



SAGESSE

ISSN 2560-7014

Preserving the Legacy of Residential Schooling Through a Rawlsian Framework

by

Alissa Droog, Dayna Yankovich, Laura Sedgwick
MLIS Graduates, Western University

Introduction

Indigenous Peoples in Canada have been mistreated. A notable example of this mistreatment is the residential schooling system in which countless Indigenous students were unwillingly taken from their homes and forced to attend boarding schools where they were, in many cases, abused physically, sexually, or emotionally. In trying to make amends for what was done, the Canadian Government developed initiatives to help move towards truth and reconciliation. In moving forward, issues regarding handling important records emerged, specifically the Independent Assessment Process (IAP) records, relating to how survivors of residential schooling systems were treated. In 2017, the Supreme Court of Canada ruled that these records should be destroyed.

This paper evaluates this controversial decision through application of John Rawls' Principles of Justice. Rawls is a 20th century American political philosopher whose Principles of Justice, namely the Principle of Equal Liberty and the Difference Principle, provide a framework to understand justice and fairness within society. More

specifically, these principles assert that everyone ought to have equal rights and that where disparities do exist, social structures ought to benefit the least advantaged groups (Garrett). As Indigenous Peoples have been disempowered by Canadian society, Rawls' Principles of Justice has been chosen as a lens to view this case as the focus on power imbalances effectively shines a light on themes including justice and fairness in a society of diverse groups and values. The exploration of Rawls in relation to this court case suggests that the decision to destroy these IAP records does not support the survivors or efforts for reconciliation. Furthermore, this is not how human rights cases ought to be handled as it does not benefit the least advantaged groups.

Research Question

How can the 2017 Supreme Court of Canada's decision (Canada (Attorney General) v. Fontaine, [2017] 2 SCR 205, 2017 SCC 47 (CanLII), <<http://canlii.ca/t/h6jgp>>) regarding the destruction of Independent Assessment Process records be evaluated considering Rawls' Principles of Justice?

Background

The residential schooling system lasted for over 150 years in Canada and was attended by over 150,000 First Nations, Inuit and Métis children (Truth and Reconciliation Commission of Canada 3)(TRC). In many cases, children were forcibly removed from their parents to attend these boarding schools which were funded by the Canadian government and run by religious organizations. Many perished or were abused at the hands of their caretakers. Beginning in the 1990's and 2000's, survivors of abuse in residential schools began to take their cases to court and in 2007, the Canadian government established the Indian Residential School Settlement Agreement (IRSSA). This agreement provided compensation to survivors of the residential

schooling system, supported healing measures and commemorative activities, and established the Truth and Reconciliation Commission (TRC) (“Indian Residential Schools”).

Compensation was provided to survivors of the residential schooling system in two ways. All attendees of the residential schooling system were entitled to receive compensation based on the number of years they attended through the Common Experience Payment (CEP), or, negotiate a different sum via the Independent Assessment Process (IAP). Over 79,000 survivors who came forward to receive the standard \$10,000.00 for proof of having attended the schools, and an additional \$3,000.00 for every additional year they attended (Logan 93). The IAP allowed survivors to receive additional compensation to the CEP if they suffered lasting psychological harm due to physical, verbal or mental abuse experienced in the schools. IAP applications were received between 2008-2012 and 38,257 claims have been received through the IAP process to date (“Indian Residential Schools”).

In 2008, the IRSSA also established the TRC which had two goals: “reveal to Canadians the complex truth about the history and the ongoing legacy of the church-run residential schools...” and to “guide and inspire a process of truth and healing, leading toward reconciliation...” (Truth and Reconciliation Commission of Canada 23). Between 2008 and 2015, the TRC travelled across Canada collecting documents and 6,750 statements about residential schools (Truth and Reconciliation Commission of Canada 29). The TRC encountered several obstacles in gathering documents about residential schools, including resistance from the Ontario Provincial Police (OPP), Library and Archives Canada (LAC), and difficulty gaining records from the IAP held by the Indian Residential Schools Adjudication Secretariat (IRSAS). The TRC won court cases with

LAC and the OPP to turn over records relating to residential schools, but the debate over who should house the IAP records has been fraught with ongoing tension (Truth and Reconciliation Commission of Canada 27-28).

The tension between privacy and sharing records of trauma shown in the IAP court case reveals a complex story about reconciliation, privacy and record-keeping in Canada. In 2010, the TRC and IRSSA created a consent form allowing anyone who shared their testimony through the IAP to have their records and testimony archived with the TRC; however, this consent form did not exist at the time that the IAP started and survivors often failed to understand the difference between the TRC and IAP (Logan 94). To complicate matters further, the IRSSA “required an undertaking of strict confidentiality of all parties to the IAP hearings, including the Survivors themselves” (Truth and Reconciliation Commission of Canada 28). In 2014, the Chief Adjudicator of the IAP supported a decision that all records from the IAP process would be destroyed immediately (Truth and Reconciliation Commission of Canada 28). In the court case which followed, the TRC sought to archive the IAP documents with the LAC “as an irreplaceable historical record of the Indian Residential School experience” (Fontaine v. Canada (Attorney General), 2014 ONSC 4585 (CanLII), <<http://canlii.ca/t/g8hd3>>).

The court ruled that unless the claimant came forward and chose to share their documents with the TRC, IAP records would be destroyed after a 15- year retention period. This decision was appealed in the Ontario Court of Justice in 2016, and then appealed again in the Supreme Court of Canada in 2017. In both cases, the decision by Justice Parnell was upheld and, unless future action takes place, these records will be destroyed by 2027 (Indian Residential Schools Adjudication Secretariat).

Literature Review

A review of the literature reveals a body of scholarship dedicated to shedding light on the importance of record retention after an atrocity takes place. Record collection and preservation after human rights abuses are important steps in the healing and memory keeping process. However, the archives could become a contentious space when various groups lobby for their own best interest and seek to obscure the collective memory to their own advantage. The work of reconciliation or restorative justice relies on accurate assessments of the past and the creation of archives play an important role in either advancing or detracting from this work (Logan 92).

Truth-telling as a path to healing remains a widely held consensus among post-conflict scholars, however, Mendeloff challenges these claims as based more on faith than on empirical evidence of peacebuilding (355). The notion that truth-telling fosters reconciliation, promotes healing, deters future recurrence, and prevents historical distortion appear true anecdotally, even if scientifically unverifiable (Mendeloff 356). To this end, TRCs have become a common mechanism of post-conflict restorative justice work.

These commissions aim to reconstruct and repair the fractured social fabric within a conflicted society. Over the past 25 years, TRCs have been commonly employed post-conflict, typically following a similar pattern of providing all sides an opportunity to testify to their own experiences. The accounts are then collated into a unifying history of the human rights abuse, with a goal of recovery, as truth is unearthed, and societal memory is established. Over the past 25 years, TRCs have taken place in South Africa, Sierra Leone, Peru, Timor-Leste, Morocco, Liberia, Canada, and Australia, with many more planned for the future (Androff 1964). TRCs typically have little connection with the court

system, and in instances where they do, it is in the interest of persecuting offenders. The South African TCR referred perpetrators to the court system, while Sierra Leone determined beforehand that serious crimes would proceed through the United Nations (UN) and lesser offenses through the TRC (Androff 1969). When the courts are involved, it is to work on behalf of the victims. Regardless of the court involvement, TRCs are designed “to produce a coherent, complex, historical narrative about the trauma of the violence and provide victims with the opportunity to participate in the process of post-conflict reconstruction” (Androff 1975).

Wood et al considered the field of archival studies and provided a critique of current practices in support of human rights work (398). They argue for a more nuanced look at the established archival description techniques and ask how it would look to invest less power in the institution housing the records and more in the people involved. The archival concept of provenance, that is ownership or custody of the record, becomes problematic when considering human rights records which hold community value. Citing an example from records of Indigenous Australians, Wood et al. discuss the use of parallel provenance and a participant driven model that honours the individuals and communities involved in their creation (403). These authors go so far as to describe an iterative recordkeeping process, where records are not static but include the voices of those who preserve, teach, add to, or in any other way become a part of the life of the record (Wood, et. al. 403). This honours the record as alive and relevant to the life of the community.

When the Supreme Court reached its decision regarding the destruction of the IAP records in 2017, the case received significant national news coverage. Headlines from the Canadian Broadcasting Corporation (CBC) included “Court order to destroy

residential school accounts 'a win for abusers': [National Centre for Truth and Reconciliation] NCTR director" (Morin), and "Indigenous residential school records can be destroyed, Supreme Court rules" (Harris). Then again in 2019, the case received attention with the development of the My Records, My Choice website, created by IRSAS, which provided the option for record preservation. CBC reported, "New website helps residential school survivors preserve or destroy records" and Aboriginal Peoples Television Network (APTN) National News featured the article "Former TRC chair encourages residential school survivors to save records" (Martens).

The IAP itself has been studied and Moran provides a thorough legal review of the IRSSA, which includes a multiple page summary of the IAP (Moran 531 - 564). This legal primer sheds light on the nature of the IAP, specifically its design as a high-volume litigative process, with some features curtailed to keep the proceedings claimant-centred. For instance, "perpetrators are not parties and [that] they have 'no right of confrontation' during the hearing. The limited rights of alleged perpetrators were expressly designed to protect that safety and security of the claimant during the stressful hearing process" (Moran 561).

Similarly, Morrissette and Goodwill provide a detailed overview of the IAP process but from a health and human services perspective (542). Coming from this lens, they speak to the therapeutic relationship of survivor to therapists, and the unique healing requirements that may come about as a result of this process. These authors consider the rationale that led people to submit themselves to what may result in further traumatization: "For some survivors, formal hearings provide an opportunity to finally reveal the truth, describe their experiences, and assist in the prevention of future similar human tragedies and cultural trauma" (Morrissette and Goodwill 555). When a person

opens up and expresses their experiences, this can prevent what these authors call a conspiracy of silence surrounding trauma, because “silence is profoundly destructive and can prevent a constructive response from victims, their families, society, and a nation” (Morrissette and Goodwill 555). Reimer has written a lengthy qualitative report on the experiences of those who participated in the CEP process. Although written before the start of the IAP, she asked participants about their thoughts on both the CEP and the proposed IAP. Many reported instances of re-traumatization as a result of participation in the CEP. Some stated the large amount of paperwork and involvement with lawyers was a deterrent for participation in the IAP (Reimer xiii-xvi). This was written before the official court decision regarding the destruction of the IAP records. Further research is needed to investigate how this decision will impact the healing and reconciliation process. Will this undermine the important work of traumatic disclosure and thus re-victimize participants? A gap exists in the literature. It is important to revisit this issue with consideration of legal, ethical, archival, and human services perspectives as aforementioned works do not sufficiently address these concerns. Previously mentioned works describing the IAP do not realize the future destruction of the records. As such, it will be important to revisit this issue both from a legal, ethical, archival, and health and human services perspective.

Methods

To answer the research question, a literature review was conducted to determine existing gaps surrounding the NCTR, IRSSA and the IAP. Relevant documentation and literature were identified, reviewed, and analyzed. Much of the important information required for this research came from the IRSSA website. This website provides a range of information pertinent to this inquiry ranging from the IAP application guide to My

Records, My Choice options to court decisions and legal documents and more. Rawls' Principles of Justice framework was then applied to assess and analyze the documentation and final court decision. A series of secondary questions were developed and considered to further motivate the process and answer the research question.

What happened?

It is important to understand the background that led to the court decision regarding the destruction of IAP records before trying to evaluate the ethical dimensions of this case against Rawls' Principles of Justice. Background knowledge of the situation can help to provide context for how people were treated and the decisions that were made to move the case forward. Furthermore, this additional insight helps to provide information from diverse perspectives held by various stakeholders. Such insights contribute to building a full image of what happened and who was affected. This is necessary to enable assessment and evaluation against Rawls' Principles of Justice.

What arguments led to court decision?

Court documentation reveals a variety of conflicting arguments and considerations that led to the final decision to have the IAP records destroyed in 2027. Arguments in favour of destroying the IAP records include: promoting the autonomy of survivors (as they have a choice whether to reclaim and preserve their own record or let them be destroyed) and maintaining confidentiality (as survivors were told their records would be destroyed, according to one judge's perspective). Arguments opposed to destroying the records include: the importance of preserving this information for future generations as a record of the atrocities that Indigenous people experienced throughout the 19th and 20th centuries contradictory evidence that could indicate that IAP records could be archived. A point of contention in the case was whether or not the language

shared with the IAP claimants indicated that the records would be archived or destroyed after use. Various judges had differing perspectives on this matter. Further, the courts took into account whether the records ought to be considered government records or court records as government records are subject to “federal privacy, access to information, and archiving legislation” (*Canada (Attorney General) v. Fontaine*, [2017] 2 SCR 205, 2017 SCC 47 (CanLII), <<http://canlii.ca/t/h6jgp>>). This consideration is more pertinent to legal rather than ethical dimensions of the case.

What biases and values need to be considered?

Biases and values that ought to be considered when addressing this research question include those related to which groups are in power, the diversity of values and perspectives, as well as personal biases.

This analysis focuses on the 2017 court case and how to move forward with the IAP records rather than the initial intention behind this process. Limitations of this research include lack of access to diverse perspectives and the inability to consult the various stakeholders to learn their views. Were we able to survey the survivors we would have a better sense of their values and desires moving forward. Further, we could better consider the relevance of diverse perspectives to Rawls’ Principles of Justice. In part due to these limitations, this is an exploration of Rawls in relation to the court proceedings and not a definitive decision on how the case ought to proceed.

Theoretical Framework

Rawls’ Principles of Justice are concerned with the ways in which rational persons would structure a society if they were behind a so-called “veil of ignorance” that distorts any knowledge about who they are in the world.

Rawls' first principle, the Principle of Equal Liberty, states that, "Each person has an equal right to the most extensive liberties compatible with similar liberties for all" (Garrett). Everyone should have equal opportunity and access when it comes to basic rights and freedoms. Rawls' second principle, the Difference Principle, holds that "Social and economic inequalities should be arranged so that they are both (a) to the greatest benefit of the least advantaged persons, and (b) attached to offices and positions open to all under conditions of equality of opportunity" (Garrett). This principle suggests that a world ought to be structured such that disadvantaged groups or individuals are privileged when it comes to social and economic inequalities (i.e. disadvantaged peoples are given the most benefits when relevant differences exist). To this point, a rational person would not design a world that favours one group over another socially, economically, or otherwise as this risks the designer being unable to benefit from the social structure.

This framework can be used as a lens upon which to view the case at hand and to frame this research question. To put it differently, would a rational person behind a veil of ignorance support the decision regarding the destruction of IAP records?

Findings and Discussion

Considering Stakeholders and Values

In 2017, as part of an appeal, the Supreme Court of Canada ruled that the previous court's decision to destroy IAP records would be upheld. This decision ensures that all IAP records will be destroyed in September 2027, except the records that are preserved through the IRSSA's My Records, My Choice initiative. This initiative permits individuals who made a claim through the IAP to choose between obtaining a copy of

their IAP record to keep for themselves or share with others; preserve their record for history, public education, and research at the NCTR with open or restricted access; or to do both. Open access allows the NCTR to share the documents and personal information publicly for reconciliation purposes whereas restricted access means this information can be shared for purposes such as publication but only if personal information is removed.

Notably, there is no option for claimants to have their IAP documents archived using a retention policy in which the records would be stored privately for a specified number of years after the death of the claimant. These options do not present enough choice for someone who may want their records to be preserved while maintaining their privacy while alive. If an individual does nothing, their record will be destroyed.

The court decision to destroy these records, except those that are preserved by individual stakeholders, impacts various groups and stakeholders that are sure to have diverse values and perspectives on the matter. Various groups that are impacted by the court's decision include individuals who went through the IAP; relatives of those who have an IAP record (whether alive or deceased); the church or diocese and state; the NCTR; and future generations.

It is not possible to know the exact views and values of individuals within these groups or even fully understand or appreciate the views and values of these groups as a whole without direct consultation. For the most part, a general sense of the various perspectives can be inferred through review of court documentation, news sources, and the other literature referred to in this paper.

Generally, the perspective of the church or diocese is that the records should be destroyed whereas the values and position of the NCTR are that the records ought to be

preserved. The reasons for this seem clear. It appears that the churches and dioceses referred to in the court documentation do not want a detailed record of the atrocities for which they are in large part responsible. The NCTR values the importance of acknowledging and preserving records of what occurred in hopes of moving towards reconciliation and a coherent representation of what happened.

From the court documents and literature, it is difficult to determine to what extent individuals with IAP records appreciate that they can make their own decision as to whether their record is preserved or destroyed. On the one hand, these individuals may feel empowered by the fact that they are given control of their own record. On the other hand, individuals in this group may feel that these options are rather limiting and do not address the bigger issue. That is, although the My Records, My Choice initiative appears on the surface to have the aim of empowering individuals to make their own choices, it ultimately fails in so far as it presents a small selection of options. Further, it does not consider the values of various other stakeholders including future generations who ought to be informed of the atrocities bestowed upon those who came before.

In accordance with Rawls' Principles of Justice, specifically the Difference Principle, society must more attentively consider the most disadvantaged groups and make decisions that most closely align with benefiting these groups. In this case, identifying the most disadvantaged groups is a challenge in and of itself. It is safe to say that the church or the state are not the most disadvantaged. The most disadvantaged groups are either the individuals with IAP records, who suffered greatly at the hands of the church and state, or future generations, who will lack important insights about the past should the records be destroyed. For either group, in accordance with Rawls'

Principles of Justice, it appears that the decision to destroy IAP records would be harmful to both groups as will be subsequently explored in more detail.

Evaluating Court Decision

Rawls' Equal Liberty Principle states that "Each person has an equal right to the most extensive liberties compatible with similar liberties for all" (Garrett). Three rights can be considered from the 2017 court case of the IAP records: the right to privacy, the right to know and the right to autonomy. The right to privacy refers to the individual rights of IAP claimants to have their records remain private. The 2017 court case held the IAP records will be destroyed after 15 years except if an IAP claimant chooses to save their personal records because "The IRSSA's express terms provided that the IAP Documents would be treated as highly confidential, subject to the very limited prospect of disclosure during a retention period, and then be destroyed" (Canada (Attorney General) v. Fontaine, [2017] 2 SCR 205, 2017 SCC 47 (CanLII), <<http://canlii.ca/t/h6jgp>>). The case also involves the right to know what happened in the residential schools in order to work towards reconciliation. Although this is a large part of the reason the court case made it to the Supreme Court, the 2017 case remains silent on this particular right, choosing instead to determine whether the supervising judge of the 2016 case had the right to make a decision about the destruction of the records in the first place. Lastly, the case deals with the right to autonomy, or the right for individuals and groups to control their own narrative. This could be interpreted as the right for claimants to determine what happens to their IAP record, or for groups such as the NTCR to use IAP documents to preserve the memory of residential schooling in Canada. Overall, the court case reveals tension between the individual rights of IAP claimants to autonomy and privacy (including the right to be forgotten) and the collective

rights to know what happened and control the narrative of residential schooling in Canada.

The 2017 court case ruled that IAP documents would be subject to a 15-year retention period in which claimants can opt to keep or share their records with the TRC before all records are destroyed in 2027. This decision attempts to balance the individual right to privacy and collective right to know by granting the individual right to autonomy to IAP claimants. However, by granting individuals the right to autonomy over their IAP records, this decision determines that the right to privacy and autonomy for individual claimants overrides the collective right to know. Thus, the court case aligns with Rawls' Principle of Equity in so far as it protects the individual right to privacy and autonomy to control what happens with IAP records. However, the court case protects this right above the collective right to know which does not align with the Principle of Equity as it does not grant the right to know in similar ways to all people in Canada. By destroying the records, the privacy of individuals is upheld, but the long-term effects of the decision do not aid the reconciliation efforts.

Rawls' Difference Principle asserts that society should be organized so that everyone has similar rights, but so that the least advantaged persons receive the greatest benefit from structures within that society in order to aim for equality. In this case, the least advantaged persons in society can be understood as the IAP claimants, and Indigenous Peoples in Canada who have experienced the intergenerational trauma left by the residential schooling system. If applied, the Difference Principle would find a way to ensure that the greatest benefit from this court case would go to either IAP claimants and/or Indigenous Peoples in Canada.

Based on these two principles, Rawls' framework assumes that ethical judgements should be made behind a veil of ignorance so that a rational person could reason what is best for the society of disadvantaged groups. The result of the 2017 court case does not align with Rawls' framework because it structurally benefits the advantaged people in this case. The state and religious organizations benefit from the destruction of the IAP records which shed light on the abusive acts that took place in the residential schooling system. Moreover, the reconciliation efforts by Indigenous Peoples are harmed by losing a significant portion of the story of residential schooling in Canada. The IAP records contain up over 36,000 testimonies of abuse in residential schools, whereas the TRC collected less than 6,500 statements about residential schools from survivors, families, church leaders, etc. The loss of these 36,000 records could harm future generations in Canada by contributing to an incomplete picture of the residential schooling system.

Another factor to consider is the limited options given to IAP claimants as a result of the 2017 court case which established the My Records, My Choice initiative tasked with contacting surviving IAP claimants about sharing their records with the NCTR (Indian Residential Schools Adjudication Secretariat). The My Records, My Choice initiative offers only four options to IAP claimants which include:

- Allow their IAP records to be destroyed by 2027
- Obtain a copy of their IAP records for themselves
- File a copy of their IAP records with the NCTR via open access
- File a copy of their IAP records with the NCTR via restricted access

For a claimant who understands the long-term benefits of archiving their records with the NCTR and who does not wish to publicize their history of abuse, the restricted

access option is the best option available. However, under the restricted access option, “the NCTR may use and share your records with others for purposes such as public education, but only if the NCTR removes your personal information” (My Records, My Choice). Unfortunately, even this option fails to fully respect if an IAP claimant wants to have their records archived in a way that disallows their use until after their passing.

The options available to IAP claimants resulting from the 2017 case do not benefit the least advantaged people as many IAP claimants have passed away and will not have a choice about what happens with their records. Nor does the voluntary choice to archive or destroy records ensure that any of the records are preserved for reconciliation efforts. When we consider that the transcripts from the IAP records represent possibly the largest collection of transcripts detailing the most serious cases of abuse in the residential schooling system in Canada, the list of options does little to ensure that any of these are kept for the purpose of better understanding residential schooling or used for reconciliation.

What would a rational person behind a veil of ignorance decide to do with the IAP records? It is possible that a person might choose to destroy the records out of respect for the traumatic nature of the information contained in the IAP records, especially when they consider that the result of publicizing these records “would have destructive effects on the fabric of existing communities and there would be generations’ worth of repercussions for all parties involved” (Logan 94). However, it is important that the person making an ethical judgement in Rawls’ framework is rational. By this, we mean that the person is able to make judgements considering other evidence and a variety of viewpoints. A rational person would look at this situation and compare it to other truth

and reconciliation efforts worldwide, as well as the long-term effects of destroying or keeping the records.

With that in mind, a rational person behind a veil of ignorance would conclude that the destruction of the IAP records does not serve the long-term interests of reconciliation or collective memory for Indigenous Peoples in Canada. They also would not choose to publicize the records in any way as this fails to protect the right to privacy for IAP claimants. Thus, they would probably find a way to balance these rights by keeping all the records, but in a way that keeps confidential information private to avoid repercussions to survivors and their families. This could look similar to archiving the records with the NCTR through something similar to the “restricted access” option available through My Records, My Choice, but may also include a retention policy in which the records are only to be used after a specific number of years after the claimant has passed away, or only to be studied without personal information attached.

A rational person would also find that the fate of the records should not be in the hands of a court system run by the state, but by Indigenous Peoples who should decide how they want to deal with the records. One of the largest problems in this case was how it focused on who had the authority to make decisions about the fate of the IAP records instead of the effects of keeping or destroying the records in the first place. For example, the 2017 Supreme Court case was started by the Attorney General of Canada who appealed the 2016 decision to destroy the IAP records on the grounds that the supervising judge of the 2016 case had no grounds to make that decision: “The Attorney General of Canada appeals to this Court, arguing that the IAP Documents are “under the control of a government institution” within the meaning of the Access to Information Act, the Privacy Act and the Library and Archives of Canada Act, and that the supervising

judge had no jurisdiction to order their destruction” (*Canada (Attorney General) v. Fontaine*, 2017 SCC 47, p. 209-210). The court case spends considerable time defending the right of the IRSAS to make decisions about the fate of the IAP records.

Overall, this is a complex issue and no solution will balance the rights of all stakeholders equally; however, keeping the records and archiving them in a way that protects the privacy of IAP claimants would benefit Indigenous People as the most disadvantaged group in the long-term. It does not benefit individual IAP claimants in the short-term as their right to autonomy about how their records are used is overridden by the right to know; however, the use of a strong privacy and retention policy could serve their right to privacy more than the current forms of restricted and open access archiving available through My Records, My Choice. This conclusion is also limited in that fact that it treats Indigenous Peoples as a homogenous group since keeping the records is viewed to be more useful for reconciliation efforts in the future.

Archives and Indigenous Knowledge

This work seeks to synthesize known research rather than prescribe a framework for Indigenous archival practices. The particular strategy employed may differ according to geography, local practices, teachings, and community priorities. It is important to identify that alternative approaches to archival techniques exist which takes into account Indigenous methodologies and epistemologies.

Little has been written specifically regarding Indigenous archiving in Canada. An Australian Research Council funded project, *Trust and Technology: Building Archival Systems for Indigenous Oral Memory*, did important work with the Koorie people of Australia and their archives. Their stated goal was to encourage the Australian archival profession to “understand the priorities of Indigenous communities and embrace

Indigenous frameworks of knowledge, memory and evidence, including knowledge that is stored and transmitted orally” (McKemmish et al. 212). They aimed to build trust between Indigenous communities and archival services. Indigenous Australians felt wary of archival institutions as these had been in the past places where their own information was kept to be held against them. Two competing themes emerged: that the people desired control and access to their own records as owners; and there was governmental resistance to this as it was felt that these records belonged to them (McKemmish et al. 219). This approach is appropriate for consideration within a Canadian context as well. Out of this work, the researchers devised seven statements of principle, which Canada would be wise to consider when coordinating archival materials with Indigenous communities. Of particular relevance to this case are Principle 2 and Principle 4 which stress the recognition of rights in records and adoption of holistic approaches. These principles assert that Indigenous People should have a voice in what happens with records created pertaining to them and their experiences. Additionally, community-controlled archival systems should provide a means for bringing together residential school records in a manner in keeping with individual and community wishes (McKemmish 231). The remaining principles are also worth noting and would require further research to establish relevance to the Canadian context. These principles are as follows:

- Principle 1: Recognition of all archival sources of Indigenous Knowledge
- Principle 2: Recognition of rights in records
- Principle 3: Recognition of rights in legal and archival frameworks
- Principle 4: Adoption of holistic, community-based approaches to Indigenous archiving

- Principle 5: Recognition of need for Indigenous people to challenge “official” records
- Principle 6: Recognition of need for inclusive education and training for recordkeeping professional practice
- Principle 7: Reconciling research, rethinking the relationship between academia and Indigenous communities (McKemmish 230-231).

Much of the literature surrounding residential schools has focused on transitional justice and lacks consideration of other approaches. Augustine Park, a Canadian restorative justice researcher, seeks to fill this gap by looking at community-based restorative work in response to residential school trauma (425). Although there is no set definition or framework for a one-size fits all approach to restorative justice work and residential schools, Park’s definition of restorative justice is helpful: “(1) justice practices that originate and take place within or between communities, (2) involving the participation of stakeholders and (3) which work to validate victims/survivors, encourage wrongdoer responsibility and transform relationships” (Park 427). This approach works to decentre the state as the sole arbiter of justice and healing post residential schools (Park 427). One of the goals of restorative justice work in Indigenous communities is “striving to teach decolonizing truths” (Park 440). To this point, when the IAP case is considered through a restorative justice framework, the destruction of IAP records negates the valuable opportunity to use them within community justice and healing work. In contrast, transitional justice typically involves state-run and judicial approaches to healing. Thus, the IRSSA is an example of transitional justice because it looks to superficially or broadly address large-scale historical wrongs rather than taking a more nuanced, community-based approach. Of importance to the topic at hand is the contention “that community-based restorative justice (CBRJ) presents a locally

meaningful alternative to official (state-sponsored) transitional justice responding to mass violence. In Canada, the failings of the official transitional justice apparatus point to the need for community-based alternatives” (Park 425). Destroying the IAP records may prove antithetical to the goal of Indigenous community-based restorative justice work.

Recommendations

Moving forward, it is recommended that this case be used as an example of what ought not be done in human rights cases in terms of presenting disadvantaged groups with limited options and seemingly disregarding significant values such as preservation of history and sharing truth and knowledge with future generations. Additionally, the groups in power, in this case the church and state, ought not be in full control of the proceedings and processes. Especially in a case like this, alternative methodologies and ways of doing things (like preserving knowledge and archiving) ought to be considered. Based on the research, the following considerations are available for discussion:

- Learn from this situation. Let it inform future human rights archival cases, especially when sensitive records are involved
- Recognize that records hold value to people and communities
- Provide additional options in the present moment; refrain from presenting survivors with a false dichotomy
- Explore Indigenous archival mechanisms as an alternative for the IAP records
- Incorporate IAP records into existing or developing community-based restorative justice projects as possible

Conclusion

The Supreme Court Decision to destroy IAP records, aside from those preserved through My Records, My Choice, does not sufficiently benefit the IAP claimants, residential schooling survivors, or future generations. This is because the destruction of these records, in some sense, benefits the perpetrators rather than bringing to light the truth about what atrocities occurred in Canada in the 19th and 20th centuries. In accordance with Rawls' Principles of Justice, it is important that the aforementioned groups, IAP claimants, residential schooling survivors, and future generations, are privileged when it comes to the Supreme Court's ruling since these are the most disadvantaged groups. Numerous ways in which the court proceedings align (or do not) with Rawls' Principles of Justice have been identified and explored. This exploration of the Supreme Court's ruling in conjunction with Rawls' Principles of Justice is limited in so far as the values and perspectives of actual stakeholders could not be directly obtained.

Glossary of Terms

APTN- Aboriginal Peoples Television Network

CBC - Canadian Broadcasting Corporation

CEP- Common Experience Payment

IAP - Independent Assessment Process

IRSAS - Indian Residential Schools Adjudication Secretariat

IRSSA - Indian Residential Schools Settlement Agreement

LAC - Library and Archives Canada

NCTR - National Centre for Truth and Reconciliation

OPP - Ontario Provincial Police

TRC - Truth and Reconciliation Commission of Canada

UN - United Nations

Works Cited

Androff, David K. "Truth and Reconciliation Commissions (TRCs): An International Human Rights Intervention and its Connection to Social Work." *The British Journal of Social Work*, vol. 40, no. 6, 2010, pp. 1960-1977. doi: 10.1093/bjsw/bcp139

Canada (Attorney General) v. Fontaine, [2017] 2 SCR 205, 2017 SCC 47 (CanLII), <<http://canlii.ca/t/h6jgp>>

CBC News. "New Website Helps Residential School Survivors Preserve or Destroy Records." *CBC News*, 14 January 2019.

<https://www.cbc.ca/news/canada/saskatchewan/new-residential-school-website-survivors-records-decision-1.4977258>. Accessed Apr. 2019.

Fontaine v. Canada (Attorney General), 2014 ONSC 4585 (CanLII), <<http://canlii.ca/t/g8hd3>>

Garrett, Jan. *John Rawls on Justice*. Western Kentucky University, 3 Sept. 2002, <https://people.wku.edu/jan.garrett/ethics/johnrawl.htm#prin>. Accessed 14 Apr. 2019.

Harris, Kathleen. "Indigenous Residential School Records Can Be Destroyed, Supreme Court Rules." *CBC News*, 6 Oct. 2017,

<https://www.cbc.ca/news/politics/indian-residential-schools-records-supreme-court-1.4343259>. Accessed 10 Apr. 2019.

Indian Residential Schools Adjudication Secretariat (IRSAS), <http://iap-pei.ca/home-eng.php>. Accessed Apr. 2019.

“Indian Residential Schools.” *Indigenous and Northern Affairs Canada*, 2019, <https://www.aadnc-aandc.gc.ca/eng/1100100015576/1100100015577#sect1>. Accessed Apr. 2019.

Kovach, Margaret. *Indigenous Methodologies: Characteristics, Conversations and Contexts*. University of Toronto Press, 2009.

Logan, Tricia. "Questions of Privacy and Confidentiality after Atrocity: Collecting and Retaining Records of the Residential School System in Canada." *Genocide Studies International*, vol. 12 no. 1, 2018, pp. 92-102.

Martens, Kathleen. "Former TRC Chair Encourages Residential School Survivors to Save Records." *APTN National News*, 6 January 2019, <https://aptnnews.ca/2019/01/16/former-trc-chair-encourages-residential-school-survivors-to-save-records/>. Accessed Apr. 2019.

McKemmish, Sue, Shannon Faulkhead, and Lynette Russell. "Distrust in the Archive: Reconciling Records." *Archival Science*, vol. 11, no. 3-4, 2011, pp. 211-239. doi:<http://dx.doi.org/login.ezproxy.library.ualberta.ca/10.1007/s10502-011-9153-2>.

Mendeloff, David. "Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?" *International Studies Review*, vol. 6, no. 3, 2004, pp. 355-380. doi: <https://doi-org.login.ezproxy.library.ualberta.ca/10.1111/j.1521-9488.2004.00421.x>.

Moran, Mayo. "The Role of Reparative Justice in Responding to The Legacy of Indian Residential Schools." *The University of Toronto Law Journal*, vol. 64, no. 4, 2014, pp. 529-565. doi:10.3138/utlj.2505.

Morin, Brandi. "Court Order to Destroy Residential School Accounts 'A Win for Abusers': NCTR Director." *CBC News*, 6 October 2017.

<https://www.cbc.ca/news/indigenous/court-order-destroy-residential-school-accounts-1-4344918>. Accessed Apr. 2019.

Morrisette, Patrick J., and Alanaise Goodwill. "The Psychological Cost of Restitution: Supportive Intervention with Canadian Indian Residential School Survivors." *Journal of Aggression, Maltreatment & Trauma*, vol. 22, no. 5, May 2013, pp. 541-558. doi: 10.1080/10926771.2013.785459.

My Records My Choice. Indian Residential Schools Adjudication Secretariat, May 2019, <http://www.iap-pei.ca/records-eng.php>. Accessed May 2019.

Park, Augustine S. J. "Remembering the Children: Decolonizing Community-Based Restorative Justice for Indian Residential Schools." *Contemporary Justice Review* vol. 19, no. 4, Dec. 2016, pp. 424-444. Doi: 10.1080/10282580.2016.1226818.

Reimer, Gwen. *The Indian Residential Schools Settlement Agreement's Common Experience Payment and Healing: A Qualitative Study Exploring Impacts on Recipients*. Aboriginal Healing Foundation, 2010.

Smith, Linda T. *Decolonizing Methodologies: Research and Indigenous Peoples*. Zed Books, 2012.

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*. Truth and Reconciliation Commission of Canada, 2015.

Wood, Stacy, et al. "Mobilizing Records: Re-Framing Archival Description to Support Human Rights." *Archival Science*, vol. 14, no. 3, 2014, pp. 397-419. Doi: <http://dx.doi.org/login.ezproxy.library.ualberta.ca/10.1007/s10502-014-9233-1>.

Biographies

Alissa Droog (MLIS, MA, B.Ed., BA) is a recent graduate of the MLIS program at Western University and currently works at the University of Alberta Libraries as the Digital Literacies Resident Librarian. Her research interests include information literacy in higher education, information ethics, biblical reception history and children's literature.

Dayna Yankovich graduated from the MLIS program in 2019 and currently works in Information Management with the federal government. She also holds a Bachelor of Science Nursing from Western University (2008). Her professional interests include health information management, infection prevention and control, electronic document management systems, and knowledge management.

Laura Sedgwick's academic interests include science in policy making, feminist ethics, and information management and dissemination. She completed a BA in Philosophy and Psychology at Wilfrid Laurier University (2011); MA in Philosophy at Western University (2012); and MLIS at Western University (2019). Laura works as an Academic Advisor at Huron University.