Building student capacity for intercultural understanding, empathy, and mutual respect.
iv. Identifying teacher-training needs relating to the above.

II. Reconciliation: Principles of Interpretation

To: Canada, Ontario, the City of Thunder Bay, Thunder Bay Police Services, NAN, NNEC, KO, DFCHA and MLC

7. In moving forward with any initiatives that respond to the Inquest recommendations, the parties should be guided by the following statements:

i. All of the Treaty Partners, including Indigenous communities and governments, Canada and Ontario, must respect the treaty rights of others and work together towards fulfilling treaty obligations;
ii. First Nation governments exercise inherent control over their education systems;
iii. First Nation communities seek to have greater responsibility to govern their on spiritual, cultural, social, and economic affairs;
iv. Without the improvement of conditions in First Nations reserve communities, a gap in education outcomes between Indigenous and non-Indigenous students will remain;
v. Canada should support individual First Nations communities as they develop solutions to the effects of colonial policy; and
vi. In order to ensure timely delivery of publicly funded services to First Nations children, where jurisdictional divisions or disputes within or between governments threaten to delay or impede the provision of services, Jordan's Principle should apply.

Coroner's comment: The jury emphasized that education programs for First Nations youth must respect treaties, and the unique culture and traditions of First Nations.

III. Education: Structural Issues

9. In order to **improve education outcomes of First Nations youth,** in consultation with First Nations education providers, provide sufficient funding and necessary resources to ensure that First Nations schools are able to:

iv. develop and implement culturally appropriate curricula and programs. Staff hired for these programs should include on-site Elders; cultural and traditional land-based teachers; and after-school activity co-ordinators;

v. develop and implement languages curricula and programs (including individual courses and full/partial immersion);

…

xi. educate students on the United Nations Convention on the Rights of Indigenous Peoples, then work of the Truth and Reconciliation Commission and Treaty Rights to strengthen the knowledge of students regarding their rights and protections.

IMPLEMENTATION OF RECOMMENDATIONS IN THE SPIRIT OF THE TRUTH AND RECONCILIATION COMMISSION'S ("TRC") "CALLS TO ACTION" ("CTA")

To: Canada

136. In order to improve education outcomes of First Nations youth, we support and endorse Recommendations 7 through 11 of the Truth and Reconciliation Commission's Calls to Action that call upon the federal government to:

…

iv. draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples, and committed to the following principles (CTA#10):

a. providing sufficient funding to close identified educational achievement gaps within one generation
b. improving education attainment levels and success rates
c. developing culturally appropriate curricula
d. protecting the right to Aboriginal languages, including the teaching of Aboriginal languages as credit courses
e. enabling parental and community responsibility, control, and accountability, similar to what parents enjoy in public school systems
f. enabling parents to fully participate in the education of their children
g. respecting and honouring Treaty relationships
h. providing adequate funding to end the backlog of First Nations students seeking a post-secondary education

To: Canada and Ontario

140. In order to achieve reconciliation through education, we support and endorse Recommendation 62 of the Truth and Reconciliation Commission's Calls to Action that calls upon the federal, provincial, and territorial governments, in consultation and collaboration with Survivors, Aboriginal peoples, and educators, to:

i. make age-appropriate curriculum based on the history of residential schools and legacy effect, 60's Scoop, colonialism, Treaties, and Aboriginal peoples' historical and contemporary contributions to Canada a mandatory education requirement for Kindergarten to Grade 12 students to counteract the harmful stereotypes and false and misleading histories/stories that play out in the media
ii. provide the necessary funding to post-secondary institutions to educate teachers on how to integrate Indigenous knowledge and teaching methods into classrooms
iii. provide the necessary funding to Aboriginal schools to utilize Indigenous knowledge and teaching methods in classrooms, and
iv. establish senior-level positions in government at the assistant deputy minister level or higher dedicated to Aboriginal content in education

To: Ontario

141. In addition, in order to further efforts toward reconciliation through education, we support and endorse Recommendation 63 of the Truth and Reconciliation Commission's Calls to Action that calls upon the Council of Ministers of Education Canada (upon its creation) to maintain an annual commitment to Aboriginal education issues, including:

i. developing and implementing Kindergarten to Grade Twelve curriculum and learning resources on Aboriginal peoples in Canadian history, and the history and legacy of residential schools
ii. sharing information and best practices on teaching curriculum related to residential schools and Aboriginal history
iii. building student capacity for intercultural understanding, empathy, and mutual respect, and
iv. identifying teacher-training needs relating to the above