

Protecting the Record: Indian Residential School Litigation and the Right to Truth

by Kimberly Murray

The most comprehensive archive that exists of Survivor testimony is set to be destroyed next year ... and a lot of people don't know that these records are about to be destroyed.¹

- Connie Walker

CANADIANS AND INDIGENOUS PEOPLE alike, have the right to know the truth about what happened at Indian Residential Schools. This right to know the truth is an internationally recognized legal right for victims, families, affected communities and society as a whole. The right to know the truth places a corresponding obligation on the state to protect the truth. Yet, in Canada, this is not the case.

In 2017, a Supreme Court ruling authorized the destruction of 38,000 Indian Residential School Survivor's records, including their testimonies.² This destruction is set to occur after September 19, 2027.

To circumvent the destruction of their records and testimonies, Survivors can provide consent to have their files transferred to the National Centre for Truth and Reconciliation (NCTR) – an archive housed at the University of Manitoba.³ But this process has not been made clear to Survivors and only a small fraction have done so.

How, then, do we protect the right to truth?

Confidentiality and the Independent Assessment Process

As part of the Indian Residential School Settlement Agreement, the Independent Assessment Process (IAP)⁴ was created; an adjudicative process whereby Survivors who had experienced sexual or physical abuse, or any other wrongful acts that resulted in serious psychological consequences, could seek redress. As part of this process, more than 38,000 Survivors participated, providing documentary and oral evidence about the abuses they endured, largely at the hands of those in charge of their care. Prior to testifying at their hearings, Survivors were promised confidentiality over what they shared. This promise of confidentiality was later interpreted by the courts to mean that their records and testimonies should be destroyed, unless Survivors choose to preserve them at the NCTR. Contained in these records and testimonies are individual and collective truths about: the extent and nature of physical and sexual abuse⁵ perpetrated on children; the names of perpetrators and officials that permitted these abuses to occur; in depth first-hand accounts of the daily occurrences of neglect, cruelty and wrongdoings within the institutions, and possibly the deaths and burials of the children that died. All these truths are evidence of the genocide and crimes against humanity, that today, a growing group of Canadians deny occurred.

Following the Supreme Court decision in 2017, the records and testimonies of Survivors were to be retained for a specified number of years to allow for the development and implementation of a notice program to advise Survivors of their rights regarding their IAP records and testimony.

To date, less than 100 files have been transferred to the NCTR, raising questions regarding the adequacy and effectiveness of the court-monitored notice program.

Protecting the Truth

Since the Supreme Court of Canada decision, new information continues to emerge about missing and disappeared Indigenous children, unmarked graves and burial sites. In my report as Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites Associated with Indian Residential Schools,⁶ I expressed my concerns that Canada is failing to comply with its international obligations by allowing the impending destruction of the IAP records to occur. This concern was echoed by the Permanent People’s Tribunal⁷ and several First Nations leaders across Canada have also called for a postponement of the destruction to allow for a more robust, accessible, and Indigenous-led notice program.⁸

For years prior to the signing of the Indian Residential Schools Settlement Agreement (IRSSA), thousands of lawsuits were filed against the federal government and the church entities that operated the institutions.

These lawsuits were filed in courts across the country, in every province and territory and most were finally resolved through the national IRSSA.⁹ These court files contain documents such as statements of claim and defence, transcripts of testimony in civil and criminal trials, affidavits of Survivors, and expert reports – all of which shed further light on what occurred behind the closed doors of Indian Residential Schools. These records are also evidence of Survivor resistance and agency. They are public (unless the court issued a sealing order) and are stored within court records centres until they will be destroyed, pursuant to provincial and territorial government disposition policies.

The Indian Residential Schools Records Project

With support from the Law Foundation of Ontario (LFO), the Social Sciences and Humanities Research Council (SSHRC), and Yellowhead Institute, the *Indian*

Residential School Records Project: Legal and Investigative Research for Justice (IRSRP) is a response to the need to protect the truth. Co-led by Pulitzer Prize-winning Cree journalist Connie Walker and Mohawk Lawyer, Kimberly Murray, the project responds to the pending destruction of the thousands of Survivor’s records and testimonies. The project is a continuation of the work that Connie Walker undertook in *Stolen: Surviving St. Michael’s*,¹⁰ an investigative podcast exploring the Indian Residential School where her father was taken in Duck Lake, Saskatchewan. During Connie’s investigation, she was able to access over 400 statements of claim that revealed important truths of Survivors.

The IRSRP has two interrelated goals. The first is to find, gather, and protect the thousands of lawsuits filed by Survivors against the federal government and church entities across the country to create an Indigenous-led archive. This archive will support Indigenous Peoples’ efforts to obtain accountability, further Indigenous data sovereignty, and breathe life into the United Nations Declaration on the Rights of Indigenous Peoples’ rights to truth, justice, redress, access to information, and the right to maintain, control, and protect their knowledge and historical records. The second is to produce an investigative national podcast to help raise awareness about and inform Survivors, their families and Indigenous communities of the pending destruction of 38,000 accounts of abuse collected through the Independent Assessment Process and of Survivors’ rights to have their records preserved at the NCTR.

The IRSRP will be a five-year investigation, and will work closely with Survivors, their families and communities.

Combating Denialism

The scheduled destruction of IAP records is occurring while Indian Residential School denialism is on the rise. In my Final Report as the Independent Special Interlocutor for Missing Children and Unmarked Graves, it is pointed out that:

It is not the existence of the Indian Residential School System that is being denied: it is the intent, outcomes, and impacts of that System.

Denialism relies on rejecting or misrepresenting the well-established facts about the Indian Residential School System. It relies on the techniques of historical research and analysis and falsely presents itself as a correction of the historical record.

Denialism is not a simple misunderstanding of the facts; whether consciously or unconsciously, denialists are working towards the accomplishment of psychological, practical, or political goals.

Indian Residential School denialism must be taken seriously because it puts at risk the important work of truth and reconciliation. It should not be dismissed as a harmless fringe phenomenon.¹¹

When people dispute documented histories of abuse, question Survivors’ accounts, or demand documentary proof while records containing that proof are being destroyed, protecting whatever we can becomes especially urgent. The Truth and Reconciliation Commission wrote that there was an urgent need to develop “historically literate citizens who understand why and how the past is relevant to their own lives and the future of the country”¹² while “examin(ing) concrete examples of historical injustice to learn from the past in order to prevent repetition in the present and future.” This, along with the preservation of records, can combat denialism.

Conclusion

The *Indian Residential School Records Project: Legal and Investigative Research for Justice* (IRSRP) and its efforts to preserve Indian Residential School litigation records and testimonies cannot replace the Survivors’ accounts that will be destroyed with the IAP records. But it can ensure that another significant body of Survivors’ truths is not also lost.

The lawsuits filed by Survivors are more than court records. They not only document what happened inside Indian Residential Schools, but they also document Survivor resistance.

Long before the Settlement Agreement was reached, Survivors went to court, told their truths, named those responsible, demanded accountability, and forced the government and churches to respond. Protecting these records is more than preserving evidence. It is about protecting the historical record created by Survivors themselves and ensuring that Survivors, families, Indigenous Nations and future generations can continue to access these truths. As September 2027 approaches, we must ask ourselves, what truths must we protect to ensure that the gross violations of human rights and other atrocities that occurred against Indigenous children never happen again?

CITATION

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Footnotes

1. Testimony of Connie Walker before the Permanent Peoples Tribunal on Missing and Disappeared Indigenous Children and Unmarked Graves in Canada, May 27, 2026.
2. Canada (Attorney General) v. Fontaine, 2017 SCC 47, [2017] 2 S.C.R. 205
3. National Centre for Truth and Reconciliation. "IAP/ADR Records." 2026. <https://nctr.ca/archives-and-collections/iap-adr-records/>
4. Indian Residential School Settlement. "Court Official Notice." n.d. <https://www.residentialschoolsettlement.ca/settlement.html>; Indian Residential Schools Adjudication Secretariat. "The IAP Story." n.d. <https://www.iap-pei.ca/story-eng.php>.
5. Indian Residential Schools Adjudication Secretariat. "The IAP Story." n.d. <https://www.iap-pei.ca/story-eng.php>; National Centre for Truth and Reconciliation. "IAP/ADR Records." 2026. <https://nctr.ca/archives-and-collections/iap-adr-records>.
6. Office of the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites Associated with Indian Residential Schools. Sacred Responsibility: Searching for the Missing Children and Unmarked Burials, Interim Report Findings June 2023. https://osi-bis.ca/wp-content/uploads/2023/07/OSI_InterimReport_FINDINGS_June-2023_web.pdf. Office of the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites Associated with Indian Residential Schools. Final Report October 2024. <https://osi-bis.ca/report/final-report-october-2024-2/>.
7. Permanent People's Tribunal. "PPT Preliminary Statement: 57th Session on Missing and Disappeared Indigenous Children and Unmarked Graves in Canada." May 31, 2026. <https://permanentpeopletribunal.org/ppt-preliminary-declaration-57th-session-on-missing-and-disappeared-children-and-unmarked-graves-in-canada/?lang=en>.
8. <https://www.cbc.ca/news/indigenous/petition-residential-school-files-9.7114976>
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10. Walker, Connie. 2024. "Stolen: Surviving St. Michael's." Gimlet Media. <https://open.spotify.com/episode/2Bll-RP1ZORKq2lxfpLUhzA>.
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12. TRC Reconciliation Volume p. 137.
13. *Upholding Sacred Obligations*, p.1098.