

CLEBC TRUTH AND RECONCILIATION ACTION PLAN: ANSWERING THE CALLS TO ACTION

Nov. 17, 2017

Background

The Truth and Reconciliation Commission (TRC) was established in 2008 as part of the settlement of the largest class action in Canadian history, brought by Indian Residential School (IRS) survivors against governments and churches who had operated the schools. The survivors negotiated for the creation of the TRC to raise public awareness and address the ongoing societal impacts of the IRS.

The TRC faced the challenge of addressing crimes committed against individual children, while also addressing the intergenerational trauma and broad impact on Indigenous societies and cultures. The IRS legacy of institutional child abuse (sanctioned by the law) continues in the grossly disproportionate representation of Indigenous Peoples in the child welfare and criminal law systems; high levels of violence against and amid Indigenous Peoples and Communities, and violence against Indigenous women, girls, and two-spirited people.

A fractured relationship continues between the legal profession and Indigenous Peoples. The TRC observed that the legal system played, and continues to play, a very important role in the inequality of Indigenous Peoples within Canadian society. The Canadian legal system is based on “failed notions of assimilation”, an unwillingness to recognize the legal reality that Indigenous societies, laws and legal orders pre-existed Crown sovereignty, and a restricted view of what law is, which largely excludes Indigenous laws and legal orders.

Reconciliation is a process of “coming to terms with events of the past in a manner that overcomes conflict and establishes a respectful and healthy relationship among people, going forward.”¹

Reconciliation must both “support Aboriginal peoples as they heal from the destructive legacies of colonization” and “inspire Aboriginal and non-Aboriginal peoples to transform Canadian society so that our children and grandchildren can live together in dignity, peace, and prosperity on these lands we now share.”² Reconciliation requires truth-telling about the past, and a commitment to move forward in a better way “with concrete actions that demonstrate real societal change”³. Reconciliation requires us to

¹ TRC. What we have learned: Principles of Truth and Reconciliation at 113.

² TRC. What we have learned: Principles of Truth and Reconciliation at 114.

³ TRC. What we have learned: Principles of Truth and Reconciliation at 121.

move from conflict to collaboration, and to consider how we contextualize legal advice in the spirit of reconciliation.

The TRC made 94 Calls to Action to redress the IRS legacy and advance Canadian reconciliation: Number 27 relates to CLEBC's mission:

27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

The CLEBC Board and organization is committed to responding meaningfully and in the spirit of openness and change to the Calls to Action issued by the TRC to the legal profession and legal education providers. The CLEBC Board of Directors struck a task force to “recommend to the Board a strategy, plan, goals and priorities to address the TRC Calls to Action with regard to legal education.” The task force's recommendations for a CLEBC Reconciliation Action Plan follow.

A. CLEBC's Commitment to a Reconciliation Action Plan

- (1) CLEBC will prioritize cultural competency, diversity, and intercultural understanding in providing continuing legal education.
- (2) CLEBC recognizes that cultural competency, conflict resolution reflecting Indigenous traditions, human rights, and anti-racism training are integral to building legal competence and will provide continuing legal education in these areas.
- (3) CLEBC recognizes that the TRC recommended that the principles embodied in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) provides strong and necessary guidance to the task of reconciliation and CLEBC commits to being guided by those principles in creating and implementing this Reconciliation Action Plan.
- (4) CLEBC recognizes that its overall commitment to a Reconciliation Action Plan is ongoing, and will allocate resources to the best of the organization's ability to implement goals over the short, medium, and long terms.

B. CLEBC's Reconciliation Action Plan

(1) CLEBC will engage and collaborate with Indigenous Peoples, the public and the legal community to respond to the TRC Calls to Action. CLEBC will:

- a) assist the profession to recognize why the TRC and Indigenous issues are important to legal practice, and help lawyers identify how their own blind spots and gaps in knowledge may affect their ability to practice competently and ethically.
- b) work proactively with other legal institutions such as the Law Society of BC, the Canadian Bar Association of BC, law schools, and law firms, to implement the TRC Calls to Action and create a culture of reconciliation and legal change.
- c) publicly state its support and commitment to implementing the TRC recommendations, and its commitment to being a leader in the legal field in this area, by, for example, placing content on the CLEBC website and acknowledging the Indigenous Territories where an event is being held.

(2) CLEBC will integrate skills and knowledge in intercultural competency, truth-telling and Indigenous Laws into CLEBC content. CLEBC will:

Addressing the Ongoing IRS Legacy

- a) actively address in CLEBC courses and materials the history and ongoing legacy of Indian Residential Schools, and how these are carried forward within the legal process:
 - (i) criminal law: racism, discrimination and over-representation in the criminal justice system including such matters as Gladue sentencing principles, FASD-FAS issues, Indigenous courts, and options within criminal law, including restorative justice initiatives.
 - (ii) child welfare law: drastic over-representation of Indigenous children and families, dealing with intergenerational trauma within the legal system, FASD-FAS issues, rights and legal protections of children, options for dispute resolution based on Indigenous traditions, role of Indigenous communities and Indigenous laws in child protection.

- (iii) violence against Indigenous Peoples, particularly women, girls, and two-spirited people.

Addressing Racist Legal Doctrines

- b) challenge the notion of law's neutrality in CLEBC products, addressing how racist legal doctrines such as the Doctrine of Discovery and Terra Nullius continue to be reflected in the operation and exercise of the law, including in the areas of Aboriginal Title, Rights, and Treaty Rights.

Truth-Telling about Racism within the Profession

- c) support truth-telling and raise awareness of racism faced by Indigenous lawyers and law students within the profession with such initiatives as the mini-documentary, "But I Was Wearing A Suit".

Human Rights and Anti-Racism Training

- d) develop and offer resources in human rights and anti-racism, with a focus on Indigenous Peoples' rights as human rights, identifying and eliminating racism.

Conflict Resolution based in Indigenous Legal Traditions

- e) develop and offer resources in alternative conflict resolution reflecting Indigenous laws and peacemaking traditions, which are multi-juridical and reach across legal systems, and respect cultural diversity among Indigenous Peoples.

Continue Extensive Aboriginal and Indigenous Law Curriculum

- f) continue to offer a curriculum on Aboriginal Law and Indigenous Laws, including programs such as:
 - Indigenous Legal Orders Conference
 - Aboriginal Law Conference
 - Aboriginal Administrative Law Conference
 - Indigenous Governance
 - Indigenous Child Welfare and the CFCSA

Indigenous Laws

- g) adopt an expanded definition of what law is to include Indigenous laws and legal orders, and develop approaches to teaching law that recognize that Canada is multi-juridical and that Indigenous laws and legal systems coexist with Canadian laws and legal systems.
- h) integrate discussion of Indigenous laws into institutional and substantive law courses and content, and create awareness within the legal profession that not knowing that more than one system of law and many legal processes are in operation is an issue of legal competency and ethics.
- i) develop Indigenous laws resources in partnership with Indigenous Peoples and institutions in areas such as child welfare, lands and resources, and legal mechanisms for decision-making or adjudicating disputes. Resources could include such things as webinars exploring Indigenous laws and legal orders, hosting Indigenous Laws discussion groups, and creating a checklist to guide lawyers in working with and actively respecting Indigenous laws and legal systems in their practice.

(3) CLEBC will actively involve Indigenous people in decision-making, planning and content creation. CLEBC will:

- a) engage participation by actively recruiting Indigenous lawyers, judges, leaders, academics, and knowledge keepers as volunteer chairs, speakers, authors and advisors to CLEBC content creators.
- b) establish relationships with Indigenous lawyers practicing in each of the core areas (Family, Criminal, Real Estate, Wills & Estates, Litigation, and Business) to advise content creators on substantive and ethical issues in their work.
- c) work toward achieving proportional representation of Indigenous Peoples on staff.
- d) build trust and strengthen relationships with Indigenous organizations, communities and resource providers.
- e) support Indigenous businesses and suppliers for services such as catering, printing, gifts, hotels, and venues.
- f) consider how to offer courses away from the big hotels downtown, such as at Musqueam or other Indigenous venues.

(4) CLEBC will support and develop Board and staff capacity to meet the TRC Calls to Action.

CLEBC will:

- a) educate the Board and staff about the TRC recommendations and Indigenous and Canadian history, particularly the role that law played in Canada's history of colonialism.
- b) provide cultural competency training for the Board and staff to build capacity and understanding of CLEBC's commitment to the principles of the TRC, including providing information on the context and legacy of residential schools, establishing a TRC staff library, holding discussion groups and workshops, and offering opportunities for staff to attend Aboriginal and Indigenous law events hosted by Indigenous organizations.
- c) create mechanisms for CLEBC staff to make recommendations on the implementation of this action plan.

(5) CLEBC will facilitate increased access to CLEBC programs by Indigenous people to encourage audience diversity and reconciliation. CLEBC will:

- a) reach out to Indigenous communities and publicize the 50% bursary available to Indigenous lawyers and community members.
- b) investigate creating a website portal for Indigenous lawyers, including such things as pricing, speaking opportunities, free trainings, invitations to discussion groups, testimonials about contributing at CLEBC from experienced Indigenous volunteers.
- c) continue to reach out to law schools with complimentary attendance for all Indigenous law students, participants at Indigenous Legal Clinics, and Indigenous law professors.

(6) CLEBC will monitor, measure, evaluate, and report to ensure accountability to the Reconciliation Action Plan. CLEBC will:

- a) establish assessment, feedback, and reporting mechanisms to monitor achievement of goals and to inform ongoing work, and set time limits to ensure accountability and make the implementation of this Reconciliation Action Plan measurable.
- b) establish a process for the Board and staff to make suggestions on how to continue to renew the commitments made in the Reconciliation Action Plan.
- c) report progress to the Board at each board meeting.