

Exploring Three Canadian Law Faculties' Engagement with Reconciliation Post-TRC

K O R Y S M I T H *

ABSTRACT

No research to date has explored whether Canadian law schools' responses to the TRC's calls to action are consistent with approaches to reconciliation which reproduce or transform colonial relations. Through the use of online content analysis and one-on-one semi-structured interviews with faculty members and Indigenous law students at the University of Ottawa, Dalhousie University, and the University of Victoria, my article explores whether these law schools' responses to the TRC's calls to action are consistent with the liberal or transformative approach to reconciliation. My research adds to the growing body of literature on reconciliation in Canadian legal education by theorizing reconciliation and analyzing institutional responses to the TRC's calls to action within these discussions. In doing so, my research contributes to the broader discussion about whether the politics of recognition is able to transform the colonial relationship between the Canadian state and Indigenous Peoples.

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Keywords: Reconciliation, Canadian legal education, Indigenous law

INTRODUCTION

In June 2015, the Truth and Reconciliation Commission of Canada (TRC) published a multi-volume final report and 94 “calls to action” to advance reconciliation between the Canadian state and Indigenous Peoples. Two of the 94 calls to action are aimed at legal education. Call to action 28 obliges law schools to create a mandatory course in Aboriginal people and the law,¹ while call to action 50 requires the federal government to work with Indigenous communities and organizations to fund the establishment of Indigenous law institutes.² Since then, Canadian law schools have implemented different responses to calls to action 28 and 50, including the creation of a joint degree program in Canadian common law (Juris Doctor (JD)) and Indigenous legal orders (Juris Indigenarum Doctor (JID)), the introduction of new mandatory and optional courses in Aboriginal and Indigenous law, the creation of concentrations and options in Aboriginal and Indigenous law, the hiring of more Indigenous faculty members, and increased exposure to Indigenous culture and practices.³

In this article, I explore whether Canadian law schools' responses to the TRC's calls to action are consistent with the liberal or transformative approach to reconciliation. In the first section, I introduce the liberal and transformative approaches to reconciliation. I conclude this section by explaining why only the transformative approach is capable of creating a new, healthy relationship with Indigenous Peoples. In the second section, I briefly outline my research methodology. Subtopics in this discussion include research design, sampling techniques, pre-recruitment exploratory conversations, ethics clearance protocols, participant recruitment, research methods, data analysis procedure, and methodological limitations. In the third section, I explore how each law school is responding to the TRC's calls to action and whether their responses are consistent with the liberal or transformative approach. In the fourth section, I summarize my key findings

¹ Canada, Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Ottawa: Truth and Reconciliation Commission of Canada) at 215 [TRC Final Report].

² *Ibid* at 260.

³ Council of Canadian Law Deans, [“Summaries of Responses to the TRC's Calls to Action”] (n.d.), online: Council of Canadian Law Deans <<https://cclcd-cdfdc.ca/wp-content/uploads/2018/07/CCLD-TRC-REPORT-V2.pdf>> [CCLD].

and outline recommendations that law schools can consider when formulating responses to the TRC's final report and calls to action. I conclude this article by discussing avenues for future research. My research adds to a growing body of literature on reconciliation in Canadian legal education⁴ by theorizing reconciliation and analyzing institutional responses to the TRC's calls to action within these discussions. In doing so, my research contributes to the broader discussion about whether the politics of recognition is able to transform the colonial relationship between the Canadian state and Indigenous Peoples.

A. Approaches to Reconciliation⁵

Reconciliation is a contested concept with different definitions and approaches.⁶ Reflecting on the different conceptualizations of reconciliation, Borrows and Tully write:

[S]ome say reconciliation between settlers and Indigenous peoples is an end state of some kind: a contract, agreement, legal recognition, return of stolen land, reparations, compensation, closing the gap, or self-determination. Others argue that it is more akin to an ongoing activity. Some say reconciliation embodies a relationship stretching back 12,000 years, an existential mode of being with one another and the living earth. It has also been associated with treaty relationships

⁴ See, for example, Hannah Askew, "Learning from Bear-Walker: Indigenous Legal Order and Intercultural Education in Canadian Law Schools" (2016) 33:1 Windsor YB Access Just 29; Val Napoleon & Hadley Friedland, "An Inside Job: Engaging with Indigenous Legal Traditions Through Stories" (2016) 61:4 McGill LJ 725; John Borrows, "Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education" (2016) 61:4 McGill LJ 795; Jeffrey G. Hewitt, "Decolonizing and Indigenizing: Some Considerations for Law Schools" (2016) 33:1 Windsor YB Access Just 65; Patricia Barkaskas & Sarah Buhler, "Beyond Reconciliation: Decolonizing Clinical Legal Education" (2017) 26 J L & Soc Pol'y 1; Adrien Habermacher, *Institutional Cultures and Legal Education at Select Canadian Law Faculties* (DCL Thesis, McGill University - Faculty of Law, 2019) [unpublished]; Pooja Parmar, "Reconciliation and Ethical Lawyering: Some Thoughts on Cultural Competence" (2019) 97:3 Can Bar Rev 526.

⁵ This section was originally published in the UBC Law Review and is reproduced with permission to inform this article's analysis: Kory Smith, "Examining Law Faculty Members and Indigenous Law Students' Conceptualization of Reconciliation" (2023) 56:3 UBC L Rev 909.

⁶ John Borrows & James Tully, "Introduction" in Michael Asch, John Borrows & James Tully, eds, *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (Toronto: University of Toronto Press, 2018) 3 [*Borrows & Tully*]; James Miles, "Teaching History for Truth and Reconciliation: The Challenges and Opportunities of Narrativity, Temporality, and Identity" (2018) 53:2 McGill Journal of Education 294.

since early contact. For some it is the path to decolonization, for others a new form of recolonization. Some insist reconciliation must be resisted, while others see it as an essential process for ongoing relationality.⁷

There are two broad approaches to reconciliation with Indigenous Peoples in Canada: (1) a liberal approach to reconciliation that promotes multiculturalism and seeks to make Indigenous Peoples equal with settlers, all the while leaving the legitimacy and authority of the Canadian settler colonial state intact; and (2) a transformative approach to reconciliation that challenges state authority, promotes Indigenous sovereignty, self-determination, and resurgence, and seeks to transform existing settler colonial laws and institutions.⁸

The Liberal Approach to Reconciliation

Grounded in liberal notions of equality and individual rights derived from Western European philosophy, the liberal approach to reconciliation seeks to repair the relationship between Indigenous Peoples and the Canadian state through the recognition of “soft” rights, including linguistic and cultural rights, and equal treatment and equal access to social and economic opportunities.⁹ While soft rights can address some of the problems facing Indigenous communities caused by centuries of racist and discriminatory laws and practices, the liberal approach to reconciliation is ultimately inadequate because it locates the harms of settler colonialism in the past, it allows settlers to feel good about themselves without having to acknowledge their own privilege or make any uncomfortable changes, and it leaves the settler colonial state intact.¹⁰

⁷ Borrows & Tully, *Ibid*, at 4.

⁸ Aimée Craft & Paulette Regan, “Introduction” in Aimée Craft & Paulette Regan, Eds, *Pathways of Reconciliation: Indigenous and Settler Approaches to Implementing the TRC’s Calls to Action* (Winnipeg: University of Manitoba Press, 2020) xi [Craft & Regan]; David B. MacDonald, “Paved with Comfortable Intentions: Moving Beyond Liberal Multiculturalism and Civil Rights Frames on the Road to Transformative Reconciliation” in Aimée Craft & Paulette Regan, Eds, *Pathways of Reconciliation: Indigenous and Settler Approaches to Implementing the TRC’s Calls to Action* (Winnipeg: University of Manitoba Press, 2020) 3 [MacDonald].

⁹ MacDonald, *ibid*.

¹⁰ *Ibid*; Glen S. Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).

The Transformative Approach to Reconciliation

A transformative approach to reconciliation is needed to adequately repair Canada's relationship with Indigenous Peoples.¹¹ Proponents of this approach reject a liberal approach to reconciliation that “perpetuate[s] unjust relationships of dispossession, domination, exploitation, and patriarchy” and seeks to “reconcile Indigenous people and settlers to the status quo”.¹² For them, reconciliation means to “conciliate *again*”—to transform relationships of conflict into relationships of conciliation and sustainability.¹³ It is a multinational political, social, and historical project that goes beyond apologies and acts of forgiveness and requires a “transformation of consciousness” or “paradigm shift”.¹⁴ Proponents of this approach to reconciliation argue for restitution, a renewed focus on treaty relationships, the restoration of Indigenous lands, and the regeneration and resurgence of Indigenous languages, cultures, laws, and governing structures.¹⁵ Compared to “soft” rights, these “hard” rights are less compatible with the current structures of the Canadian state. Old colonial structures will need to be unsettled, and new political arrangements will need to be imagined—ones “where Indigenous Peoples self-determine their own futures either inside or outside of Canada, or some combination of both”.¹⁶

This means that transformative reconciliation requires decolonization. Decolonization refers to the “long-term process involving the bureaucratic,

¹¹ Michael Asch, John Borrows & James Tully, eds, *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (Toronto: University of Toronto Press, 2018) [Asch, Borrows & Tully]; MacDonald, *supra* note 8; Paulette Regan, “Reconciliation and Resurgence: Reflections on the TRC Final Report” in Michael Asch, John Borrows & James Tully, eds, *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (Toronto: University of Toronto Press, 2018) 209 [Regan].

¹² Borrows & Tully, *supra* note 6 at 5.

¹³ James Tully, “Reconciliation Here on Earth” in Michael Asch, John Borrows & James Tully, eds, *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (Toronto: University of Toronto Press, 2018) 83 at 95 [emphasis in original] [Tully].

¹⁴ Kiera Ladner, “Proceed with Caution: Reflections on Resurgence and Reconciliation” in Michael Asch, John Borrows & James Tully, eds, *Resurgence and Reconciliation: Indigenous-Settler Relations and Earth Teachings* (Toronto: University of Toronto Press, 2018) 245 at 248-49.

¹⁵ Asch, Borrows & Tully, *supra* note 11; MacDonald, *supra* note 8; Regan, *supra* note 11.

¹⁶ MacDonald, *ibid* at 8.

cultural, linguistic and psychological divesting of colonial power”.¹⁷ Tuck and Yang argue that decolonization “require[s] a change in the order of the world”¹⁸ and thus cannot be treated as a social justice project. For them, decolonization entails the “repatriation of Indigenous land and life”.¹⁹ A growing number of scholars recognize that in order for reconciliation to be effective it must involve decolonization.²⁰ Waziyatawin argues that “if Canadians, Americans, and Indigenous Peoples are going to create a peaceful and just society, all oppression must cease. Colonization, by its very nature, is antithetical to justice. Therefore, complete decolonization is a necessary end goal for a peaceful and just society”.²¹ It makes sense that transformative reconciliation requires decolonization as a first step. It is impossible to create a relationship between the Canadian state and Indigenous Peoples that is accountable to Indigenous sovereignty and futurity if the state, through its colonial laws and institutions, continues to hold power over Indigenous Peoples.

While decolonization calls for the divesting of colonial power, I do not believe this requires the total destruction of settler institutions and the

¹⁷ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 2nd ed (London: Zed Books, 2012) at 98.

¹⁸ Eve Tuck & K. Wayne Yang, “Decolonization is not a Metaphor” (2012) 1:1 *Decolonization: Indigeneity, Education & Society* 1 at 31.

¹⁹ *Ibid* at 21.

²⁰ See e.g. Jeff Corntassel & Cindy Holder, “Who’s Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self-Determination in Australia, Canada, Guatemala, and Peru” (2008) 9 *Human Rights Review* 465; Jeff Corntassel, Chawwinis & T’lakwadzi, “Indigenous Storytelling, Truth-Telling, and Community Approaches to Reconciliation” (2009) 35:1 *English Studies in Canada* 137; William Julius Mussell, “Decolonizing Education: A Building Block for Reconciliation” in Marlene Brant Castellano, Linda Archibald & Mike DeGagné, eds, *From Truth to Reconciliation: Transforming the Legacy of Residential Schools* (Aboriginal Healing Foundation, 2008) 321; Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada* (Vancouver: UBC Press, 2010); Brian Rice & Anna Snyder, “Reconciliation in the Context of Settler Society: Healing the Legacy of Colonialism in Canada” in Marlene Brant Castellano, Linda Archibald & Mike DeGagné, eds, *From Truth to Reconciliation: Transforming the Legacy of Residential Schools* (Aboriginal Healing Foundation, 2008) 45.

²¹ Waziyatawin, “You Can’t Un-Ring a Bell: Demonstrating Contrition Through Action” in Gregory Younging, Jonathan Dewar & Mike DeGagné, eds, *Response, Responsibility, and Renewal: Canada’s Truth and Reconciliation Journey* (Aboriginal Healing Foundation, 2009) 193 at 196 [Waziyatawin].

separation of Indigenous Peoples from non-Indigenous society. Borrows and Tully note that some scholars argue that a healthy relationship between Indigenous Peoples and the state is not possible and, therefore, Indigenous resurgence must occur separate from settler society.²² While I agree that separation between Indigenous Peoples and non-Indigenous people and the Canadian state will sometimes be necessary to create a new relationship built on mutual respect, I agree with Borrows and Tully²³ that separation is not a healthy strategy in all situations. It is possible to create positive change from within a society. Borrows, for example, notes that secession is “largely a colonizer’s activity” and that instead of speaking about severing relations with others, Indigenous Peoples “usually speak of creating better relations”.²⁴ Creating better relations will sometimes involve making improvements to settler institutions rather than destroying them. As Borrows notes, “[a] hammer, saw, and backhoe are instruments of creation and destruction. It is possible to use these tools to undo or renovate the thing that has been created”.²⁵

Proponents of the transformative approach to reconciliation argue that the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*²⁶ can “[serve as] a road map for fundamental transformative change at all layers of Canadian government and society”.²⁷ The TRC also called for *UNDRIP* to be the framework for reconciliation in Canada:

In its 2012 *Interim Report*, the TRC recommended that federal, provincial, and territorial governments, and all parties to the Settlement Agreement, undertake to meet and explore the *United Nations Declaration on the Rights of Indigenous Peoples*, as a framework for reconciliation in Canada. We remain convinced that the *United*

22 *Borrows & Tully, supra* note 6.

23 *Ibid.*

24 John Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at 167 [Borrows].

25 *Ibid* at 167 [emphasis in original].

26 *United Nations Declaration on the Rights of Indigenous Peoples*, 2007, A/RES/61/295 [UNDRIP].

27 Sheryl Lightfoot, “Conclusion” in Aimée Craft & Paulette Regan, eds, *Pathways of Reconciliation: Indigenous and Settler Approaches to Implementing the TRC’s Calls to Action* (Winnipeg: University of Manitoba Press, 2020) 268 at 270; see also *Craft & Regan, supra* note 8; *MacDonald, supra* note 8; *Regan, supra* note 11.

Nations Declaration provides the necessary principles, norms, and standards for reconciliation to flourish in twenty-first-century Canada.²⁸

UNDRIP is an international instrument on the rights of Indigenous Peoples adopted “by the United Nations on 13 September 2007 by a majority of 144 states in favour, 4 states against (Australia, Canada, New Zealand, and the United States), and 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa, and Ukraine)”.²⁹ All four countries that voted against have reversed their position and now support *UNDRIP*.³⁰ *UNDRIP* recognizes that Indigenous Peoples have the right to self-determination, self-government, and the right to “maintain and strengthen their distinct political, legal, economic, social and cultural institutions”,³¹ among many other important rights. *UNDRIP* does have one serious limitation in Article 46(1), which puts member states' sovereignty first and foremost:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.³²

Article 46(1) weakens *UNDRIP*'s transformative potential and is precisely the thing that Indigenous anti-colonial scholars have warned about the liberal approach to reconciliation. Using the principle of territorial integrity to deny Indigenous Peoples' right to exercise authority over their lands would undermine transformative reconciliation and be contrary to *UNDRIP* as a whole. For *UNDRIP* to be an effective framework for implementing transformative reconciliation in Canada, the federal government must read Article 46(1) in the context of the whole instrument and other international human rights laws and must accept Indigenous Peoples' full right to self-determination without any discriminatory

28 *TRC Final Report*, *supra* note 1 at 21.

29 United Nations, *United Nations Declaration on the Rights of Indigenous Peoples* (n.d.), online: *United Nations* <<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>>.

30 *Ibid.*

31 *UNDRIP*, *supra* note 26 at art 5.

32 *Ibid* at art 46(1).

qualifications or conditions. In the final part of this section, I discuss what engaging with transformative reconciliation in Canadian legal education must involve.

Transformative Reconciliation in Canadian Legal Education

Implementing transformative reconciliation will require educational institutions to engage with a different kind of learning and teaching.³³ As previously mentioned, the Canadian government has a very long history of using education as an instrument of oppression against Indigenous Peoples. It is unsurprising, then, that Canadian law schools have devalued Indigenous law. *UNDRIP* and the TRC's calls to action provide a useful framework for implementing transformative reconciliation in education. Articles 14, 15, and 21 of *UNDRIP* set out the educational rights of Indigenous Peoples. Article 14 says that Indigenous Peoples have the right to establish and control their own educational systems; the right to participate in the educational systems of the state without discrimination; and the right to an education provided in their own culture and language. Article 15(1) says that Indigenous Peoples have the right to have their cultures and traditions reflected in the educational systems of the state. Lastly, Article 21(1) says that Indigenous Peoples have the right to the improvement of their social and economic conditions, including in the area of education. All these rights must be implemented in order for transformative reconciliation in Canada to occur.

The TRC's calls to action 6-12 specifically address education. They call on the federal government to eliminate educational gaps and discrepancies in funding between Indigenous Peoples and non-Indigenous people in all levels of education. In particular, call to action 10 calls on the federal government to draft a new "Aboriginal education legislation" that would incorporate the following principles:

- i. Providing sufficient funding to close identified educational achievement gaps within one generation.
- ii. Improving education attainment levels and success rates.
- iii. Developing culturally appropriate curricula.
- iv. Protecting the right to Aboriginal languages, including the teaching of Aboriginal languages as credit courses.

³³ Tully, *supra* note 13.

- 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.³⁴

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

In the context of Canadian legal education, the TRC has two recommendations that will assist law schools in implementing transformative reconciliation. Call to action 28 obliges law schools to create a mandatory course in Aboriginal people and the law, while call to action 50 requires the federal government to work with Indigenous communities and organizations to fund the establishment of Indigenous law institutes. Borrows has advocated for the creation of “multi-juridical Indigenous law schools” where students “learn how to compare and contrast sources of authority within legal systems that are committed to unity through understanding, critiquing, and applying deep jurisprudential diversity”.³⁵ Multi-juridical Indigenous law schools would teach Indigenous law alongside common law and civil law. They would also work with local Indigenous communities “to ensure that law is taught in a way that is

³⁴ *TRC Final Report*, *supra* note 1 at 149-150.

³⁵ *Borrows*, *supra* note 24 at 228.

attentive to practical procedural and substantive concerns”.³⁶ Establishing Indigenous law schools that are separate from settler law schools would be the strongest possible response to call to action 50. Transformative reconciliation requires settler law schools to provide support to local Indigenous communities interested in developing their own law schools.

Creating Indigenous law schools will require enormous resources. In 2019, the federal government announced it would be investing \$10 million over five years to support Indigenous law initiatives across the country through the Justice Partnership and Innovation Program (JPIP). Funding was used to support multi-year projects (up to four years) that sought to “[d]evelop Indigenous laws through research into traditional or customary practices, including in modern forms or as modified over time”; “[s]upport the use of Indigenous laws by Indigenous communities”; and “[i]ncrease the understanding of Indigenous laws within Indigenous communities and by all Canadians”.³⁷ The funding was available to bands, tribal councils, and self-governing First Nations, Métis and Inuit; Canadian not-for-profit and non-governmental organizations; and Canadian educational institutions.³⁸ The deadline to apply for funding was 1 November 2019. In May 2021, the government announced that it would be using \$9.5 million to fund 21 projects that respond to call to action 50.³⁹ To engage with transformative reconciliation, settler law schools can assist local Indigenous communities to apply for similar funding to establish Indigenous law schools.

In the meantime, settler law schools can better engage with Indigenous law by establishing Indigenous law institutes.⁴⁰ Creating Indigenous law institutes within settler law schools can be a powerful response to call to action 50. Although they will operate within settler law schools, these

³⁶ *Ibid* at 229.

³⁷ Department of Justice Canada, “Justice Partnership and Innovation Program” (last modified 20 August 2021), online: *Government of Canada* <<https://www.justice.gc.ca/eng/fund-fina/jsp-sjp/pfo-pfc.html>>.

³⁸ *Ibid*.

³⁹ Department of Justice Canada, “Revitalization of Indigenous Laws at Centre of Government of Canada Funding” (last modified 17 May 2021), online: *Government of Canada* <<https://www.canada.ca/en/department-justice/news/2021/05/revitalization-of-indigenous-laws-at-centre-of-government-of-canada-funding.html>>.

⁴⁰ *Borrows, supra* note 24.

institutes can make a significant contribution to the resurgence of Indigenous law if law school and university administrators support their development and allow them to operate with relative autonomy. That is, while these institutes will rely on university support and funding, Indigenous Peoples and communities must have control over how they are developed. This is the only way they will achieve their full potential.

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

In the third section of this article, I will use this theoretical framework to explore whether law schools are engaging with the liberal or transformative approach to reconciliation. Before doing so, I outline my research methodology in the next section.

B. Methodology⁴¹

Research Design

My qualitative study used online content analysis and one-on-one semi-structured interviews with faculty members involved in responding to calls to action 28 and 50⁴² and Indigenous law students. I adopted a case study

⁴¹ Substantial parts of this section were originally published in the UBC Law Review and are reproduced with permission to inform this article's analysis: Kory Smith, "Examining Law Faculty Members and Indigenous Law Students' Conceptualization of Reconciliation" (2023) 56:3 UBC L Rev 909.

⁴² After the TRC report and calls to action were published, many Canadian law schools created a specific 'TRC Committee' comprised of faculty members and sometimes students and staff to respond to calls to action 28 and 50. However, not all law schools created a formal TRC Committee. Some law schools created reading groups where faculty members regularly meet to read the TRC report and discuss how calls to action 28 and 50 can be implemented at their institution. Some law schools used a committee created before the TRC report was released to discuss how their institution should respond to calls to action 28 and 50.

method for my study whereby I took each law school's engagement with reconciliation as a specific case or unit of analysis. The case study method involves "an in-depth analysis of a case, often a program, event, activity, process, or one or more individuals".⁴³ Cases can be located at the micro (individual), meso (organization, institution), or macro (communities, societies) levels.⁴⁴ Since I am studying law schools' engagement with reconciliation, I locate my study at the meso level of analysis. Using a case studies method with three cases allows me to analyze cases individually and in dialogue with each other to identify similarities and differences. I used online content analysis and one-on-one interviews to understand how law schools are engaging with reconciliation. The interviews "provide[d] opportunities for mutual discovery, understanding, reflection, and explanation via a path that [was] organic, adaptive, and oftentimes energizing".⁴⁵

Sampling

My study used purposeful and snowball sampling. Purposeful sampling is when research participants are selected because they "fit the parameters of the project's research questions, goals, and purposes".⁴⁶ Faculty members play an important role in shaping how law schools respond to calls to action 28 and 50. Conducting interviews with them helped me explore these responses, as well as their strengths and limitations. The decisions that these faculty members make have a profound impact on Indigenous law students. Including Indigenous law students in my study allowed me to investigate how these decisions are being experienced on the ground. Conducting interviews with Indigenous law students allowed me to explore their experiences in law school; their thoughts on reconciliation and calls to action 28 and 50; and their opinions of the quality of their institution's response to calls to action 28 and 50. My study also used snowball sampling.

⁴³ John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, 4th ed (Thousand Oaks: SAGE Publications, Inc., 2014) at 43.

⁴⁴ Peter G. Swanborn, *Case Study Research: What, Why and How?* (Thousand Oaks, SAGE Publications, Inc., 2010).

⁴⁵ Sarah J. Tracy, *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact*, 2nd ed (Hoboken: John Wiley and Sons Inc., 2019) at 156 [Tracy].

⁴⁶ *Ibid* at 82.

During the interviews, I asked participants if they knew other faculty members or Indigenous law students who they thought would like to participate in my study. Several participants gladly suggested colleagues for potential interview participation. The participants either provided me with their contact information or provided their colleagues with a letter of invitation and my contact information.

As of 2023, there are 24 law schools in Canada: 7 in Western Canada⁴⁷, 14 in Central Canada⁴⁸, and 3 in Atlantic Canada⁴⁹.⁵⁰ I chose to conduct one-on-one interviews with faculty members involved in responding to calls to action 28 and 50 and Indigenous law students at the University of Ottawa ("UOttawa Law"), Dalhousie University ("Dal Law"), and the University of Victoria ("UVic Law"). UOttawa Law does not have a TRC Committee. Instead, it has an Indigenous Legal Traditions Committee (ILTC). One of the ILTC's responsibilities is implementing a response to the TRC's calls to action. Dal Law created a TRC Committee in October 2016. The Committee's mandate is to address the TRC's calls to action. UVic Law does not have a TRC Committee. Instead, the law school created a reading group where faculty members regularly meet to discuss the TRC report and calls to action.

When selecting the research sites, factors that I considered included engagement with the TRC's calls to action, geographical location, class size, and Indigenous representation. To present a cross-section of Canadian legal education, it was important for me to include one law school from each region of Canada. First-year class sizes are relatively small at UVic Law (113

⁴⁷ University of Victoria, University of British Columbia, Thompson Rivers University, University of Alberta, University of Calgary, University of Saskatchewan, and University of Manitoba.

⁴⁸ Lakehead University, University of Western Ontario, Queen's University, University of Windsor, University of Toronto, Ryerson University, York University, University of Ottawa (Common Law and Civil Law), McGill University, Université de Montréal, Université du Québec à Montréal, Université de Sherbrooke, and Université Laval.

⁴⁹ University of New Brunswick, Université de Moncton, and Dalhousie University.

⁵⁰ Federation of Law Societies of Canada, "Approved Canadian Common Law School Programs" (n.d.), online: *Federation of Law Societies of Canada* <flsc.ca/wp-content/uploads/2023/05/Common-Law-Schools-V4.pdf>.

students in 2017⁵¹) and Dal Law (167 students in 2017⁵²) compared to UOttawa Law (320 students in the English Common Law Section in 2017⁵³). According to the 2016 census, there were 21,815 Aboriginal Peoples⁵⁴ in Ottawa⁵⁵, 15,190 in Halifax⁵⁶, and 3,625 in Victoria⁵⁷, representing 2.3%, 3.8%, and 4.2% of the population, respectively.⁵⁸ National statistics on the amount of Indigenous representation in Canadian law schools do not currently exist. However, I was able to obtain some information concerning Indigenous student representation at the UVic

51 Law School Admission Council, “University of Victoria Faculty of Law” (n.d.), online: *Law School Admission Council* <<https://www.lzac.org/choosing-law-school/find-law-school/canadian-law-schools/university-victoria>>.

52 Law School Admission Council, “Dalhousie University Schulich School of Law” (n.d.), online: *Law School Admission Council* <<https://www.lzac.org/choosing-law-school/find-law-school/canadian-law-schools/dalhousie-university>>.

53 Law School Admission Council, “University of Ottawa Faculty of Law” (n.d.), online: *Law School Admission Council* <<https://www.lzac.org/choosing-law-school/find-law-school/canadian-law-schools/dalhousie-university>> [LSAC Ottawa].

54 I use the term ‘Aboriginal’ here because this is the term used by Statistics Canada.

55 Statistics Canada, “Census Profile, 2016 Census (Ottawa)” (last modified 27 October 2021), online: *Statistics Canada* <<https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Geo2=PR&Code2=01&SearchType=Begins&SearchPR=01&TABID=1&B1=All&type=0&Code1=3506008&SearchText=ottawa>>.

56 Statistics Canada, “Census Profile, 2016 Census (Halifax)” (last modified 27 October 2021), online: *Statistics Canada* <<https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Geo2=PR&Code2=01&SearchType=Begins&SearchPR=01&TABID=1&B1=All&type=0&Code1=1209034&SearchText=halifax>>.

57 Statistics Canada, “Census Profile, 2016 Census (Victoria)” (last modified 27 October 2021), online: *Statistics Canada* <<https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=CSD&Geo2=PR&Code2=01&SearchType=Begins&SearchPR=01&TABID=1&B1=All&type=0&Code1=5917034&SearchText=victoria>>.

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

Law and Dal Law. UVic Law admitted 2 first-year Indigenous students into their 2020 JD class and 13 first-year Indigenous students into their 2020 JID class. Dal Law admitted 8 first-year Indigenous students into their 2020 JD program. UOttawa Law did not provide me with information regarding Indigenous student representation. However, according to the Law School Admissions Council, Indigenous students make up approximately 1% of the student body at UOttawa Law (Law School Admission Council, n.d.-c).⁵⁹

Pre-Recruitment Exploratory Discussions

Prior to recruitment, I needed to gain access to law schools and prospective participants. To gain access to faculty members involved in responding to calls to action 28 and 50, I sent an email to the Dean of Law at each law school explaining the purpose of my study and asking them to put me in contact with the relevant faculty members. In April, 2019, the Dean of Law at UOttawa Law forwarded my email to members of the ILTC. I spoke with one member of the ILTC in May 2019. He expressed interest in my study and advised me to contact the Chair of the ILTC to get more feedback on my study and discuss the data collection phase in more detail. I did not hear back from the Chair before I began the recruitment process. In April 2019, I received an email from the Dean of Law at UVic Law informing me that she had forwarded my email to faculty members and the graduate student administrator. I did not hear back from these individuals before I began the recruitment process. In April and July 2019, I sent emails to the Dean of Law at Dal Law asking her to put me in contact with faculty members involved in responding to calls to action 28 and 50 to have exploratory discussions about my study. I did not hear back from the Dean before I began the recruitment process. I did, however, have the opportunity to meet two faculty members at the Canadian Association of Law Teachers conference at the University of British Columbia in June 2019, where they presented on their law school's efforts to implement calls to action 28 and 50. I followed up with one of the faculty members in July 2019. She provided me with valuable feedback on my study and offered to connect me with other committee members when I was ready to proceed with data collection.

⁵⁹ LSAC Ottawa, *supra* note 53.

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

Institutional Ethics Clearance

The ethics protocol for my study was reviewed by the Carleton University Research Ethics Board CUREB-A and approved on November 27, 2019. I submitted my ethics clearance certificate and supporting documents to the University of Victoria, Dalhousie University, and the University of Ottawa for expedited review in December 2019. I received ethics clearance on December 4, 2019, December 5, 2019, and December 20, 2019, respectively. In the process of obtaining ethics clearance from the Carleton University Research Ethics Board CUREB-A, I completed the TCPS 2: Core online training tutorial. In June 2018, I participated in the Carleton University Institute on the Ethics of Research with Indigenous Peoples, a week-long program where I learned about Indigenous customs and codes of research practice, as well as the importance of seeking engagement with appropriate Indigenous communities and organizations throughout the research process. This training provided me with skills that helped me interrogate the research process and safeguard against oppressive relationships that have traditionally characterized research involving Indigenous Peoples.

Although this process was valuable for both the design and execution of my study, complying with institutional ethics protocols did not guarantee that my research would be conducted with respect and integrity. As a result, I was required to demonstrate reflexivity at each stage of the research

process. As Guillemin and Gillam⁶⁰ note, because “procedural ethics is unable to inform and guide all aspects of research practice”⁶¹, researchers must exercise reflexivity throughout the research process by “acknowledging and being sensitized to the microethical dimensions of research practice and in doing so, being alert to and prepared for ways of dealing with the ethical tensions that arise”⁶². The primary way by which I engaged in reflexivity was through a process of reflexive journaling⁶³ where I reflected on my experiences during the research process by creating an “audit trail” of my reasoning, judgement, and emotional reactions⁶⁴.

Recruitment

I used multiple methods to recruit participants for my study. In mid-December 2019, I sent a letter of invitation to each law school for distribution to faculty members involved in responding to calls to action 28 and 50. I sent the letter of invitation to the faculty member at Dal Law with whom I spoke in July 2019. She forwarded the letter to other members of the TRC Committee who contacted me to participate in my study. I sent the letter of invitation to a faculty member at UVic Law with whom I had previously spoken about my study. She forwarded the letter to another faculty member with knowledge of the law school’s TRC reading group. This faculty member forwarded the letter to other members of the reading group who contacted me to participate in my study. While conducting interviews at UVic Law in February 2020, I was further assisted by a staff member who sent the letter of invitation to faculty members and Indigenous law students. Finally, I sent the letter of invitation to the faculty member at UOttawa Law with whom I spoke in May 2019. He agreed to participate in an interview and provided me with contact information for

⁶⁰ Marilys Guillemin & Lynn Gillam, “Ethics, Reflexivity, and ‘Ethically Important Moments’ in Research” (2004) 10:2 *Qualitative Inquiry* 261.

⁶¹ *Ibid* at 277.

⁶² *Ibid* at 278.

⁶³ Tova Band-Winterstein, Israel Doron & Sigal Naim, “I Take Them With Me’—Reflexivity in Sensitive Research” (2014) 15:4 *Reflexive Practice* 530; Roni Berger, “Now I See It, Now I Don’t: Researcher’s Position and Reflexivity in Qualitative Research (2015) 15:2 *Qualitative Research* 219 [Berger]; Kylie Meyer & Rosalind Willis, “Looking Back to Move Forward: The Value of Reflexive Journaling for Novice Researchers” (2019) 62:5 *Journal of Gerontological Social Work* 578.

⁶⁴ Berger, *ibid* at 222.

the Chair of the ILTC. I sent the letter of invitation to the Chair at the end of December but did not receive a response. I was able to recruit more faculty members from the University of Ottawa because the first interviewee provided me with a list of current ILTC members. I sent the letter of invitation to these individuals in January 2020.

To recruit Indigenous law students, I posted a recruitment poster on UOttawa Law's ILSA's Facebook page and DILSA's Facebook page. Recruiting Indigenous law students at UVic Law was more difficult because I was unable to locate a Facebook page for their ILSA. I sent two emails to UVic Law's ILSA in December 2019 and January 2020 but received no response. In December 2019, I sent the letter of invitation to the President of UVic Law's Law Students' Society (LSS). She informed me that she could allot a portion of LSS's Law School Newsletter to recruiting Indigenous students for my study. I do not know if information about my study was ever published in the newsletter. In January 2020, I sent a Facebook message to UVic Law asking if they would be willing to help me recruit students by sharing a poster about my study on Facebook and/or Twitter. In mid-February 2020, I was informed via Facebook that the poster had been shared on Facebook and sent to Indigenous law students and faculty members involved in implementing the TRC. I received emails from interested students shortly thereafter. I also used snowball sampling to recruit participants. Faculty members and Indigenous law students at each law school told others about my study and provided me with contact information for colleagues they thought might like to participate in my study. I sent these individuals the letter of invitation to provide them with more information about my study.

Online Content Analysis

I reviewed UOttawa Law, Dal Law, and UVic Law's faculty websites and academic calendars from the 1970s and 1980s to the early 2020s to examine how these three law schools are engaging in reconciliation. More specifically, I reviewed these websites to see what curricular and non-curricular changes these law schools have made since the TRC's final report and calls to action were published. I have done my best to ensure that my descriptions of these changes are up-to-date. However, some changes may have occurred during the publishing process.

Interviews

I conducted 24 one-on-one semi-structured interviews with faculty members and Indigenous law students between January and May 2020. I completed 16 face-to-face interviews and 8 telephone interviews. I originally obtained ethics clearance to conduct face-to-face interviews. However, while conducting face-to-face interviews at Dal Law in mid-February, I realized that I would not be able to conduct all of the interviews during my short stay in Halifax. I used telephone interviews because, as a graduate student, I did not have the financial resources to return to Halifax and Victoria for a second time. I obtained ethics clearance to conduct telephone interviews at the end of February. Before beginning each telephone interview, I asked participants to read and sign a revised consent form that explained the privacy concerns associated with conducting telephone interviews with a mobile application. As the spread of COVID-19 restricted non-essential travel beginning in March, it was good that I transitioned to telephone interviews.

The interviews lasted between 30 minutes and 1.5 hours. At Dal Law, I conducted 5 interviews with faculty members and 4 interviews with Indigenous law students. At UVic Law, I conducted 7 interviews with faculty members and 2 interviews with Indigenous law students. At UOttawa Law, I conducted 3 interviews with faculty members and 3 interviews with Indigenous law students. In April 2020, I received an email from a member of the ILTC at UOttawa Law informing me that because the committee is in the middle of working through what their response to the TRC will be, and that is being done collectively, the remainder of the committee wants to provide me with feedback collectively, rather than be interviewed separately. After careful consideration and discussion with my doctoral supervisor, I accepted the committee's offer to provide me with a collective response to my interview questionnaire. I sent the committee a copy of my interview questionnaire and received confirmation that I could use the data from the three interviews that I had already conducted. Therefore, in addition to conducting six interviews at UOttawa Law, I also obtained a collective response from the ILTC.

Using online content analysis and one-on-one semi-structured interviews allowed me to explore how the three law schools are engaging with reconciliation post-TRC and whether this engagement is consistent with the liberal or transformative approach to reconciliation. There were many benefits of using semi-structured interviews for my study. They were

flexible and organic in nature, they encouraged creativity, and they allowed for the emergence of more nuanced data.⁶⁵

Interview Data Analysis Strategy

Interview recordings were transcribed in a three-step process. First, each interview was transcribed verbatim. Real names were deleted and replaced with assigned pseudonyms. Second, research participants were given the opportunity to participate in the transcription process by reviewing their transcripts and making corrections or additional clarifications to their contributions using the *track changes* feature. This process helped to “validate the transcripts, to preserve research ethics, and to empower the interviewees by allowing them control of what [is] written”.⁶⁶ Participants had 3 weeks to complete this process. 15 participants indicated on the consent form that they wanted to review their transcript for accuracy and completeness, but only 10 participants responded to my email invitation. Lastly, I edited the transcripts to make sure the documents read coherently. This step involved eliminating repetitive words and most non-lexical conversational sounds such as *um*, *hm*, or *uh*. Transcription is a political process; what we as researchers choose to include and exclude, from spelling, grammar, and punctuation to tone, facial expressions, and emotions, is the result of our positionality and our interest in the research. To reconcile this, I endeavored to preserve the words of the research participants throughout the transcription, analysis, and writing processes.

After completing the transcripts, I identified relevant themes based on the research and interview questions. To do this, I engaged in an iterative analysis whereby I grounded my analysis in the current literature and the interview data.⁶⁷ Before organizing or coding the data, I read through the interview transcripts to get a sense of what was happening. After the “data immersion phase”⁶⁸, I began organizing the data. To do this, I used a computer-aided process⁶⁹ whereby I colour-coded the interview transcripts

⁶⁵ Tracy, *supra* note 45.

⁶⁶ Irit Mero-Jaffe, “Is That What I Said?” Interview Transcript Approval by Participants: An Aspect of Ethics in Qualitative Research” (2011) 10:3 *International Journal of Qualitative Methods* 231 at 231.

⁶⁷ Tracy, *supra* note 45 at 209.

⁶⁸ *Ibid* at 213.

⁶⁹ *Ibid*.

using certain colours to correspond with specific themes. These themes related to how participants explained reconciliation, both as a general concept and in the context of legal education; how law schools are responding to calls to action 28 and 50; what challenges law schools have encountered while formulating and implementing their response to calls to action 28 and 50; and whether call to action 28 sufficiently contributes to transformative reconciliation in Canadian legal education. After colour-coding almost 350 pages of interview data, I kept these coded documents open and created a new document titled 'Doctoral Study Analysis'. I then created a bolded heading for each theme and copied and pasted under each heading the relevant colour-coded data.

Limitations

All research projects have methodological limitations. I would like to discuss four methodological limitations of my study. My study sought input from faculty members involved in responding to the TRC's calls to action and Indigenous law students at UOttawa Law, Dal Law, and UVic Law. The first limitation concerns which faculty members I interviewed for my study. Because one of the purposes of my study was to examine the views of key faculty members who are already actively working on implementing the TRC's calls to action, I did not interview faculty members not involved in this work. As a result, my study is not representative of all faculty members at the three law schools. Future research should examine how faculty members not involved in implementing the TRC's calls to action conceptualize reconciliation as their views may differ from those expressed in this article.

The second limitation concerns the number of law schools included in my study. I conducted my research at three of Canada's 24 law schools. Consequently, my findings and recommendations may not reflect the thoughts and experiences of faculty members and Indigenous students at other law schools. Future research should examine how these other law schools are responding to the TRC's calls to action.

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

The fourth limitation concerns the lack of non-Indigenous students in my study. I specifically decided to seek input only from Indigenous law students for two important reasons. First, because research on Indigenous Peoples has historically been extractive and violent, I wanted to help unsettle the institution of research by placing Indigenous students' voices and experiences at the centre of the research process. Second, while all law students, Indigenous and non-Indigenous alike, are experiencing their institution's response to the TRC's calls to action on the ground, Indigenous law students are in a particularly unique position to comment on the adequacy of their response as they have historically been excluded from and marginalized by the Canadian legal profession.⁷⁰ Future research should explore what non-Indigenous students have to say about how their law schools are responding to the TRC's calls to action. This is consistent with anti-colonialism, which, as Simmons and Dei⁷¹ note, asserts that the dominant population "must be prepared to invoke and act on their complicities and responsibilities through a politics of accountability in order to bring about change".⁷² It will of course be important for researchers to find ways for non-Indigenous students to contribute in meaningful ways that do not reassert their power and privilege over Indigenous Peoples.

C. Findings

UOttawa Law

UOttawa Law has taken important steps to engage more with Indigenous Peoples and their laws. This section will outline those steps and discuss some of the successes and challenges encountered along the way. UOttawa Law does not yet have a mandatory first-year course in Indigenous law. However, the ILTC notes in its collective response that it is "currently working to modify the first-year curriculum to ensure space for a mandatory Indigenous law course as a standalone offering". Beginning in 2023, UOttawa Law introduced mandatory course modules to all first-year

⁷⁰ Other racialized groups have also been excluded from and marginalized by the Canadian legal profession. However, the TRC report, and calls to action 28 and 50 in particular, seek to right the perpetual wrongs done to Indigenous Peoples by the Canadian state.

⁷¹ Marlon Simmons & George J.S. Dei, "Reframing Anticolonial Theory for the Diasporic Context" (2012) 1:1 *Postcolonial Directions in Education* 67 [Simmons & Dei].

⁷² *Ibid* at 76.

students based on the Seven Sacred Teachings—a set of teachings, common to many First Nations, that address human conduct towards others.⁷³ In the English Common Law Program, the modules were led by professors Signa Daum Shanks, Frankie Young, and Angela Cameron.⁷⁴ In the French Common Law Program, the modules were led by professors Anne Levesque and Alisa Lombard.⁷⁵ The faculty members “approached their lessons through understandings of truth, courage, and love, encouraging students to show humility and respect”.⁷⁶ Throughout the modules, students were urged to “consider the past, present and future of law and to bring an open mind to how we think about Indigenous Peoples and laws”.⁷⁷ Students had opportunities to learn from Indigenous leaders, knowledge keepers, community members, lawyers, judges, and artists, as well as leadership from the County of Carleton Law Association and the Ontario Bar Association.⁷⁸ In June 2024, UOttawa Law announced that beginning in 2025 first-year students will be required to take a full course on the “Truth and Reconciliation Commission, Indigenous People and the law”.⁷⁹

Although there is currently no mandatory full course in Indigenous law, there is a first-year thematic course in Indigenous law for students registered in the English Common Law Program. During the 2021-22 academic year, the course was CML 1105 Indigenous Women and the Law. The online course description says that students will learn about “how Indigenous women experience colonial law”.⁸⁰ In past years, UOttawa Law has offered

73 University of Ottawa, “Decolonizing Legal Learning: Moving Forward on Call to Action 28 at the Common Law Section” (27 September 2023), online: <<https://www.uottawa.ca/en/common-law/news/decolonizing-legal-learning-moving-forward-call-action-28-common-law-section>> [University of Ottawa 2023].

74 University of Ottawa, “Called to Action: A New Foundation in Indigenous Laws and Legal Traditions for Common Law Students” (20 June 2024), online: <<https://www.uottawa.ca/faculty-law/common-law/news/new-foundation-indigenous-laws-legal-traditions>> [University of Ottawa 2024].

75 *Ibid.*

76 University of Ottawa 2023, *supra* note 73.

77 University of Ottawa, 2024, *supra* note 74.

78 *Ibid.*

79 *Ibid.*

80 This description is from the Faculty of Law’s 2021-2022 course search engine, which is no longer available online.

a first-year thematic course in Indigenous Laws & Legal Orders. UOttawa Law started offering a first-year thematic course in 2008-2009⁸¹, but it is not clear when a thematic course in Aboriginal or Indigenous law was first offered. It does, however, appear that UOttawa Law has developed new thematic courses in Aboriginal and Indigenous law since the TRC's final report and calls to action were released.

UOttawa Law offers the same optional upper-year courses in Aboriginal and Indigenous law that it did in the early 2000s. For example, the following optional courses were offered during the 2021-2022 academic year: CML 2301 Indigenous Peoples and the Law, CML 3162 Studies in Aboriginal Law: Beadwork and the Law, and CML 3162 Studies in Aboriginal Law: Worldview, Language & Legal Concepts. In Studies in Aboriginal Law: Beadwork and the Law, students selected for the course will

explore both historic links between beadwork and law and the contemporary use of beadwork as a tool for revitalizing Indigenous legal orders...[,and will] engage in learning relating to contemporary Indigenous legal issues and will consider the use of beadwork as a tool for mobilizing Indigenous legal knowledge and centring Indigenous lived experience of law.⁸²

In Studies in Aboriginal Law: Worldview, Language & Legal Concepts, students study topics such as “Aboriginal Justice issues, comparative analysis of Aboriginal law in other countries, and international Aboriginal rights law”.⁸³ In addition, this year students are also able to take courses that address Indigenous legal issues similar to those offered in the early 2000s, such as CML 3112 Theory and Practice of Social Justice Law and CML 3353 Children and the Law. Finally, this year students can take legal aid clinic courses that focus on Aboriginal law and Indigenous legal issues similar to those offered in the early 2000s, such as CML 3248 Introduction Legal Aid Clinic Course, CML 3449 Clinical Legal Aid II, and CML 3450 Clinical Legal Aid III.

In addition to the first-year thematic course in Indigenous law and optional upper-year courses in Aboriginal and Indigenous law, UOttawa

⁸¹ University of Ottawa, “Undergraduate Studies Calendar 2008-2009”, online: <www.uottawa.ca/academic/info/regist/0809/calendars/courses/CML.html>.

⁸² This description is from the Faculty of Law’s 2021-2022 course search engine, which is no longer available online.

⁸³ This description is from the Faculty of Law’s 2021-2022 course search engine, which is no longer available online.

Law also has an Aboriginal Law and Indigenous Legal Traditions Option for “JD students wishing to gain in-depth and practical experience in Aboriginal law including some exposure to Indigenous peoples’ legal traditions”.⁸⁴ Students registered in the Option are required to take 3 units from the following courses: CML 2301 Aboriginal Peoples and the Law, CML 2701 Les autochtones et le droit, or DRC 4762 Droit des autochtones, and 15 units from the following optional courses:

Group A

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

Group B

CML 1105 Food Security and Sustainability (Note: This is a first year thematic course)
CML 1105 Global Intellectual Property and Social Justice (Note: This is a first year thematic course) CML 2321 Alternative Dispute Resolution Processes
CML 3112 Theory and Practice of Social Justice Law
CML 3131 Public International Law
CML 3135 International Law and Developing Countries
CML 3137 Critical Race Theory
CML 3144 Defending Battered Women on Trial
CML 3150 Race, Racism and the Law
CML 3307 Trusts
CML 3315 Negotiation
CML 3343 Poverty and the Law

⁸⁴ University of Ottawa, “Option in Aboriginal Law and Indigenous Legal Traditions”, online: <<https://www2.uottawa.ca/faculty-law/common-law/aboriginal-law>>.

CML 3374 Law and Society (with approval of the option coordinator)
CML 3398 Human Rights Laws in Canada
CML 3399 Human Rights (International Protection)
CML 4113 Foundation Legal Writing Skills
CML 4131 Multicultural Rights in Liberal Democracies
CML 4382 Feminist Legal Issues

Group C

Moot Course:

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

Internship:

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

Clinical:

CML 3248 Introduction Legal Aid Clinic Course (with approval of Option Coordinator)
CML 3250 Advanced Clinical Course in Community Law (with approval of Option Coordinator)⁸⁵

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

UOttawa Law once had the small group *Mudjimushkeeki/Torts*.⁸⁶ All first-year JD students are required to take one of their substantive courses in a small group format. The purpose of the small group format is to ensure “that all students have the opportunity to get to know their colleagues well,

⁸⁵ *Ibid.*

⁸⁶ CCLD, *supra* note 3 at 16.

to participate in meaningful classroom discussions and to enjoy continuous feedback from the professor”.⁸⁷ The small group *Mudjimushkeeki/Torts* gave students the opportunity to study “non-voluntary obligations to others from an Indigenous perspective”, and it was part of a first-year Indigenous course stream that incorporated Indigenous law into common law courses.⁸⁸ It appears that the small group *Mudjimushkeeki/Torts* and the first-year Indigenous course stream no longer exist.

In addition to offering course content in Aboriginal and Indigenous law, UOttawa Law has also taken steps to improve the culture and environment of the law school and provide greater support to Indigenous students. In its collective response, the ILTC notes that, under the leadership of Indigenous faculty members, it has created “a heightened consciousness and awareness amongst faculty and students” by offering events like “Indigenous led teach-ins, lectures series, film series, [and] reading groups focusing on Indigenous law and epistemology”. Several participants, particularly students, had positive things to say about these events. For example, one student member of the law school’s Indigenous Law Students Government commented on the high number and quality of the events, and how 2019-2020 was “a really good year [with] a lot of important events” (Participant #4).

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

⁸⁷ University of Ottawa, “First Year English JD Programs”, online: <<https://www2.uottawa.ca/faculty-law/common-law/student-centre/enrollment/first-year-english-jd-programs>>.

⁸⁸ CCLD, *supra* note 3 at 16.

UOttawa Law also hired Elder Claudette Commanda and Dr. Danielle Lussier. Elder Commanda currently serves as the Chancellor of the University of Ottawa. In the past, she worked as Special Advisor to the Dean on Reconciliation, the Faculty of Law's Elder-in-Residence, a member of the University of Ottawa Board of Governors, and a professor in the Institute of Women's Studies, Faculty of Education, and Faculty of Law. Dr. Lussier is a researcher who currently works as Associate Vice-Principal, Indigenous Knowledges and Learning, at the Royal Military College of Canada. Between 2018 and 2022, she worked as a part-time professor and the Director of Community & Indigenous Engagement at UOttawa Law, where she supported Indigenous students and fostered awareness and consideration of Indigenous matters within and outside the law school. She also held positions as Advisor, Indigenous Relations, and Indigenous Learner Advocate. In 2019, UOttawa Law received a \$1 million donation to support Indigenous students through scholarships, bursaries, and emergency funding.⁸⁹ Dr. Lussier also spearheaded a beading project where students, faculty, and staff can attend beading circles and "learn beadwork techniques developed by the Métis, who are known for beading garments with intricate designs that represent berries, flowers, and vines".⁹⁰ The beadwork has been featured on academic robes worn by law students and faculty members at convocation.⁹¹

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

And the other thing that they've done is...we have like a beading project where...students and professors will get together in beading circles and bead and what they're beading are sashes that students and professors and all of the executives at the faculty wear at convocation. So, it has a real presence and, you

89 University of Ottawa, "uOttawa Faculty of Law Receives \$1 Million to Support Indigenous Learners" (22 November 2019), online: <<https://www2.uottawa.ca/about-us/media/news/uottawa-faculty-law-receives-1-million-support-indigenous-learners-0>>.

90 University of Ottawa, "Indigenous Symbolism at Convocation" (19 June 2019), online: <<https://www.uottawa.ca/gazette/en/news/indigenous-symbolism-convocation>>.

91 *Ibid.*

know, the work is absolutely stunningly gorgeous...[a]nd so different from the attire that we're supposed to wear at this convocation. And then the dean talked about it at convocation, you know, where there are thousands of students and their families and talked about the importance of this beading project and, you know, it's ongoing. It hasn't been a sort of one-time thing and it's not unusual to be at a faculty council meeting and have professors listening but beading at the same time. It's kind of amazing, really. (Participant #2)

Two students offered similar comments:

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

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

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

Based on my interviews and my review of UOttawa Law's website and University of Ottawa academic calendars, UOttawa Law has made significant changes to its program since the TRC's final report and calls to action were released. In 2023, it introduced mandatory course modules to all first-year students based on the Seven Sacred Teachings. In 2025, it will begin offering a mandatory full first-year course on the "Truth and Reconciliation Commission, Indigenous People and the law". UOttawa Law also offers optional upper-year courses in Aboriginal and Indigenous law, although many of these courses were offered to students in the 1980s,

1990s, and early 2000s. UOttawa Law also created the Aboriginal Law and Indigenous Legal Traditions Option, which provides students with an opportunity to gain an in-depth knowledge of Aboriginal and Indigenous law. However, the Option is not a mandatory component of the program and many of the courses offered were created many years before the TRC's final report and calls to action were released.

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

There are many things that UOttawa Law can do to fully engage with transformative reconciliation: (1) implement a mandatory curriculum requirement that covers the material included in call to action 28;⁹² (2) incorporate Indigenous law into all other mandatory courses, and offer appropriate training to faculty members to help them teach this content; (3) create an institute for the study, research, and application of Indigenous law; (4) reconfigure the physical space of the law school to be more accessible, inclusive, and inviting;⁹³ (5) create a space where Indigenous students can study, socialize, and participate in academic and cultural programming; (6) work with local Indigenous communities to create opportunities for community and land-based learning; (7) offer support to faculty members who wish to incorporate Indigenous pedagogies into the classroom; (8) secure more funding to support current Indigenous students and faculty members and recruit new Indigenous students and hire new Indigenous faculty members; and (9) build stronger relationships with local Indigenous communities.

UOttawa Law is already working on many of these things. In its 2019-2024 Strategic Plan, UOttawa Law identifies “reconciliation,

⁹² Given the breadth of call to action 28, the law school should seriously consider participants' recommendation to incorporate mandatory requirements throughout the duration of the JD program.

⁹³ The law school can, for example, make changes to classroom design and include Indigenous art and displays with information about local Indigenous communities, Indigenous law, and Indigenous legal professionals.

Indigenization, and decolonization” as one of its “strategic priorities” for the future. This strategic priority contains the following four components and associated commitments:

A. Student Support and Experience

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

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

B. Teaching

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

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

C. Research

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

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

D. Community

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

6. Build relationships with Indigenous Nations and communities, community members and territorial land holders to address meaningfully: the land which the law school sits on, the responsibility of the law faculty as settlers on Indigenous lands, the building and renewing of relationships with Indigenous Nations and peoples, the decolonization and Indigenization of existing course materials and curriculum, and the reciprocal, respectful and

relational agreements and partnerships to be developed with Indigenous Nations locally and internationally.

7. Develop Indigenous community-drive and supported Legal Research Practice Group.⁹⁴

Dal Law

Beginning in December 2016, the Committee received input from various stakeholders, including students and Mi'kmaq alumni at Kwilmu'kw Maw-klusuaqn Negotiation Office (KMKNO) in Millbrook, Nova Scotia.⁹⁵ Over the next six months, the Committee developed a plan for a staggered approach to curriculum reform that combined a mandatory standalone course and integrating relevant themes across their existing curriculum.⁹⁶ In May 2016, the Faculty Council approved a mandatory two-credit course for first-year students called Aboriginal and Indigenous Law in Context.⁹⁷ Between 2017 and 2019, the Committee met to make changes to the mandatory course and develop other elements of its response to the TRC's calls to action.⁹⁸ The TRC Committee did not contemplate an optional approach because, as one faculty member put it:

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

According to Dalhousie University's academic calendar for 2021-2022, the mandatory course "provides an introduction to both Aboriginal Law and Indigenous Law, and the historical and contemporary context that is fundamental to understanding these areas of law".⁹⁹ The course is broken

⁹⁴ University of Ottawa, "Faculty of Law Strategic Plan 2019-2024", online: <https://commonlaw.uottawa.ca/sites/commonlaw.uottawa.ca/files/sp_eng_h_november_27.pdf>.

⁹⁵ Schulich School of Law TRC Committee, "Schulich School of Law: Efforts to Implement the TRC Report and Calls to Action" PowerPoint Slides (2019) [*Schulich TRC Committee Slides*].

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ Dalhousie University, "Academic Calendar 2021/2022", online: <<https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/2021>

up into two parts, one in September (LAWS 1019 or “AIRC I”) and one in January (LAWS 1029 or “AIRC II”). The objective of AIRC I is to “expose students to Mi’kmaq people and to teach them about things that are important to Mi’kmaq people – places, language, culture, spiritual practices, traditions, stories, art, historical and contemporary issues”.¹⁰⁰ This objective is achieved through classroom instruction, a blanket exercise, special guest speakers, and fieldtrips to Mi’kmaq communities and places of historical significance to the Mi’kmaq.¹⁰¹ For example, in 2017-2018, students visited the Sipekene’katik Residential School site, Five Islands, and Partridge Island.¹⁰² In 2018-2019, students visited Sipekene’katik First Nation, Millbrook First Nation, and the Mi’kmaq Native Friendship Center in Halifax.¹⁰³ Students are evaluated on the basis of a two-page reflection paper that “demonstrates a knowledgeable and thoughtful engagement with the component parts of the experiential learning exercises”.¹⁰⁴ In 2017-2018, students were given the following instructions for the reflection paper:

In your reflection piece, you are asked to write about what were the major points you took away from the activities you participated in and how you think it will impact your legal studies. You may also use the paper to pose questions for yourself, the legal community and Canadian society more generally.¹⁰⁵

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

1. How knowledgeable would you say you are about Indigenous people in Canada: their history, communities and cultures and the current issues they face?
2. What are the sources of your information on Indigenous people: elementary and high school, university, media, self-study, personal experience with Indigenous peoples, other?
3. What do you understand to be the relationship between Indigenous peoples and Canadian law?
4. What do you understand to be the biggest challenges Indigenous people face in Canada today?

[2022%20DENT MED LAW Calendar.pdf](#) at 149 [*Academic Calendar 2021/2022*].

¹⁰⁰ CCLD, *supra* note 3 at 2.

¹⁰¹ *Ibid.*

¹⁰² *Schulich TRC Committee Slides, supra* note 95.

¹⁰³ *Ibid.*

¹⁰⁴ *Academic Calendar 2021/2022, supra* note 99 at 149.

¹⁰⁵ *Schulich TRC Committee Slides, supra* note 95.

5. Do you know anything about the laws of Indigenous peoples?
6. As a future lawyer, what do you think you should know about Indigenous peoples to make you are an ethically?¹⁰⁶

In their reflection paper, they were asked to use their answers to these questions to “identify and critically analyse two or three key insights that you gleaned from AILC I”.¹⁰⁷ After reviewing students’ responses, the Committee identified 18 insights from the reflection papers:

1. Law is a social construct
2. Law is not necessarily about protecting rights but can be an instrument of oppression
3. Knowledge is culturally specific
4. That the past has intergenerational and current impacts
5. That the land we inhabit has historical indigenous names & significance
6. That try[ing] to step inside the shoes of others is vital
7. Cultural competence is essential
8. That we are all treaty people
9. That language is vital, but not necessarily translatable
10. That Indigenous/Aboriginal issues can affect all areas of legal practice
11. That legal education & practice is a privilege accessible [to] some and denied to others
12. That law has been, and continues to be, part of the problem
13. That listening is vital, and that we should not always be ready with a retort
14. That sameness of treatment may promise false equality
15. That it is ok to be emotional as a lawyer
16. That we are responsible for the choices we make and that we can be held accountable
17. Imperative that all lawyers should know something about indigenous legal systems
18. That legal pluralism & multi-juralism is a professional competency¹⁰⁸

The second part of the course, AILC II, “explores how law applies to, and is applied by, Indigenous people,” and “demonstrate[s] that areas of intersection pervade many areas of law”.¹⁰⁹ Students receive two days of teaching on topics like the Marshall Inquiry, Indigenous/Mi’kmaq law, *UNDRIP*, water rights, and treaties and section 35 of the *Constitution Act, 1982*.¹¹⁰ After receiving instruction on how to give an effective presentation,

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ CCLD, *supra* note 3 at 2.

¹¹⁰ Schulich TRC Committee Slides, *supra* note 95.

students are put into groups and asked to present on one of the following topics:

1. Introduction to UNDRIP
2. Loss of language and culture and intergenerational harms as non-compensable loss in residential school class action
3. Sentencing circles and Restorative Justice initiatives
4. Indian status, membership and Indigenous citizenship
5. Property issues on reserve (Indian land regime and possibly also housing issues on reserve)
6. Indigenous conceptions of property and relationship with environment (link to duty to consult and accommodate)
7. Royal Proclamation [of 1763] & Aboriginal title
8. The Caring Society case, the systemic underfunding of services on reserve and human rights
9. Repeal of s. 67 of the CHRA [Canadian Human Rights Act] and its impact on Canada and FN [First Nation] governments, Matson [Matson et al v Indian and Northern Affairs Canada, 2013 CHRT 13] case
10. Introduction to modern day treaty and self-government and negotiation processes¹¹¹

This mandatory first-year course is graded on a pass/fail basis, and students must pass both parts of the course.¹¹² Student evaluations were very strong in the first two years the course was offered, and in May 2019, members of the Committee received the Class of 1967 Teaching Award for the course.¹¹³ The Committee identified several success factors, including having a supportive Dean and collaborative colleagues, access to funding and research assistants, the Chancellor's Chair in Aboriginal Law and Policy (discussed below), and community and alumni connections.¹¹⁴

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

This seminar course is intended for students who want to obtain a deeper appreciation of governance systems and structures that currently apply to First

¹¹¹ *Ibid.*

¹¹² *Academic Calendar 2021/2022, supra* note 99 at 149.

¹¹³ *Schulich TRC Committee Slides, supra* note 95.

¹¹⁴ *Ibid.*

Nation communities pursuant to the Indian Act and other federal legislation and policy, spanning areas such as elections, the exercise of Band Council authority through resolutions and by-laws, membership, essential services program devolution, land issues and economic development, employment and human rights issues on reserve, and dispute resolution mechanisms. This course will also examine systems beyond the Indian Act, including systems that First Nations communities are currently engaging in and aspiring towards, such as self-government and greater implementation of customary and Indigenous law. This course will be useful for students who intend to work closely with First Nations communities or organizations and government departments servicing those communities. As opposed to being a general survey of the legal and policy issues affecting Indigenous Peoples in Canada, like the Aboriginal Peoples and the Law course, this course will make governance issues affecting First Nations communities its focal point.¹¹⁵

Dal Law has offered a version of this course since then. The following year, Dal Law created a new course called LAWS 2290 Advanced Aboriginal Peoples and the Law. According to the Dalhousie University academic calendar for that year, this course “familiarize[s] students with the current moment in Aboriginal law” and exposes them to advanced topics in Aboriginal law such as

Aboriginal equality and human rights claims, the revitalization of Indigenous Law, the Truth and Reconciliation Commission Final Report, the United Nations Declaration on the Rights of Indigenous Peoples, Aboriginal rights and title, consultation, the criminal justice system and self-governance, sources of law, unique constitutional provisions, the special position of Indian reserves, the nature of aboriginal title and rights, Indian treaties, fiduciary obligations, taxation, and self-government/self determination.¹¹⁶

Dal Law continues to offer this course to students today.¹¹⁷ In 2019-2020, Dal Law added a new course called LAWS 2289 Indigenous Law. According to the Dalhousie University academic calendar for that year, students enrolled in this course “examine Indigenous legal principles, rules, processes and values” and “identify[y] and apply[y] substantive Mi’kmaq law

¹¹⁵ Dalhousie University, “Calendar 2017/2018”, online: <https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/DLM_17_18_Calendar.pdf> at 150.

¹¹⁶ Dalhousie University, “Calendar 2018/2019”, online: <https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/Dentistry_Law_Medicine_2018-2019.pdf> at 191.

¹¹⁷ In 2021-2022, this course was renamed Special Topics in Aboriginal Law: *Academic Calendar 2021-2022*, *supra* note 99 at 179.

to promote the resurgence of Indigenous social, political, cultural and economic success".¹¹⁸ Dal Law has offered this course each year since then.¹¹⁹

In addition to the first-year mandatory course Aboriginal and Indigenous Law in Context and optional upper-year courses in Aboriginal and Indigenous law, Dal Law also created new optional courses that address Indigenous legal issues. For example, in 2019-2020, Dal Law created a new course called LAWS 2276 Imprisonment and Penal Policy, which explores "specific issues that incarceration raises as it interacts with other aspects of law and society, including family, aboriginality, labour, property, end of life planning etc".¹²⁰ Dal Law has offered this course each year since then.

In 2021, Dal Law started offering a Certificate in Aboriginal and Indigenous Law. The Certificate provides students with the opportunity to obtain an in-depth understanding of Aboriginal and Indigenous law. In order to obtain the Certificate, students must complete the following three courses: LAWS 1019 & 1029 Aboriginal and Indigenous Law in Context, LAWS 2062 Constitutional Law, and LAWS 2280/2282 Aboriginal Peoples and the Law.¹²¹ They must obtain an additional three credits by taking one or more of the following courses:

- LAWS 2290 Special Topics in Aboriginal Law
- LAWS 2270 Indigenous Governance
- LAWS 2282 Indigenous Law as Practices: Applying Mi'kmaq Legal Traditions
- LAWS 2227 Dealing with the Past: The Indian Residential Schools Settlement
- LAWS 2006 Kawaskimhon Aboriginal Rights Moot¹²²

¹¹⁸ Dalhousie University, "Calendar 2019/2020", online: <https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/Dentistry_Law_Medicine_2019_2020.pdf> at 126 [*Academic Calendar 2019/2020*].

¹¹⁹ In 2020-2021, this course was renamed Indigenous Law as Practice: Applying Mi'kmaq Legal Traditions: Dalhousie University, "Academic Calendar 2020/2021", online: <<https://cdn.dal.ca/content/dam/dalhousie/pdf/academics/academiccalendar/DENT2020-2021%20July%207.pdf>> at 179.

¹²⁰ *Academic Calendar 2019/2020*, *supra* note 118 at 125.

¹²¹ Dalhousie University, "Aboriginal and Indigenous Law", online: <<https://www.dal.ca/faculty/law/aboriginal-indigenous-law.html>>.

¹²² *Ibid.*

Students also have the option of completing the additional three credits through a major research paper on a topic related to Aboriginal or Indigenous law and approved by the TRC Committee.¹²³ The Certificate is supported by several faculty members who specialize in Aboriginal and Indigenous law or work as allies in these areas.

In addition to making changes to their curriculum, the law school also responded to the TRC's calls to action by creating an Elder-in-Residence position in 2015 and the Chancellor's Chair in Aboriginal Law and Policy in 2016.¹²⁴ The Chancellor's Chair was awarded to Professor Naomi Metallic for a five-year term with the following four expectations:

- Contribute to teaching and research in the area of Aboriginal Law;
- Identify opportunities to collaborate with scholars from other Dalhousie University faculties to offer interdisciplinary courses and to conduct interdisciplinary research in the area of Aboriginal Law;
- Build the profile of the Schulich School of Law and Dalhousie University in Aboriginal Law and Policy teaching and research; and
- Contribute to building relationships between the university and Aboriginal communities in the Maritimes¹²⁵

The law school also added more Indigenous art to the law school and worked with the Nova Scotia Barristers' Society to develop the Ku'TawTinu: Mi'kmaw Shared Articling Initiative, which allows graduates to create an articling experience that focuses on Aboriginal and Indigenous law.¹²⁶

Based on my interviews and my review of Dal Law's website and Dalhousie University academic calendars, Dal Law has made important changes to its program since the TRC's final report and calls to action were released. It created a short mandatory first-year course in Aboriginal & Indigenous Law in Context, established a Certificate in Aboriginal and Indigenous Law, and developed optional upper-year courses in Aboriginal and Indigenous law and courses that address Indigenous legal issues. It also made broader changes to advance education on Indigenous law and

¹²³ *Ibid.*

¹²⁴ CCLD, *supra* note 3 at 2.

¹²⁵ Dalhousie University, "Chancellor's Chair in Aboriginal Law and Policy Schulich School of Law, Dalhousie University Strategic Plan 2016 - 2018", online: <https://cdn.dal.ca/content/dam/dalhousie/pdf/law/Faculty%20and%20Staff/law_Chancellor%27s%20Chair%20in%20Aboriginal%20Law%20and%20Policy_Strategic%20Plan.pdf> at 1.

¹²⁶ CCLD, *supra* note 3 at 2.

improve the culture and environment of the law school by, for example, creating an Elder-in-Residence position and the Chancellor's Chair in Aboriginal Law and Policy. All of these changes are contributing to transformative reconciliation at Dal Law.

There are some things that Dal Law can do to better engage with transformative reconciliation: (1) develop a full semester or full year first-year course that covers material included in call to action 28;¹²⁷ (2) incorporate Indigenous law into all other mandatory courses, and offer appropriate training to faculty members to help them teach this content; (3) work with local Indigenous communities to create opportunities for community and land-based learning; (4) strengthen its graduate programs to home grow scholars who can teach and conduct research in the areas of Aboriginal and Indigenous law; (5) create an institute for the study, research, and application of Indigenous law; and (6) establish an Indigenous community legal clinic.

Dal Law is already working on many of these things. During my interviews, faculty members indicated that the TRC Committee is working hard to develop another mandatory requirement. At the time of the interviews, faculty members were not sure if this would be a standalone course or a basket of courses to allow for greater flexibility. Professor Naiomi Metallic has entered her second term as the Chancellor's Chair in Aboriginal Law and Policy and Dal Law has hired two Indigenous faculty members who will be joining her on the TRC Committee.¹²⁸ Professor Metallic is also working on developing an Indigenous Law and Governance Lodge (an "Lnuwey Tpludaqann Wikuom"), with the goal of "mak[ing] Dalhousie a hub for supporting Mi'kmaq and other Indigenous communities in the Atlantic region in revitalizing their own laws, while educating members of the legal communities about ongoing developments in the areas of Indigenous laws and governance practices".¹²⁹ Creating another mandatory requirement, establishing an Indigenous Law and Governance Lodge, and implementing the other action items listed above

¹²⁷ Currently, the course runs for a few weeks in September and January. Several participants said that it should be a semester or year-long course.

¹²⁸ Dalhousie University, "Using Law as a Tool for Reconciliation", online: <<https://www.dal.ca/faculty/law/news-events/news/2021/10/14/using-law-as-a-tool-for-reconciliation.html>>.

¹²⁹ *Ibid.*

will put Dal Law on the path to creating transformative change. Of course, implementing these changes will require significant funding. If one does not already exist, Dal Law should establish a sub-committee comprised of administrators, faculty members, staff, and students whose sole responsibility is developing creative proposals to obtain grants and donations to fund these commitments.

UVic Law

UVic Law was the first law school in Canada to publicly respond to the TRC's final report and calls to action.¹³⁰ Shortly after the TRC's final report and calls to action were published, the law school released a one-page statement wherein it confirms its commitment to "live up to the TRC's recommendation, ensuring a learning environment where all our students will come to recognize the deep and lasting implication of Crown-Indigenous relations" and "graduate lawyers and other advocates who are aware of the privilege and responsibilities of practicing law in the multi-juridical Canada we share today".¹³¹ UVic Law has taken several steps to respond to the TRC's calls to action. On June 15, 2015, two faculty members wrote an article in *Canadian Lawyer* titled "TRC offers a window of opportunity for legal education". In the article, the authors discuss the role that law schools must play in the long-term process of reconciliation:

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

Many law schools across the country are engaged in curricular reform at the moment. We argue that the recommendation that targets what we teach at law

¹³⁰ CCLD, *supra* note 3 at 20.

¹³¹ University of Victoria, "UVic Law Responds to Recommendations 27 and 28 of the Truth and Reconciliation Commission", online: <<https://www.uvic.ca/law/home/news/archive/TRC%20recommendations.php>>.

school is a moment for looking broadly at how we offer law students diverse opportunities for engaging with the hardest questions a society can ask of itself.¹³²

After having a conversation with a lawyer about the work being done by the hashtag #CharlestonSyllabus to create resources to generate conversations about the history of racial violence in the United States, the authors created the Reconciliation Syllabus, a national blog dedicated to offering space for law professors, lawyers, and law students to share ideas and resources for responding to call to action 28.¹³³ The blog offers resources for each course taught in law school, including business law, constitutional law, contract law, criminal law, environmental law, evidence, family law, Indigenous legal traditions, jurisprudence, oil/gas/energy law, professional responsibility, property law, remedies, research methods, securities, sexual identities and the law, and tort law.¹³⁴ The blog also includes resources for teaching about the TRC, conducting a Blanket Exercise, bringing art into the classroom, and strengthening “intersocietal competency”.¹³⁵

UVic Law has responded to calls to action 28 and 50 by updating its curriculum, supporting Indigenous law revitalization, and enhancing support for Indigenous students. The law school revised LAW 106 Legal Process, which is a mandatory orientation course for first-year students. According to the academic calendar for 2021-2022, this course “[p]rovides first-year students with a transactional overview of their new discipline in its totality. [It] [f]oregrounds the processes and pragmatics of decision making throughout the major institutions of the legal system, understood in their changing historical, social and jurisprudential contexts”.¹³⁶ The course has two components. The first component happens during the first two weeks

132 Gillian Calder & Rebecca Johnson, “TRC Offers a Window Opportunity for Legal Education” (15 June 2015), online: *Canadian Lawyer* <<https://www.canadianlawyermag.com/news/general/trc-offers-a-window-of-opportunity-for-legal-education/269823>>.

133 *Ibid.*

134 *Ibid.*

135 *Ibid.*

136 University of Victoria, “Undergraduate Calendar - September 2021”, online: <[https://www.uvic.ca/calendar/archives/202109/undergrad/index.php#/courses/r1Nrida7N?group=Law%20\(LAW\)&bc=true&bcCurrent=LAW106%20-%20The%20Legal%20Process&bcGroup=Law%20\(LAW\)&bcItemType=courses](https://www.uvic.ca/calendar/archives/202109/undergrad/index.php#/courses/r1Nrida7N?group=Law%20(LAW)&bc=true&bcCurrent=LAW106%20-%20The%20Legal%20Process&bcGroup=Law%20(LAW)&bcItemType=courses)>.

of September, and the second component occurs in early January. During the September component, students work in small groups with professors and graduate students to learn about “legal institutions, skills and theories through various arts-based practices”.¹³⁷ These arts-based practices include “the use of theatre to introduce students to Alternative Dispute Resolution (ADR); the use of soundscapes in Downtown Victoria to introduce students to living law; and a guided walk up a local mountain (PKOLS) to introduce students to Indigenous laws”.¹³⁸ The hike up PKOLS (Mount Douglas) is used to teach students about the importance of the territory. One faculty member explained the significance of this exercise as follows:

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

In past years, the first component of the course has also included a version of the KAIROS Blanket Exercise, which is a two to three-hour interactive exercise that uses blankets as a representation of land to explore the historic and contemporary relationship between Indigenous Peoples and non-Indigenous people and the Canadian state.

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

In addition to the mandatory first-year orientation legal course, UVic Law has also incorporated content about “Indigenous legal traditions, the

¹³⁷ Sara Ramshaw, “Law and Humanities: A Field Without a Cannon” (2019) *Law, Culture and the Humanities* 1 at 4.

¹³⁸ *Ibid.*

history and legacy of residential schools, Treaties and Aboriginal rights, and Aboriginal-Crown relations” into mandatory courses like LAW 100 The Constitutional Law Process; LAW 102 The Criminal Law Process; LAW 104 Law, Legislation and Policy; LAW 110 Legal Research and Writing; LAW 109 Torts; LAW 301 The Administrative Law Process; LAW 315 Business Associations; and LAW 360 Legal Ethics & Professionalism.¹³⁹ This is consistent with faculty members’ belief in the importance of infusing this content across the law school curriculum.

UVic Law also added optional upper-year courses dedicated to studying Indigenous law and legal issues. For example, during the spring 2022 term, the law school offered courses in LAW 343 A02 Current Topics in Indigenous Law: Criminal Justice and Family Law and LAW 388A Indigenous Law Research, Method and Practice. The summaries for these two courses explain how students engage with Indigenous laws and legal issues. The course summary for LAW 343 A02 Current Topics in Indigenous Law: Criminal Justice and Family Law says that the course “provide[s] a comprehensive treatment, both substantive and practical, of the social realities and issues faced by Indigenous people in the Canadian criminal justice system” by studying “the problems faced by Aboriginal peoples in the justice system, the search for positive solutions to those problems (the *Gladue* sentencing framework in particular), and problems/issues that have been identified with those solutions”.¹⁴⁰ Lastly, the course summary for LAW 388A Indigenous Law Research, Method and Practice says that “[s]tudents will identify and critically examine legal theories about the nature and sources of law, and reflect on collaborative legal research and the work of Indigenous law revitalization in inter-societal contexts”.¹⁴¹

In 2018, UVic Law started offering the world’s first Indigenous law degree program. The optional joint degree program in Canadian common

¹³⁹ CCLD, *supra* note 3 at 20.

¹⁴⁰ University of Victoria, “Faculty of Law, University of Victoria, 2021-22 Course Registration - Preliminary Course Information Summary (PCIS)”, online: <<https://www.uvic.ca/law/assets/docs/pcisspring2022/202201-343-2-indig-crim-family-milwards.pdf>>.

¹⁴¹ University of Victoria, “Faculty of Law, University of Victoria, Summer 2021 Course Registration - Preliminary Course Information (PCIS)”, online: <<https://www.uvic.ca/law/assets/docs/pcissummer2021/202105-388a-indigenous-research-johnson-napoleon.pdf>>.

law (Juris Doctor (JD)) and Indigenous legal orders (Juris Indigenarum Doctor (JID)) offers a class of 25 students the opportunity to combine intensive study of the common law legal system with engagement with Indigenous law.¹⁴² The program was initially conceived in 2005 by John Borrows.¹⁴³ In first year, students enrolled in the program are required to take LAW 100I Transsystemic Constitutional Law (or LAW 100 Constitutional Law); LAW 102I Transsystemic Criminal Law (or LAW 102 Criminal Law); LAW 104I Law, Legislation and Policy; LAW 107I Transsystemic Property Law (or LAW 107 Property Law); and LAW 112I Transsystemic Legal Processes, Research, Writing. Second-year students are required to take LAW 105I Transsystemic Contracts (or LAW 105 Contracts) and LAW 109I Transsystemic Torts (or LAW 109 Torts). Third and fourth-year students are required to take LAW 350I Indigenous Field Student Level 1 and LAW 450I Indigenous Field Study Level II, respectively. In their second, third, or fourth year, students are also required to take LAW 301I Transsystemic Administrative Law (or LAW 301 Administrative Law), LAW 360 Legal Ethics and Professionalism, and LAW 395 Coast Salish Legal Studies and Language. In their third or fourth year, students are required to take LAW 315I Transsystemic Business Associations. Finally, in order to graduate, students enrolled in the JD/JID program must complete the major paper requirement.¹⁴⁴ As can be seen from the list of required courses, students in the JD/JID program study law from a transsystemic lens, comparing the common law with various Indigenous laws. For example, whereas students in the regular JD program study administrative law purely from the common law perspective, students in the JD/JID program examine “administrative law in Indigenous contexts and mixed-law situations, such as the electoral laws of First Nations bands

¹⁴² University of Victoria, Undergraduate Admissions, “Juris Doctor (JD)/JD/JID (Indigenous Law)”, online: <University of Victoria. (n.d.-m). *Undergraduate programs, law*. <https://www.uvic.ca/undergraduate/programs/undergraduate-programs/pages/law.php>>.

¹⁴³ John Borrows, “Creating an Indigenous Legal Community” (2005) 50 McGill LJ 153. See also: *Canada, Law Commission of Canada, Justice Within: Indigenous Legal Traditions* (Ottawa: Law Commission of Canada, 2005); John Borrows, *Canada’s Indigenous Constitution* (Toronto: University of Toronto Press, 2010).

¹⁴⁴ This list of required courses is based on Appendix 5 of UVic Law’s “Winter Session 2021-2022 Planning and Course Selection Guide for UVic Law JD/JID Students”, which was last updated in June 2021 (University of Victoria, 2021c).

and environmental review processes”.¹⁴⁵ JD/JID students are able to take optional courses in Indigenous law and legal issues, including LAW 343E *ĆELÁÑENEŁ: A Field Course in the Re-emergence of WSÁNEĆ*, LAW 368 *Indigenous Feminist Legal Studies*, and LAW 384 *Field Course in Reconciliation, Ecology and Place-based Law*.

In March 2019, the federal government announced that it would provide \$9.1 million in funding to UVic Law to help build a National Centre for Indigenous Laws.¹⁴⁶ In September 2020, the Province of British Columbia and the Law Foundation of British Columbia announced additional contributions of \$13 million and \$5 million, respectively.¹⁴⁷ The \$27.1 million in funding will be used to build a 2,440-square-meter addition to the law school building. The centre “will be designed to reflect and honour the law school’s location and long-standing relationship with the Songhees, Esquimalt and WSÁNEĆ peoples on whose territory the university resides”.¹⁴⁸ The centre, which will contain “public lecture theatres, faculty and staff offices, classrooms, meeting space, an Elders’ room and spaces for gathering, ceremony and sharing of histories and knowledge”, will house the JD/JID program and the Indigenous Law Research Unit and act as a hub for connection, where the law school can host “conferences, public workshops, research, and partnerships for faculty, students and visitors”.¹⁴⁹

The JD/JID program and the National Centre for Indigenous laws are both responses to the TRC’s call to action 50, which, as previously mentioned, calls for the development of Indigenous law institutes. While the idea of the JD/JID program was conceived before the TRC’s final report

¹⁴⁵ University of Victoria, Faculty of Law, 2021 Course Registration – Preliminary Course Information (PCIS), online: <https://www.uvic.ca/law/assets/docs/pcisfall2021/202109-301i-tadm-law-promislow1.pdf>.

¹⁴⁶ Katie Derosa, “Federal Budget: UVic gets \$9.1M to Build National Centre for Indigenous Law” (19 March 2019), online: *Times Colonist* <https://www.timescolonist.com/local-news/federal-budget-uvic-gets-91m-to-build-national-centre-for-indigenous-law-4670971>.

¹⁴⁷ Julie Sloan, “UVic Law to Build a National Centre for Indigenous Law” (3 September 2020), online: <https://www.uvic.ca/news/topics/2020+indigenous-law-funding-ring+news>.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

and calls to action were published, the program did not open its doors until 2018. The program, then, should be seen as a direct response to call to action 50. The Assembly of First Nations said that the JD/JID program and the National Centre for Indigenous Laws are powerful responses to call to action 50:

We consider both of these initiatives (the JD/JID program and the Indigenous Legal Lodge [now the National Centre for Indigenous Laws]) to be fundamental to the fulfilment of Truth and Reconciliation Commission Call to Action #50 and to the creation of the legal infrastructure of the nation-to-nation relationship in Canada.¹⁵⁰

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

They are precisely what we had hoped would follow from the report of the Truth and Reconciliation Commission, and they promise to inform the very best of legacies: a set of initiatives that reject and reverse the pattern of denigration and neglect identified in our report, and that establish the conditions for effective action long into the future.¹⁵¹

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

There are some things that UVic Law can do to better contribute to transformative reconciliation in legal education: (1) develop a formal strategy for implementing the TRC's calls to action; (2) incorporate more transsystemic learning into the JD program to ensure that JD and JD/JID students do not have vastly different experiences when it comes to

¹⁵⁰ University of Victoria, "JD/JID Joint Degree Program in Canadian Common Law and Indigenous Legal Orders", online: <<https://www.uvic.ca/law/assets/docs/jid/jidbrochureravenov2018web.pdf>> at 2.

¹⁵¹ *Ibid* at 4.

engagement with Indigenous law and legal issues; (3) create opportunities for greater engagement with community and land-based learning; and (4) support Indigenous Elders and knowledge keepers in playing a bigger role in legal education. Implementing these changes will require a large amount of funding. As with UOttawa Law and Dal Law, UVic Law should create a sub-committee comprised of administrators, faculty members, staff, and students whose sole responsibility is developing creative proposals to obtain grants and donations to fund these changes.

D. Discussion and Recommendations

As discussed above, transformative reconciliation requires law schools to implement calls to action 28 and 50, make non-curricular changes to their programs, and advocate for the creation of Indigenous law schools. The three law schools that I examined are moving towards implementing transformative reconciliation, but more work needs to be done. UOttawa Law has not currently implemented their response to calls to action 28 and 50. However, in 2023 it introduced mandatory course modules to all first-year students based on the Seven Sacred Teachings, and in 2025 it will begin offering a mandatory full first-year course on the “Truth and Reconciliation Commission, Indigenous People and the law”. UOttawa Law has also made important non-curricular changes to improve the law school environment, such as hiring more Indigenous faculty members and staff, obtaining significant funding to support Indigenous students, and hosting more events to provide faculty members, students, and staff with opportunities to learn more about Indigenous law. According to its 2019-2024 Strategic Plan, UOttawa Law plans on further implementing calls to action 28 and 50 in the near future.

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

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

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

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

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

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

i. Law Schools Should Establish a TRC Committee

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

mandate that defines reconciliation and outlines its approach to responding to the TRC's calls to action.

ii. The TRC Committee Should Include Settlers

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

iii. Law Schools Should Create a TRC Sub-Committee Dedicated to Developing Creative Proposals to Obtain Grants and Donations to Fund Its Response

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

iv. The TRC Committee Should Clearly Explain How It Understands Reconciliation

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

v. The TRC Committee Should Consult Faculty, Students, Staff, Legal Professionals, and Local Indigenous Community Members when Formulating Its Response to the TRC's Calls to Action.

It is important that, when implementing their response to the TRC's final report and calls to action, law schools engage in extensive consultation. It is particularly important for law schools to seek input from students and Indigenous community members. Several students that I interviewed indicated that they were not consulted by the law school. Given that any

response to the TRC's final report and calls to action will have a direct impact on students' legal education, it is essential to seek their input at each stage of the process. Canadian law schools are very often located on unceded Indigenous land and near Indigenous communities. In addition, Indigenous law is rooted in Indigenous societies themselves. For these reasons, local Indigenous communities should play a central role in formulating the law school's response to the TRC's calls to action.

vi. The TRC Committee Should Develop Responses to Calls to Action 28 and 50

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

vii. The TRC Committee Should Outline Clearly How the Law School Will Respond to Call to Action 28

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

viii. The TRC Committee Should Outline Clearly How the Law School Will Respond to Call to Action 50

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

ix. The TRC Committee Should also Address Other Non-Curricular Changes

In addition to responding to calls to action 28 and 50, law schools should also implement non-curricular changes, including making the admissions process more accessible for Indigenous students, hiring more Indigenous faculty members and staff, recruiting more Indigenous students, creating more spaces for Indigenous students to study and socialize, and

empowering faculty members to use creative methods of evaluation and engage with experiential learning, land-based learning, and Indigenous pedagogies. While these changes are not explicitly included in calls to action 28 and 50, they are necessary components of transformative reconciliation. This work will very likely require the TRC Committee to work with other Faculty Committees and university management.

x. When the TRC Committee is Responding to Calls to Action 28 and 50, They Should Situate Their Response in the Context of the Entire TRC Report and in Relation to the Other 93 Calls to Action

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

xi. The TRC Committee Should Work with Other Law School Committees

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

xii. The TRC Committee Should Produce an Annual Public Report of Its Work

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

xiii. Law Schools Should Provide Support to Indigenous Communities Who Want to Establish Indigenous Law Schools

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

CONCLUSION

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

My research sought input from faculty members involved in responding to the TRC's calls to action and Indigenous law students at three Canadian law schools that teach the common law legal tradition. Future research can expand on my findings in four important ways. First, future research should examine how other Canadian law schools, including those that teach civil law, are responding to the TRC's calls to action and what faculty members and Indigenous law students have to say about their responses. Second, researchers should also explore what non-Indigenous students have to say about their responses. This is consistent with anti-colonialism, which, as Simmons and Dei note, asserts that the dominant population "must be prepared to invoke and act on their complicities and responsibilities through a politics of accountability in order to bring about change."¹⁵² It will be important for researchers to find ways for non-Indigenous students to contribute in meaningful ways that do not reassert their power and privilege over Indigenous Peoples.

¹⁵² Marlon Simmons & George J.S. Dei, "Reframing Anti-Colonial Theory for the Diasporic Context" 1:1 *Post Colonial Directions in Education* 67 at 76.

Implementing transformative reconciliation in Canadian legal education will be more meaningful if our legal system and legal profession support the revitalization of Indigenous law. The TRC's call to action 27 calls on the Federation of Law Societies of Canada to ensure all lawyers receive cultural competency training in "the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations".¹⁵³ Researchers should explore how law societies are responding to call to action 27 and whether they are engaging with the liberal or transformative approach to reconciliation.

Finally, the TRC's call to action 45(ii) calls on the government to implement *UNDRIP*, which, as I mentioned in the first section of this article, says that Indigenous Peoples have the right to maintain their own legal institutions. On June 21, 2021, Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act*¹⁵⁴ (*UNDRIPA*) received Royal Assent and came into force. Section 5 of the Act says that "[t]he Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration".¹⁵⁵ This requires the government to ensure that its laws recognize and support Indigenous Peoples' right to maintain their own legal institutions. Researchers should examine whether and how the government is implementing call to action 45(ii) and section 5 of *UNDRIPA*, and whether their responses are consistent with the liberal or transformative approach to reconciliation. I am particularly excited by these last two potential directions for future research, and I look forward to contributing to them in the future.

¹⁵³ *TRC Final Report*, *supra* note 1 at 168.

¹⁵⁴ *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.

¹⁵⁵ *Ibid* at s. 5.