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## Understanding the Ongoing Dialogues on Indigenous Issues in Canadian Legal Education Through the Lens of Institutional Cultures (Case Studies at UQAM, UAlberta, and UMoncton)

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## Abstract

This article offers an empirical study of the discourses and attitudes at three law faculties regarding Indigenous issues in legal education. After the catalyst effect of the TRC report, law faculties across Canada are facing the great challenge of fulfilling their role in the process of reconciliation. This article highlights how the modalities of the dialogue in each faculty correspond to each institution's culture, approached through their history, social space, and sense of mission. Through interviews with faculty members and observations at public events at UQAM, UAlberta, and UMoncton, this article reveals the stark contrasts between the three case studies on topics such as traditional territory acknowledgements, Indigenous content in curricula, and recruitment of Indigenous faculty members and students. This analysis offers a deeper understanding of the diversity of legal education across Canada and what it means for the way law faculties respond to contemporary challenges.

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# Understanding the Ongoing Dialogues on Indigenous Issues in Canadian Legal Education Through the Lens of Institutional Cultures (Case Studies at UQAM, UAlberta, and UMoncton)

ADRIEN HABERMACHER\*

This article offers an empirical study of the discourses and attitudes at three law faculties regarding Indigenous issues in legal education. After the catalyst effect of the TRC report, law faculties across Canada are facing the great challenge of fulfilling their role in the process of reconciliation. This article highlights how the modalities of the dialogue in each faculty correspond to each institution's culture, approached through their history, social space, and

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This article comprises work that forms part of the author's DCL thesis at McGill University's Faculty of Law. It is published with the consent of the author's thesis committee. The research and analysis for this article were finalized before the author started employment at the Université de Moncton.

I would like to express my immense gratitude the faculty members who kindly agreed to participate in this research project for their generosity and trust; I also thank the leadership and administrative teams at the Département des sciences juridiques de l'Université du Québec à Montréal, the University of Alberta Faculty of Law and the Faculté de droit de l'Université de Moncton for welcoming me during several weeks within their walls and providing me with a wealth of information about their institution. In addition, I would like to thank Professors Helge Dedek and Shauna Van Praagh at McGill University's Faculty of Law for their helpful comments on earlier drafts of this article. Lastly, I want to recognize the work of the Centre de Traduction et Terminologie Juridique at the Université de Moncton to provide translations to English of the interview quotes originally in French, thus enabling a wider readership to access the original data on which this article relies.

sense of mission. Through interviews with faculty members and observations at public events at UQAM, UAlberta, and UMoncton, this article reveals the stark contrasts between the three case studies on topics such as traditional territory acknowledgements, Indigenous content in curricula, and recruitment of Indigenous faculty members and students. This analysis offers a deeper understanding of the diversity of legal education across Canada and what it means for the way law faculties respond to contemporary challenges.

Cet article propose une étude empirique des discours et attitudes au sein de trois facultés de droit quant aux enjeux autochtones dans la formation au droit. À la suite de l'effet catalyseur du rapport de la commission vérité et réconciliation, les facultés de droit d'un bout à l'autre du Canada font face à l'immense défi de prendre part au processus de réconciliation. Cet article met en avant les concordances entre le ton de ce dialogue dans chaque faculté et la culture institutionnelle de chacune, que l'on approche via l'histoire, l'espace social, et le sens de mission propres à ces facultés. Des entretiens avec des professeurs et des observations lors d'événement publics à l'UQAM, la faculté de droit de l'université d'Alberta et la faculté de droit de l'université de Moncton révèlent les différences marquantes entre ces trois études de cas sur des sujets tels que la reconnaissance des territoires traditionnels, le contenu autochtone des programmes, et le recrutement de professeurs et d'étudiants autochtones. Cette analyse propose d'approfondir notre compréhension de la diversité de la formation au droit au Canada, et ce qu'elle implique quant aux réponses que les facultés apportent aux enjeux contemporains.

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**ON 30 AUGUST 2017**, at 12:30 p.m., the dean of the Faculté de Science Politique de Droit (“FSPD”) of Université du Québec à Montréal (“UQAM”) welcomed the incoming students of the law and political science programs. Towards the beginning of his address, he included an acknowledgment that the meeting was taking place on the unceded traditional territory of local Indigenous people. One hour later, as the FSPD’s governing body (“conseil académique facultaire”) met, one of the professors distanced themselves from the dean’s remarks in unequivocal terms. The professor proclaimed that they objected to the dean’s acknowledgment, insisting on communicating their disapproval of the practice to all attendees. This event occurred on the first day of my fieldwork for a research project focused on institutional cultures and legal education at three law faculties.

The event stresses the sometimes contentious and indisputably current character of Indigenous issues in Canadian law faculties.

The fieldwork and analysis that supports this article is part of my broader doctoral research project that explores the role of institutional cultures in how Canadian law faculties respond to contemporary challenges in legal education.<sup>1</sup> I suggest that institutional cultures play a significant role in the way law faculties debate and act on social challenges, such as those regarding Indigenous Peoples and lands. In this study, I understand institutional cultures as a combination of core, enduring, and distinctive characteristics in connection with the institutions' history and geography; their economic, social, and political environments; and the communities that constitute them, as well as those that they serve.<sup>2</sup> Institutional cultures are in flux: The members of the community come and go and the surrounding environments evolve. The aim is therefore not to permanently define such cultures but to capture a snapshot of them. Focusing on the core, enduring, and distinctive characteristics alleviates, in part, the difficulty of drawing a portrait that would become quickly outdated. Moreover, given the necessary limitations of this exercise, the portrait can only be an incomplete part of the whole. Lastly, and maybe most importantly, the portrait is an interpretation by an outsider, me, based on an understanding of the information that insiders accepted to share with me. This series of caveats should not leave the readers with the impression that this enterprise is futile; I hope to demonstrate that in spite of such obstacles, accounting for context when looking at how law faculties respond to the contemporary challenge of tackling Indigenous issues in

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1. See Adrien Habermacher, *Institutional Cultures and Legal Education at Select Canadian Law Faculties* (DCL Thesis, McGill University, 2019) [unpublished].
  2. The language of "core, enduring, and distinctive" characteristics comes from Stuart Albert & David Whetten, "Organizational Identity" (1985) 7 *Res in Org Behav* 263. I also rely on the definition of culture in higher education institution from George D Kuh & Elizabeth J Whitt, *The Invisible Tapestry: Culture in American Colleges and Universities* (Association for the Study of Higher Education, 1998) at 12-13. The authors define culture in higher education institutions: "[A]s the collective, mutually shaping patterns of norms, values, practices, beliefs, and assumptions that guide the behavior of individuals and groups ... and provide a frame of reference within which to interpret the meaning of events and actions on and off campus." See also *e.g.* William G Tierney, "Organizational culture in higher education: Defining the essentials" (1988) 59 *J Higher Educ* 2 at 3. Tierney recognizes the importance of external factors such as "demographic, economic, and political conditions" in shaping institutional cultures, as well as emphasizes the role of internal forces. For a detailed explanation of the concepts and its use in my work, see Habermacher, *Institutional Cultures and Legal Education*, *supra* note 1 at ch 1 s 2.

legal education provides a better understanding of the diverse realities of legal education in Canada.

The data I collected during my fieldwork allowed me to identify patterns in faculty members' approaches and attitudes towards Indigenous issues. These patterns are sometimes ones of commonality across Canada, and other times of diversity that echoes the differences in institutional cultures from one faculty to the next. First, I observed that the Truth and Reconciliation Commission of Canada's ("TRC") Calls to Action<sup>3</sup> have been transformative in shaping discourse and attitudes towards Indigenous issues in legal education. Whether legal educators embrace or object to it, and whether similar previous reports or literature had already made an impact on them, the TRC report and its Call to Action 28<sup>4</sup> occupy a central place in discourses about legal education and Indigenous issues. Second, the importance of Indigenous issues for each faculty differed according to participants' perception of Indigenous presence in their social and cultural space as well as the extent to which Indigenous issues resonated with the faculty's self-defined mission. For instance, we will see that a lesser presence of Indigenous Peoples in the mainstream social reality of each faculty correlates with the participants' perceptions that the sudden preoccupation for Indigenous issues is artificial. On the other hand, a deep-rooted political and intellectual sensibility to the issues touching vulnerable communities corresponds to greater engagement with Indigenous issues, even where the social context does not seem to warrant it.

Given that the discourse on Canadian legal education too often relies on broad brushstrokes and treats law faculties as fungible, the identification and understanding of these patterns in their proper context is crucial in meaningfully engaging in the dialogue about Indigenous issues in legal education. Analyzing discourses and attitudes in three law faculties on a socio-political theme that animates contemporary debates in Canada provides an opportunity to better understand how the faculties perceive their role in society, and the role of their respective institutional cultures. The theme of reconciliation between mainstream Canadian society and Indigenous Peoples offers the dual advantage of being simultaneously prevalent in public debate across Canada and of having manifold implications for legal education. Reconciliation has become a central theme of

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3. *Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, vol 1 (James Lorimer, 2015). [*Final Report of the TRC*].

4. *Ibid.* Call to Action 28 is targeted at legal educators and its implications on the faculties studied are discussed later in this article.

public debates and policies in Canada in the past two decades.<sup>5</sup> The first Part of this article will provide context for the recent rise of this theme in the public space; it will also demonstrate that the TRC's Calls to Action pushed this issue to the forefront of contemporary debate on legal education in Canada.

The second Part of this article will offer remarks on the methodology used to obtain the empirical data that I rely on to support my conclusions. It will explain why I chose to conduct fieldwork in three very distinct law faculties: UQAM, University of Alberta ("UAlberta"), and l'université de Moncton ("UMoncton"). It will also explain how I asked participants about their attitudes towards the themes explored in this article, and will highlight the difference in interviewing strategy between early and later interviews, which will provide a caveat to better understand the responses collected. This Part will also present the overall trends noticeable in my data regarding whether and how participants engaged with the topic. This broad picture will reveal a sharp contrast between UAlberta and UMoncton, a phenomenon that I explore in later Parts of this article.

The third Part of this article will focus on the perceptions of proximity with and importance of Indigenous issues to each faculty in light of their social and cultural context. It will demonstrate how the idea of reconciliation and Indigenous issues, more generally, resonate differently depending on a faculty's demographics, history, and society. This Part will highlight how local realities seem to shape the reception of the national discourse about reconciliation and legal education.

This discourse usually focuses on the place of Indigenous legal perspectives in the undergraduate law curriculum. To echo Harland, the debate is no longer *why* Indigenous laws matter in Canadian legal education, but rather *how* they

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5. The word "reconciliation" denotes a certain political project, largely driven by mainstream Canadian institutions; it could be contrasted with notions such as "assimilation" (the key policy objective of Canadian governments for most of their history) or "decolonization." In this article, I will speak of "reconciliation" as it is contemporaneously used in the prevalent Canadian vocabulary and philosophy, while remaining aware that it constitutes an "abstract aspiration" as described by John Borrows. See John Borrows, "Unextinguished: Rights and the Indian Act" (2016) 67 UNBLJ 3 at 4. There are ongoing political struggles between various actors to define reconciliation and shape its implementation. On the use of "reconciliation" in South Africa and the construction of a "post-evil" discourse, see *e.g.* Robert Meister, *After Evil* (Columbia University Press, 2011) at 50-82.

should be taught.<sup>6</sup> Prominent scholars have put forth robust proposals to move forward in this direction.<sup>7</sup> In proceeding to consider this “how” question, it is important to also recognize, as Hewitt argues, that curricular matters are only one part of the equation, and we need to consider deeper institutional changes to move forward in this direction.<sup>8</sup> This tendency is not confined to discussions of Indigenous issues, it permeates the literature on legal education generally. My own work on legal education attempts to cast light on less prominent aspects of legal education, and curricular consideration is only one component of my research on institutional cultures. Likewise, this article will analyze participants’ attitudes on specific questions connected to pursuing reconciliation in the field of legal education, where the analysis is not confined to curricular issues.

As the opening paragraph underlines, the first aspect of Indigenous issues in legal education that I encountered during my fieldwork was the question of land acknowledgments. It is not specific to legal education and relevant to a variety of situations. I dedicate Part IV of this article to participants’ attitudes on land acknowledgements. It reflects that while legal education faces unique questions regarding the place of Indigenous legal perspective in the teaching of and research about law in Canada, it is also confronted by some of the same questions that confronts society at large.

Part V will turn to the attitudes regarding the inclusion of Indigenous issues and perspectives in the curriculum, through traditional courses and a dedicated, mandatory course recommended by the TRC. This will lead us to finally consider attitudes towards the recruitment of Indigenous faculty members and students into each faculty’s community in Part VI. The issues raised in these two Parts

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6. Fraser Harland, “Moving from the *Why* to the *How* of Indigenous Law” (2016) 61 McGill LJ 721 at 722. See also Aaron Mills, “The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today” (2016) 61 McGill LJ 847 (“It’s becoming part of the orthodoxy of legal education in Canada *that* Canadian law needs to relate with Indigenous legal orders” [emphasis in original] at 856). But see Karen Drake, “Finding a Path to Reconciliation: Mandatory Indigenous Law, Anishinaabe Pedagogy, and Academic Freedom” (2017) 95 Can Bar Rev 9 (making the case for mandatory inclusion of Indigenous legal orders in the Canadian law curriculum, indirectly showing that the argument has not yet become trivial).
  7. Val Napoleon & Hadley Friedland, “An Inside Job: Engaging with Indigenous Legal Traditions through Stories” (2016) 61 McGill LJ 725; John Borrows, “Outsider Education: Indigenous Law and Land-Based Learning” (2016) 33 Windsor YB Access Just 1; John Borrows, “Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education” (2016) 61 McGill LJ 795 [Borrows “Heroes”]; Mills, *supra* note 6. See also Hannah Askew, “Learning from Bear-Walker: Indigenous Legal Orders and Intercultural Legal Education in Canadian Law Schools” (2016) 33 Windsor YB Access Just 29.
  8. Jeffery G Hewitt, “Decolonizing and Indigenizing: Some Considerations for Law Schools” (2016) 33 Windsor YB Access Just 65.



are intimately connected to each other and dominate the discourse about Indigenous issues in legal education. We will see again that patterns specific to each faculty emerge from the data, echoing the meanings attributed to other aspects of legal education that we have explored in ascertaining their respective institutional cultures.

My goal throughout this article is not to offer prescriptive arguments as to how Canadian legal education should assume its responsibility in the pursuit of reconciliation. I take seriously the “duty to learn,”<sup>9</sup> and I recognize my own lack of knowledge regarding Indigenous legal cultures. I thus defer to experts to identify challenges and avenues for reform in Canadian legal education. My objective here is a more modest contribution. I aim to offer contextualized insights into how the dialogues on such matters are unfolding in select Canadian law faculties. While some readers will note that my findings corroborate with their anecdotal information or experience, I hope that my research will strengthen our collective understanding of the diverse realities of legal education across Canada. Establishing the truth for reconciliation requires an acknowledgment that while the challenge is common, it bears different meanings for different faculties.<sup>10</sup> Engaging meaningfully and respectfully with Indigenous issues and legal orders in legal education is a formidable challenge. My hope is that this article presents Canadian law faculties with a mirror through which they can perceive themselves and their peers more accurately, and choose future directions based on more refined reflections.

Beyond my own analysis, this article gives others access to data that would otherwise remain unwritten and unpublished. This timestamped and contextualized data will provide a milestone for future researchers to assess and understand our journey on these important questions. Moreover, my project is the first empirical project of this scale on legal education in Canada to come after the TRC Call to Action 28, and therefore addresses a gap in the literature.<sup>11</sup>

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9. Justice Lance SG Finch, “The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice” (paper delivered at the “Indigenous Legal Orders and the Common Law” Continuing Legal Education Society of British Columbia, November 2012) at 7, online: *British Columbia Continuing Legal Education*, <[store.cle.bc.ca/productdetails.aspx?cid=648](http://store.cle.bc.ca/productdetails.aspx?cid=648)>.
  10. See also John Borrows, “Fourword: Issues, Individuals, Institutions and Ideas” (2002) 1 *Indigenous LJ* vii [Borrows, “Issues, Individuals and Ideas”]; John Borrows, “Outsider Education: Indigenous Law and Land-Based Learning” (2016) 33 *Windsor YB Access Just* 1 at 10 [Borrows, “Outsider Education”].
  11. Sandomierski, for instance, did not substantially engage with Indigenous issues in legal education in his thesis, but addressed the matter in a revised version of the same work coming out in a book format a few years later, see David Sandomierski, *Aspiration and Reality in Legal Education* (University of Toronto Press, 2020) at 213-18.

However, it is not an assessment of the faculties' progress toward responding to the TRC Call to Action 28; at least one other empirical research project is underway to explore this very aspect at five different law faculties in Canada.<sup>12</sup> Lastly, this article will also demonstrate the importance of accounting for the faculties' cultural characteristics to apprehend their responses to a prominent contemporary challenge. By showing legal educators the normative force that institutional cultures hold in such processes, I aim to empower them to exert their agency and consider new alternative paths for Canadian legal education.

## I. PIVOTAL CHARACTER OF THE TRC CALLS TO ACTION

The question of the relationship between the Canadian state and Indigenous Peoples constitutes a prevalent socio-political issue across the country. The Oka crisis in 1990 sparked the creation of the Royal Commission on Aboriginal Peoples<sup>13</sup> and certainly started a process of widespread engagement in the Canadian public with Indigenous issues. In the following years, recognition of the harmful and discriminatory character of Canada's long-standing Residential Schools grew, leading for instance to the Indian Residential School Settlement Agreement in 2007 and the official apology to former students of Indian Residential Schools the following year.<sup>14</sup> The TRC final report in 2015 represents a culmination of this long process. Through the past decades, we can see a change of paradigm in

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12. Kory Smith, a doctoral candidate in sociology at Carleton University, is conducting such a project concerning five Canadian law Faculties (all different from my own case studies). He is preparing a thesis provisionally titled "Unsettling the Colonial Structure of Canadian Legal Education: An Examination of Canadian Law Schools' Responses to the Truth and Reconciliation Commission's Call to Action 28."

13. *Report of the Royal Commission on Aboriginal People: Looking Forward, Looking Back*, vol 1 (Supply Services Canada, 1996) [*Looking Forward, Looking Back*]; *Report of the Royal Commission on Aboriginal People: Restructuring the Relationship*, vol 2 (Supply Services Canada, 1996); *Report of the Royal Commission on Aboriginal People: Gathering Strength*, vol 3 (Supply Services Canada, 1996); *Report of the Royal Commission on Aboriginal People: Perspectives and Realities*, vol 4 (Supply Services Canada, 1996); *Report of the Royal Commission on Aboriginal People: Renewal: A Twenty-Year Commitment*, vol 5 (Supply Services Canada, 1996). The Oka crisis consisted in a two-and-half months long armed standoff between Mohawk warriors and the Canadian army, as the former blocked access to a land on which they had long historical claims but where the municipality of Oka, Quebec, was attempting to erect a gold course (see *ibid* at vol 1, 196-98).

14. Government of Canada, *Statement of apology to former students of the Indian Residential Schools* (11 June 2008), online: *Indigenous and Northern Affairs*, <<https://www.aadnc-aandc.gc.ca/eng/1100100015644/1100100015649>>.

public discourse, now focused on pursuing “reconciliation.” It takes the form of a general awakening among non-Indigenous Canadians to the history of violence and broken promises that defines much of the relationship between the Canadian State and the Indigenous Peoples, and a growing recognition of the equal dignity of Indigenous cultures to all Canadian cultures. The works of the TRC have been a catalyst in this process.

There are many more facets to the recent history of the relationship between the Indigenous Peoples and the Canadian State than the TRC, as the later National Inquiry into Missing and Murdered Indigenous Women and Girls (“NIMMIWG”)<sup>15</sup> demonstrated, or the continuing gap in living conditions between many reserves and mainstream Canadian society.<sup>16</sup> The legal world has also engaged in public debates regarding, for example, the inadequacy of the *Indian Act*,<sup>17</sup> and the adoption and implementation of *UNDRIP*.<sup>18</sup> The developments on the question of residential schools nonetheless marked a turning point in public awareness and perception of Indigenous issues in general, and the

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15. See National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1a (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019), online: <[www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final\\_Report\\_Vol\\_1a-1.pdf](http://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf)> [NIMMIWG *Final Report*, vol 1a]; National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol 1b (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019), online: <[www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final\\_Report\\_Vol\\_1b.pdf](http://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1b.pdf)> [NIMMIWG *Final Report*, vol 1b].
  16. For instance, as of 30 November 2019, the Canadian government counted 57 long-term drinking water advisories in effect on public systems on reserve. See Indigenous Services Canada, “Ending long-term drinking water advisories” (November 2019), online: Government of Canada <[www.sac-isc.gc.ca/eng/1506514143353/15333171306602](http://www.sac-isc.gc.ca/eng/1506514143353/15333171306602)>; another telling example is found in the 2016 Census revealing that 44% of status First Nations Peoples living on reserves resided in a dwelling that needed major repairs, as opposed to 14% of status First Nation Peoples living off-reserve and only 6% of the non-Aboriginal population. see Statistics Canada, “The housing conditions of Aboriginal people in Canada” (25 October 2017), online: <[www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016021/98-200-x2016021-eng.cfm](http://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016021/98-200-x2016021-eng.cfm)>.
  17. RSC 1985, c l-5.
  18. *United Nations Declaration on the Rights of Indigenous Peoples*, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007) [UNDRIP]. See e.g. the collection of essays on the topic of UNDRIP in Oonagh Fitzgerald et al, eds, *Braiding Legal Orders: Implementing the United Nations Declaration on the Rights of Indigenous Peoples* (CIGI Press, 2019).

place of this topic in the public debate nationally.<sup>19</sup> A high point of this debate happened in 2015 when the TRC issued its final report and labelled Canada's Aboriginal policy, which existed for over a century, a "cultural genocide."<sup>20</sup> In order to "advance the process of Canadian reconciliation," the TRC also issued recommendations in the form of ninety-four Calls to Action, including the following addressed specifically to legal educators:<sup>21</sup>

We call upon law schools in Canada to require all law students to take a course in Aboriginal People and the law, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal—Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

The legal context that led to the TRC, the deeply political nature of the process, and the publicity it garnered ensured that such a call to action would not go unnoticed in the legal education community. While some law faculties had already been engaging with Indigenous issues generally for some time,<sup>22</sup> this public and forceful invitation, in a context of increasing awareness and interest for the relationship between Indigenous Peoples and mainstream Canadian society, not

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19. See e.g. The Environics Institute, *Canadian Public Opinion on Aboriginal Peoples* (June 2016) at 19, 29-31, 35, online: <nctr.ca/assets/reports/Modern%20Reports/canadian\_public\_opinion.pdf>. This report displays the evolution of responses between 2008 and 2016 to questions regarding the challenges faced by Aboriginal peoples, the Indian residential schools, and the role of individual Canadians in bringing about reconciliation.
  20. *Final Report of the TRC*, *supra* note 3 at 1. See also NIMMIWG *Final Report*, vol 1a, *supra* note 15 at 50 (finding that "The violence the National Inquiry heard amounted to a race-based genocide of Indigenous Peoples, including First Nations, Inuit and Métis, which especially targets women, girls, and 2SLGBTQIA people.").
  21. *Supra* note 3. The TRC also addressed a very similar call to the Federation of Law Societies of Canada (no. 27), as well as to other educational institutions: medical and nursing schools (no. 24), Kindergarten to Grade Twelve instructors (nos. 62 & 63), schools of theology and religious training centers (no. 60), and journalism programs and media schools (no. 86).
  22. University of Saskatchewan—Indigenous Law Centre, "The Summer Program in Property and Customary Law," online: <indigenoulaw.usask.ca/ilc-summer-program.php> (the eldest sustained initiative regarding Indigenous issues in Canadian legal education is probably the Program of Legal Studies for Native People at the University of Saskatchewan established in 1973, now called the Summer Program in Property and Customary Law); Borrows, "Issues, Individuals and Ideas", *supra* note 10 at xii-xvi (describing successive waves of reforms in Canadian law faculties towards greater engagement with Indigenous issues); Kerry Sloan, "A Global Survey of Indigenous Legal Education and Research" (2013), online: <Indigenoubar.ca/Indigenoulaw/wp-content/uploads/2013/04/KLS-World-Indigenous-Legal-Education-Complete1.pdf> (summarizing initiatives at 16 universities teaching law across Canada to include Indigenous issues a few years before the publication of the TRC final report).

only sparked renewed consideration but also shaped how legal educators would engage with the topic. A participant at UAlberta shared the sentiment that efforts such as those aimed at reflecting the presence of Aboriginals in society in the law faculty were “unheard of” several decades ago, when they joined the institution.<sup>23</sup>

The TRC report is not the only avenue through which legal educators have engaged with Indigenous issues. In February 2018, during my fieldwork, the trial and acquittal of Gerald Stanley for the fatal shooting of Colten Boushie, a member of the Cree Red Pheasant First Nation in Saskatchewan, ignited a large public debate about the absence of Indigenous jurors from juries, among other systemic biases against Indigenous persons in the criminal justice system.<sup>24</sup>

Legal educators, like many other stakeholders, reacted publicly to this verdict and the systemic issues it raised. For instance, the Faculty of Law at University of Windsor issued a collective statement that read in part: “Canada has used law to perpetuate violence against Indigenous Peoples and too often protects those who commit acts of violence against Indigenous Peoples. Just like racism, law is learned. This means legal education is part of the problem too.”<sup>25</sup> A law professor at Queen’s University took issue with this institutional position and published an opinion piece in the *National Post* titled “The social justice revolution has taken the law schools. This won’t end well” shortly after.<sup>26</sup> Two of his own colleagues at

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23. AB03. I refer to the participants interviewed using codes to preserve anonymity. All statements made by participants during interviews will be associated to the code I assigned to each participant. The codes have 2 elements: the first set of characters are a province code that refers to the university (AB for UAlberta, NB for UMoncton, and QC for UQAM), the second set of characters are numbers referring to specific participants. The name of the participant will only appear where this is particularly relevant and when the participant explicitly agreed to be identified. The anonymous code may be omitted (e.g. ABXX) where the information provided is particularly sensitive and readers could identify the participant in conjunction with information provided elsewhere in the article.

24. See generally Kent Roach, *Canadian Justice, Indigenous Injustice: The Gerald Stanley and Colten Boushie Case* (McGill Queens Press, 2019). The question of Indigenous participation in juries had already been the object of a dedicated inquiry in Ontario. See Ontario, Ministry of the Attorney General, *First Nations Representation on Ontario Juries: Report of the Independent Review*, by The Honourable Frank Iacobucci (February 2013), online: <[www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/First\\_Nations\\_Representation\\_Ontario\\_Juries.html](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/iacobucci/First_Nations_Representation_Ontario_Juries.html)>.

25. Faculty of Law, University of Windsor, “A Statement on Stanley Trial Verdict” (27 February 2018) online: <[www.uwindsor.ca/law/2018-02-16/windsor-laws-statement-stanley-trial-verdict](http://www.uwindsor.ca/law/2018-02-16/windsor-laws-statement-stanley-trial-verdict)>. The current version of the statement on the institution’s website is dated 27 February 2018, and is identical to the original version, dated 16 February 2018; see the original publication online: <[archive.li/oDZzM](http://archive.li/oDZzM)>.

26. Bruce Pardy, (27 February 2018), online: <[nationalpost.com/opinion/the-social-justice-revolution-has-taken-the-law-schools-this-wont-end-well](http://nationalpost.com/opinion/the-social-justice-revolution-has-taken-the-law-schools-this-wont-end-well)>.

Queen's responded with a piece in the *Globe and Mail* a month later, arguing that "law schools must be political."<sup>27</sup>

This series of public interventions are only a few among many contributions from legal educators to the public debate that followed the verdict in the Stanley trial.<sup>28</sup> They illustrate how events more discrete than the TRC's lengthy proceedings and reports can also bring legal education communities to contend with social and political issues that implicate Indigenous Peoples. Such events can certainly shape the conversations in, and maybe the decisions taken by, law faculties on how to engage with Indigenous issues. The official character of the TRC, the national scope of its extensive works, and the its targeted requests confer upon the TRC report an aura and authority that makes it truly pivotal.

In all three institutions I visited, interviewed participants recognized the catalytic character of the TRC report in legal education. One of the participants characterized it as "galvanizing."<sup>29</sup> Another explained that the issues it raised "have been transformative in terms of focus."<sup>30</sup> Eight participants explicitly referred to the TRC or its report, most often to say that conversations about Indigenous issues in legal education in their community centred around responding to the Calls to Action. The same pattern can also be found in responses that did not mention the TRC by name. For instance, at UMoncton participants started sharing their views on Indigenous issues in legal education by positioning themselves on the question of a mandatory course on Aboriginal Peoples and the Law, the key object of the Call to Action 28. In a recording of the orientation event at UAlberta in September 2017, which will be analyzed in greater detail below, we can hear that the dean started his speech to the new students with a reference to the TRC's Calls to Action and the efforts that the institution was undertaking in response.<sup>31</sup> At this time, a dedicated working group within the

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27. Lisa Kerr & Lisa Kelly, "Yes, law schools must be political," *The Globe and Mail* (17 March 2018), online: <[www.theglobeandmail.com/amp/opinion/article-yes-law-schools-must-be-political/](http://www.theglobeandmail.com/amp/opinion/article-yes-law-schools-must-be-political/)>.

28. See e.g. Lisa A Silver, "Tracing the Likeness of Colten Boushie in the Law Classroom" (22 February 2018), online: *ABlawg* <[ablawg.ca/wp-content/uploads/2018/02/Blog\\_LAS\\_Boushie.pdf](http://ablawg.ca/wp-content/uploads/2018/02/Blog_LAS_Boushie.pdf)>; Lorne Sossin, "Love and Hope'—How Colten Boushie's Death and Gerald Stanley's Trial Will Change Canadian Law" (14 February 2018), online (blog): *Dean Sossin's Blog* <[deansblog.osgoode.yorku.ca/2018/02/love-and-hope-how-colten-boushies-death-and-gerald-stanleys-trial-will-change-canadian-law/](http://deansblog.osgoode.yorku.ca/2018/02/love-and-hope-how-colten-boushies-death-and-gerald-stanleys-trial-will-change-canadian-law/)>.

29. AB09.

30. AB04.

31. University of Alberta Faculty of Law, "UAlberta Orientation 2017" (8 September 2017) at 00h:06m:36s, online: YouTube <[www.youtube.com/watch?v=kgPU3QGH6lQ](https://www.youtube.com/watch?v=kgPU3QGH6lQ)> [UAlberta Orientation 2017 Video].

Federation of Law Societies of Canada (FLSC) is still considering the role it may play in the FLSC national requirements for common law degrees.<sup>32</sup> A few years after its publication, we can see that TRC report occupies a central place in the legal education discourse in Canada.

In between the end of my fieldworks and publication of the present piece, the NIMMIWG released its final report in June 2019. The NIMMIWG and TRC share many characteristics in their setup and the publicity they received, as well as their respective findings of genocide and cultural genocide. It is too early to say whether the NIMMIWG's conclusions and recommendations will have the same force as the TRC's. The NIMMIWG specifically targeted some of its Calls for justice to "attorneys and law societies,"<sup>33</sup> "post-secondary institutions"<sup>34</sup> and "all Canadians."<sup>35</sup> While we can hope for profound effects in many aspects of Canadian society, the absence of an equivalent to TRC Call to Action 28, explicitly calling on law faculties to take on certain responsibilities, suggests that the impact of the NIMMIWG will not compare to that of the TRC in the world of Canadian legal education.

The TRC Call to Action 28 constitutes a pivotal moment in Canadian legal education's engagement with Indigenous issues. Some engagement existed prior to the TRC report, and not all engagement following it is the direct result of Call to Action 28. As we will see below, attitudes towards Call to Action 28 were mixed and some participants clearly rejected the recommendation. Nonetheless, the TRC report and Call to Action 28 have become a locus of meanings in Canadian law faculties, now shaping adhesion to and criticism of dominant attitudes regarding Indigenous issues. The TRC report has played the role of a cultural pivot at the scale of the whole of Canadian legal education, triggering faculties to express and engage with their self-conception of their mission and situation vis-à-vis Indigenous issues. The summary of "initiatives to ensure meaningful and effective engagement with the Truth and Reconciliation Commission Calls to Action" at each law faculty in Canada, compiled by the Council of Canadian Law Deans ("CCLD"), further shows that engaging with Indigenous issues is now universal among Canadian law faculties and is done through the lens offered by

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32. See e.g. "Federation of law societies commits to effective response to TRC" (11 March 2016), online: FLSC <[flsc.ca/federation-of-law-societies-commits-to-effective-response-to-trc-report/](http://flsc.ca/federation-of-law-societies-commits-to-effective-response-to-trc-report/)>. The FLSC announces the creation of the working group.

33. NIMMIWG *Final Report*, *supra* note 15, vol 1b at 193 (calls 10.1.i-10.iii).

34. *Ibid* at 193-94 (calls 11.1-11.2).

35. *Ibid* at 199 (calls 15.1-15.8).



the TRC Call to Action.<sup>36</sup> We will see below how the perceptions of and attitudes towards such engagement is specific to each of the faculty included here and varies by issues considered.

## II. REMARKS ON METHODOLOGY AND PATTERNS OF ENGAGEMENT

The results and analysis I present in this article are based on in-person, semi-directed interviews with faculty members and observations at public events at the département des sciences juridiques de l'UQAM ("DSJ") between 28 August and 28 September 2017 (eleven interviews, four events), UAlberta Faculty of Law between 2 October and 10 November 2017 (eleven interviews, three events), and Faculté de droit de UMoncton between 9 March 2018 and 10 April 2018 (eight interviews, four events).<sup>37</sup> The interviews and events took place in French at UQAM and UMoncton, and in English at UAlberta. Interview participants were all full-time faculty members; they were selected to obtain a cross section of the overall faculty in terms of age, gender, and fields of expertise. I am also relying on information contained in publicly available documents (*e.g.*, resources hosted on institutional websites), information obtained through targeted questions to each faculty's administration, as well as academic literature.<sup>38</sup>

I chose these three law faculties as case studies in order to reflect the diversity of legal education across Canada. Together they feature: common law and civil law traditions; English and French languages; older and younger institutions; Western, Central, and Eastern Canada; large and small faculties and student bodies; and varied socio-political missions, *et cetera*. What unites and makes them comparable is that they all offer degrees that lead to professional legal practice (after completion of the local bar requirements). Together, they do not constitute

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36. See Council of Canadian Law Deans, "TRC REPORT: The enclosed summaries indicate that in responding to the TRC Calls to Action, Canadian law schools are building on various initiatives already in place, many longstanding" (2018), online: < <https://cclld-cdfdc.ca/our-latest-news/> > [CCLD *TRC Report*].

37. This research received ethics approval from four university research ethics boards (REBs): those of the three institutions where I conducted fieldwork research, and that of McGill University: REB File # 420-0317 at McGill University, approved from 22 March 2017; approved at UQAM (no file #) from 31 March 2017; REB File # 1617-060 at Moncton, approved from 20 April 2017; REB File # Pro00073108 at UAlberta, approved from 22 August 2017.

38. For more details on my methodology, see Habermacher, *supra* note 1 at ch 1, s 3.



a representative sample of Canadian legal education but provide a window into the diverse realities of this type of university education across the country.

Each of the three law faculties has a specific mandate. Established in the mid-1970s, UQAM fosters a commitment to educating critical jurists concerned with social justice.<sup>39</sup> Its mandate constitutes an explicit political goal, marked on the left of the political spectrum. On the other hand, UAlberta has aimed to train competent lawyers for its region since its founding in the 1910s, in fulfilment of its perceived obligation to the public;<sup>40</sup> the political implications here are more implicit and denote a commitment to a widely-accepted view as to the role of lawyers in furthering peaceful dispute resolution and public liberties in a society governed by the rule of law. In turn, UMoncton has purported to provide French-speaking Acadians with socio-economic opportunities and political empowerment since the late 1970s. UMoncton's mandate is an explicitly socio-political mission, intimately connected to concerns of the Acadian society for its survival in an environment where English speakers constitute the majority.<sup>41</sup> Beyond this mission, engagement with contemporary socio-political issues also comes into play in teaching and researching practices, as well as in the debates surrounding decisions such as new faculty hiring, curriculum, student recruitment, and even the granting of honorary degrees.

Examining whether, when, and how participants provided their views on the topic of Indigenous issues and legal education provides helpful insights with respect to the separate analysis of the content of their responses. First, not all participants expressed their views on the topic of reconciliation and legal education: Only twenty-four of thirty interview participants explicitly engaged with the topic. It is important to bear in mind that the general theme of interviews was much broader, and that participants were invited to share their views on "the institutional cultures about legal education and the role they may play at select law faculties across Canada." Nearly half of the UQAM participants did not engage with this topic, whereas all but one did at UAlberta, and all did at UMoncton. Differences in the range of topics tackled in the interviews and the specific questions I asked participants prevent any significant conclusion fueled directly from differences in raw figures (*e.g.*, that this topic would be more present at UMoncton than at UQAM). The initial interview guide I designed and relied on during the first few interviews did not include specific questions

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39. See Habermacher, *supra* note 1 at ch 2, s 2; Robert D Bureau & Carol Jobin, "Les Sciences Juridiques à L'Université du Québec à Montréal: Fifteen Years Later" (1987) 11 Dal LJ 295.

40. See Habermacher, *supra* note 1 at ch 2, s 3.

41. *Ibid.*

on Indigenous issues. Three of the six participants who did not engage explicitly with the topic are the first 3 participants I interviewed at UQAM, which was the first leg of my fieldwork. In contrast, the last 18 participants I interviewed (at UAlberta and UMoncton) all spoke on the topic. This is because I adapted the phrasing of some questions over time to invite participants to share their views on Indigenous issues and started asking questions that explicitly mention this topic when the participants had not mentioned the topic during the interview. As the importance of including this topic in my data became clear, I started using a twofold interview strategy based on a vague prompt to invite participants to talk about Indigenous issues, and an explicit prompt towards the end of the interview if the participant had not yet referred to Indigenous issues explicitly.<sup>42</sup>

We cannot infer much from the absence of the topic in six interviews besides that such topics was not sufficiently on the top of the participants' minds for them to mention it spontaneously. These six participants would have engaged with the topic had I offered the explicit prompt to them; we can assume as much given that no participants explicitly asked about it refused to share at least some ideas on this theme. For this reason, mention of the topic after an explicit prompt and absence of the topic altogether can be considered as functional equivalent for the present purpose. Please see Table 1, below, which presents a breakdown of the number of interviews by institution where the participants engaged with the topic, and the circumstances in which they did so.

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42. Example of vague prompts: "Do you see social or political issues of the day finding an echo in debates or discussions within the faculty?" Example of explicit prompts: "A topic that we have not yet talked about today and that often comes up in discussions about legal education nowadays is that of Indigenous issues—would you like to add anything on this topic?"

**TABLE 1: Number of participants who explicitly engaged with the topic of INDIGENOUS issues and legal education, by institution and by circumstances of engagement<sup>43</sup>**

	UQAM	UAlberta	UMoncton	Total
Engaged spontaneously	0	4	1	5
Engaged after vague prompt	5	6	0	10
Subtotal	5	10	1	15
Engaged after explicit prompt	1	0	7	8
Did not engage explicitly	5*	1	0	6*
Subtotal	6*	1	7	15*
Total	11	11	8	30

NOTE: \* signals comprising three interviews that did not include the “vague prompt” strategy.

The most significant result from Table 1 is the contrast between UAlberta and UMoncton regarding faculty members’ engagement with the topic. There is a clear trend at UAlberta to discuss Indigenous issues spontaneously or after only a vague prompt, and an equally clear opposite trend at UMoncton to only engage with the topic after an explicit prompt. Once we account for the methodological discrepancy in the first few interviews at UQAM and retain only those where I implemented the same two prompts strategy as I later did at UAlberta and UMoncton (eight of eleven), we can see that most eligible UQAM participants engaged with the topic after a vague prompt only. The trend at UQAM regarding in the circumstances leading participants to engage with Indigenous issues during my interviews therefore resembles that described at UAlberta.

### III. PERCEPTIONS OF PROXIMITY AND IMPORTANCE

Part II of this article suggested that whether participants mentioned Indigenous issues spontaneously depended on the proximity of such issues to the preoccupations of the participants’ faculties. Let us now turn to the substance

43. The category “engaged spontaneously” corresponds to the cases when the participant mentioned Indigenous issues in the general description of their institution; the category “engaged after vague prompt” corresponds to participants who mentioned the topic when asked about “contemporary socio-political issues”; the category “engaged after explicit prompt” corresponds to cases when participants only mentioned the topic after an explicit question about it; the “did not engage explicitly” category encompasses the interviews where the participants mentioned neither of the terms “reconciliation,” “réconciliation,” “Indigenous,” “Aboriginal,” or “autochtone.” We must bear in mind that no participant in this last category was asked to engage with the topic through an explicit prompt.

of the participants' contributions, in order to analyze if we can indeed ascertain different degrees of proximity with Indigenous issues for each institution. We will also situate the participants' perceptions of the topic in their geographic and cultural context using contemporary statistical data and historical information, as the participants often refer to such elements themselves.

One participant at UAlberta included the following comment when drawing a general portrait of the institution: "[B]ecause we are in Western Canada, we have a community that has one of the highest urban population of Aboriginals, and that is something that shapes the university."<sup>44</sup> Edmonton features a much larger Aboriginal population (76,205) than either Montréal (34,745) or Moncton (3,515).<sup>45</sup> In fact, among Canadian cities, Edmonton is second only to Winnipeg with respect to the number of Aboriginal individuals living in the metropolitan area, even as other smaller urban centers feature higher ratios.<sup>46</sup>

We must keep in mind that these cold facts are only one way to describe the presence of Indigenous individuals in the societies within which the three law faculties evolve. They are an imperfect snapshot subject to the flaws of the method of collection and processing, as well as to the political climate of the time. For instance, Aboriginal identity here is based on self-identification by the census respondents,<sup>47</sup> and the figures available concern only those in private households. Despite these limitations, they provide an entry point to describe social reality thanks to comparable metrics.

The same UAlberta participant's statement indicates that the numerical presence of Indigenous people bears on the importance that non-Indigenous

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44. AB02.

45. Statistics Canada, *Census Profile, 2016*, Catalogue no. 98-316-X2016001, online: <www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/index.cfm> [Statistics Canada, *Census Profile, 2016*]. All figures for cities are based on Census Metropolitan Areas (CMA).

46. Winnipeg: 92,810 (11.9% of the 778,489 inhabitants, compared to 5.9% of 1,321,426 Edmontonians). See *ibid.*

47. Self-identification and reporting of Aboriginal identity will change from one data collection to another and is subject to several factors. See Statistics Canada, "Aboriginal Peoples Reference Guide, Census of Population 2016" (25 October 2017), online: <www12.statcan.gc.ca/census-recensement/2016/ref/guides/009/98-500-x2016009-eng.cfm>. Statistics Canada notes that "[c]hanging attitudes about Aboriginal identity, judicial decisions or anticipated legal changes, the social climate and other factors may influence how people identify themselves." Changes in self-identification are the second main factor in the growth of the Aboriginal population (after natural growth), and Statistics Canada affirms that "more people are newly identifying as Aboriginal on the census" and that this is the "continuation of a trend over time." See Statistics Canada, "Aboriginal Peoples in Canada: key results from the 2016 Census" (25 October 2017), online: <www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm>.

inhabitants accord to Indigenous issues. The greater presence of Indigenous people in the urban spaces in Edmonton, as well as the Prairies more generally, coincides with the finding that all but one UAlberta participant spoke of Indigenous issues spontaneously or after a prompt as vague as a question about contemporary socio-political issues.<sup>48</sup>

Inversely, the small presence of Indigenous people in New Brunswick, and the Acadian society in particular, coincides with the finding that all but one UMoncton participants spoke of Indigenous issues and only once I had explicitly prompted them to do so. One UMoncton participant shared the following:<sup>49</sup>

Il y a des problèmes qui existent dans certaines parties du pays qui n'existent pas forcément ailleurs. ... Par exemple au Saskatchewan les Autochtones représentent maintenant ... près de 20% de la population de la province. Donc les Autochtones au Saskatchewan ont une présence sociale dans le vécu de tous les jours des gens, qu'ils n'ont pas par exemple ... au Nouveau-Brunswick. ... Au Nouveau-Brunswick la population autochtone est très petite, et je pense qu'il y a des choses plus présentes dans l'esprit des gens pour cette raison-là.

Another participant expressed the same idea in different terms: "On ne connaît pas les Autochtones. Je n'ai pas d'amis autochtones, mes enfants non plus. J'ai dû aller à un pow-wow deux fois. On va voir les Autochtones uniquement quand des européens nous rendent visite et veulent voir ça."<sup>50</sup>

Edmonton alone accounts for nearly twice as many inhabitants than the entire province of New Brunswick; it may thus not be surprising that the number of Aboriginal inhabitants in Moncton is extremely modest compared to that of Edmonton. However, the proportional representation in Moncton is nearly half of the representation in Edmonton.<sup>51</sup> Finally, the absolute number of Aboriginal

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48. There are approximately 258,640 Aboriginal Peoples in Alberta (6.4% of 4,067,175 inhabitants), and 656,970 Aboriginal Peoples in the Prairies (10.2% of 6,443,892). See Statistics Canada, *Census Profile, 2016*, *supra* note 45.

49. NB08 (There are problems that exist in certain parts of the country that do not necessarily exist elsewhere. ... For example, in Saskatchewan Indigenous Peoples now represent ... close to 20% of the population of the province. Therefore, Indigenous Peoples in Saskatchewan have a social presence in the day-to-day lives of people, whereas the same cannot be said for example ... in New Brunswick. ... In New Brunswick the Indigenous population is very small, and I believe that there are other issues at the forefront of people's minds for that reason).

50. NB05 ("We are not familiar with Indigenous people. I do not have any Indigenous friends and neither do my children. I have only attended a pow wow twice. We only see Indigenous Peoples when Europeans come to visit, and they want to experience a pow wow").

51. 2.5% of 141,525 (Moncton) compared to 5.9% of 1,321,426 (Edmonton). See Statistics Canada, *Census Profile, 2016*, *supra* note 45.

Peoples in Moncton indicates the absence of a critical mass to shape perceptions of the social space.

An additional aspect that also plays an important role here is the belonging to language communities. Several participants at UMoncton affirmed that Indigenous New Brunswickers were not part of the same language community as the University. One asserted that “aujourd’hui les Autochtones du Nouveau-Brunswick, Micmacs et Malécites, ne parlent pas français.”<sup>52</sup> Another offered more nuances in declaring that “la plupart des Autochtones parlent la langue des premières nations, que ce soit micmac ou malécite et anglais; ils ne parlent pas français.”<sup>53</sup>

The number of French-speaking Indigenous people in New Brunswick is disproportionately small. French speakers in New Brunswick represent about a third of the province’s population. Among them, only 3.7 per cent reported an Aboriginal identity in 2016. For the entire province, that was only 8,525 persons who both identified as Aboriginal and indicated that French was either their or one of their mother tongues, *i.e.*, 1.2 per cent of province’s population.<sup>54</sup> While this represents nearly 40 per cent of the province’s Aboriginal Peoples, it is mostly the Métis Peoples who compose this group;<sup>55</sup> less than 10 per cent of First Nations people living on reserve reported knowing French and only forty individuals, all living in the Madawaska community, in this category indicated that French was the only official language they knew.<sup>56</sup> These figures show that French is not the primary official language spoken by Indigenous people in New Brunswick.

One participant qualified the current relationship between the Acadians and the Indigenous Peoples as “deux solitudes”<sup>57</sup> and another explained that “il n’y a pas

52. NB04 (“today, Indigenous New Brunswickers, Mi’kmaq and Maliseet, do not speak French”).

53. NB02 (“most Indigenous Peoples speak the language of the First Nations, be it Mi’kmaq or Maliseet and English; they do not speak French”).

54. See Statistics Canada, *Census Profile, 2016*, *supra* note 45.

55. There are approximately 10,200 people who identify as Métis in New Brunswick, 7,030 of whom speak French. This is approximately 60 per cent of all Aboriginal Peoples in New Brunswick who speak French (11,685). See *Statistics Canada, Census Profile, 2016*, *supra* note 45.

56. Of Indigenous Peoples living on a reserve in New Brunswick, 715 individuals (8.9 per cent) reported knowing both French and English, *ibid*; for the profiles of each First Nations communities listed by the provincial government, see Government of New Brunswick, Department of Aboriginal Affairs, “First Nations Communities,” online: <[www2.gnb.ca/content/gnb/en/departments/aboriginal\\_affairs/fnc.html](http://www2.gnb.ca/content/gnb/en/departments/aboriginal_affairs/fnc.html)>.

57. NB04 (“two solitudes”). The term usually refers to the social and cultural isolation between French and English Canadians.

une grande présence [autochtone à UMoncton] à cause de la langue.”<sup>58</sup> However, Acadians and local Indigenous communities had strong connections prior to the British waging war on the latter and organizing the forced displacement of the former in the mid-eighteenth century. One participant elaborated further in the following terms:<sup>59</sup>

C’est une des raisons, suivant ma recherche, qui a motivé la déportation acadienne. Les Anglais voyaient un rapprochement entre les Acadiens et la communauté micmaq et malécite. ... Faragher ... parle d’une approche de colonisation acadienne tout à fait originale, qui n’a pas d’autre exemple en Amérique du Nord. Il [affirme] que si la déportation n’avait pas eu lieu, on pourrait peut-être parler d’une réconciliation ethnique, parce qu’il y avait un métissage qui se passait entre les deux peuples, vraiment une collaboration, et aussi même un dialecte de vieux français-autochtone, donc les deux pouvaient communiquer. ... Les Autochtones préféraient les français pour le commerce, et donc c’était une frustration chez les Anglais [qui voulaient] commercer avec les Autochtones. Et aussi politiquement, numériquement, je pense que ça [leur] faisait peur se rapprochement-là. Et donc les Acadiens ont été déportés

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58. NB02 (“there is not a strong [Indigenous] presence [at UMoncton] because of the language”).

59. NB04:

(It is one of the reasons, according to my research, that led to the Acadian deportation. The English were witnessing a reconciliation between the Acadians and the Mi’kmaq and Maliseet community. ... Faragher ... writes about an approach to Acadian colonization that is quite unique, of which there are no other examples in North America. He [maintains] that if the deportation had not taken place, one could perhaps speak of an ethnic reconciliation, given that there was a *métissage* between both Peoples, a collaboration really, and also, even a dialect of Old French-Indigenous language, so that both could communicate. ... The Indigenous Peoples preferred to trade with the French. This was a source of frustration for the English [who wanted to] trade with the Indigenous Peoples. And politically, numerically, I believe that the reconciliation scared [them]. So, the Acadians were deported, and the English started to have the monopoly on trade relations with the Indigenous Peoples. ... All that to say that today, Indigenous New Brunswickers, Mi’kmaq and Maliseet do not speak French).

See John Mack Faragher, *A Great and Noble Scheme: The Tragic Story of the Expulsion of the French Acadians from their American Homeland*, (WW Norton, 2005) at 48 (arguing that the Acadians and local Indigenous Peoples exchanged knowledge, built mixed families, and even started crafting common linguistic structures). Faragher notes that (*ibid*):

[M]étissage played a prominent part in the prevailing climate of cooperation during the early years of the settlement. ... From the Mi’kmaq [the French settlers] learned the Indigenous arts of fishing and hunting, methods of making clothing and moccasins from skins, furs and animal sinew, and the many uses of birchbark. A jargon composed of Mi’kma-wisimk and French became the lingua franca of the countryside.

Faragher further affirms that the Deportation “aborted a promising experience of ethnic reconciliation” (*ibid*).

et les Anglais ont commencé à avoir le monopole des relations commerciales avec les Autochtones. ... Tout ça pour dire que aujourd'hui des Autochtones du Nouveau-Brunswick, Micmacs et Malécites, ne parlent pas français.

Other historical sources attest the existence of early mingling and of an alliance between the Mi'kmaq Peoples and the French communities in the region.<sup>60</sup> They corroborate Faragher's assertions on this front even as they nuance Faragher's claims by showing that the French presence was no less part of a colonial enterprise in Mi'kma'ki than that of the British and that tensions arising from mutual misunderstanding on the terms of the alliance (whether it was solely commercial or also political and military) arose before the deportation of the Acadians.<sup>61</sup> After *le grand dérangement*, the relation between the two communities never recovered. As Acadians took part in squatting, grabbing reserve lands, and building an industry of the exploitation of the resources essential to the Indigenous way of life,<sup>62</sup> the new language dynamics further entrenched the mutual isolation of Acadians and Mi'kmaqs.

I previously mentioned the acquittal of Gerald Stanley for the killing of Colten Boushie and the vivid public debate it sparked across Canada and specifically within the legal community.<sup>63</sup> These events had a very small echo in the Acadian community: The archives of the main local French newspaper,

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60. *Looking Forward, Looking Back*, *supra* note 13 at 97-98 (the report showed that in 1715, the Mi'kmaqs affirmed to the British, who were then trying to persuade Acadians to swear allegiance to the British Crown after the French cession of Acadia, that "they had always been independent peoples, allies and brothers of the French").

61. See William C Wicken, "Re-examining Mi'kmaq-Acadian Relations, 1635-1755" in Sylvie Dépatie et al, eds, *Vingt ans après, Habitants et marchands: lectures de l'histoire des XVIIe et XVIIIe siècles canadiens* (McGill-Queen's University Press, 1998) 93 (confirming the existence of strong cultural connections between Acadians and Mi'kmaqs early on, but arguing that opposing economic lifestyles and demographic evolution had already distanced Acadian and Mi'kmaq communities in the few decades preceding the Deportation. According to him, social and political tensions arose between the two when the imperial struggle between England and France in the region escalated, especially as the Acadians insisted on their neutrality whereas the Mi'kmaqs expected the support of those they considered as their ally and kin in the armed struggle against English troops); Mark W Landry, *Pokemouche Mi'kmaq and the Colonial Regimes* (MA Thesis, Saint Mary's University, 2010) [unpublished] at 13 (affirming: "The relationship between the French and Mi'kmaq would be one of turmoil and ... the alliance between these two powers occurred, not because of amicable features or similarities between the two, but simply because the French colonized Mi'kma'ki first"); Andrea Bear Nicholas, "Wabanaki and French Relations: Myth and Reality" (1991) 24 *Interculture* 12 (deconstructing the myth of the "benevolent French embrace").

62. See generally Landry, *supra* note 61.

63. See the text accompanying notes 24-28.



*l'Acadie Nouvelle*, contain only one article featuring the name of Colten Boushie in the months following the acquittal of Gerald Stanley.<sup>64</sup> This further illustrates that Indigenous issues, especially when they occur and are discussed primarily in English, are much less present in the public debate among Acadian regions than other parts of Canada.

Distance with Indigenous issues is not unique to the Acadians. A participant advanced that French speakers generally in Canada felt less concerned by the topic than English speakers.<sup>65</sup> Their explanation for this phenomenon relied on the colonial history of and in Canada:<sup>66</sup>

Les Anglophones, c'est la puissance coloniale. Les Francophones on a été colonisateurs, mais pas de la même façon, et on a été nous-mêmes colonisés par les Anglais. Donc dans la mesure où il y a eu oppression et marginalisation des Autochtones, je ne pense pas que les francophones se sentent responsables au même degré que les Anglophones.

Another participant offered a similar view on the difference between French and English in colonizing the land, although with romantic and idealized undertones: "On n'a pas colonisé les Autochtones quand on est arrivé ici. On leur a demandé beaucoup d'aide en fait, et on leur a fait des enfants. On les a aimés,

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64. Search conducted with the Eureka platform on 31 October 2018, online: <nouveau.eureka.cc>. *L'Acadie Nouvelle* is a small local publication, and Acadians turn to other news sources for coverage of national issues; we can nonetheless note the sharp gap with the equally local but English-language newspaper *Moncton Times and Transcript*, which featured six articles on the topic, all published between 12 February and 9 March 2018. By comparison, the *Globe and Mail* and the *Toronto Star* featured respectively nearly 150 and eighty articles containing the name of Colten Boushie by 31 October 2018. For explanation of the sources used by Acadians see Marie-Hélène Eddie, *Publics, espace public et problème public : une étude de cas de l'enjeu du gaz de schiste au Nouveau-Brunswick de 2010 à 2016* (PhD Dissertation, University of Ottawa, 2019) [unpublished], online: <[https://ruor.uottawa.ca/bitstream/10393/39948/5/Eddie\\_Marie-Helene\\_2019\\_th%c3%a8se.pdf](https://ruor.uottawa.ca/bitstream/10393/39948/5/Eddie_Marie-Helene_2019_th%c3%a8se.pdf)> at 225-29. Eddie explains that Acadian media sources constitute a "protected bubble" and a "particular public space, separate, and accessible only to Francophones and Francophiles" where Acadians discuss mostly their own local issues.

65. NB08.

66. NB08 ("Anglophones are the colonial power. Francophones, we were also colonizers, but not in the same way, and we were ourselves colonized by the English. Therefore, I do not think that Francophones feel responsible for the oppression and marginalization of Indigenous Peoples to the same degree as Anglophones do").

on ne les a pas colonisés.”<sup>67</sup> The idea that French Canadians too have suffered oppression from the English came back in another participant’s discourse on the topic: “[L]es Acadiens on a aussi été opprimé. On a été déporté. Les Canadiens Français ont 200 ans de lutte pour en arriver à la situation d’aujourd’hui. Les Autochtones commencent à être sur la *map*, nous ça fait 200 ans qu’on lutte pour ça.”<sup>68</sup> We can see here that some UMoncton members perceive a comparable experience of oppression at the hands of the English between Acadians, or even French Canadians, and Indigenous Peoples. The last quote can even suggest a form of competition for public attention between the two groups.

One participant asserted that the 1999 Supreme Court of Canada (“SCC”) decisions in the *Marshall*<sup>69</sup> case had brought Acadians in contact with Indigenous issues, through confrontation:<sup>70</sup>

Cette décision a été la première manifestation tangible de l’article 35. Elle portait sur les pêches, et elle a eu des conséquences directes ici, dans l’industrie de la pêche. Il y a eu des manifestations violentes. Les pêcheurs étaient inquiets, avaient l’impression d’une chasse gardée; [ils se disaient:] “[C]’est nous qui avons développé [ce secteur économique] et maintenant on va le donner aux Autochtones ?”

In the *Marshall* decisions, the SCC found that Mi’kmaq and Maliseet people on the East Coast continue to have treaty rights to hunt, fish, and gather in order to earn a moderate livelihood on the basis of the Peace and Friendship Treaties,

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67. NB04: “We did not colonize the Indigenous Peoples when we arrived here. In fact, we asked them for a lot of help and we gave them children. We loved them, we did not colonize them”); the same participant later showed some distance with this romantic view (“les femmes diraient peut-être ‘vous avez colonisé nos corps’” (“the women might say: ‘you colonized our bodies’”)).

But see Faragher, *supra* note 59 at 37. Faragher affirms that there was a “custom of sexual freedom among young, unmarried [Mi’kmaq] women that was eagerly exploited by [French] fishermen and traders” and that “[w]hile girls were free to accept or reject lovers, however, the Mi’kmaq had no patience with forced sexual relations or rape.”

68. NB06 (“the Acadians, we were also oppressed. We were deported. The French Canadians have struggled for 200 years to get to the place where we are today. The Indigenous Peoples are starting to be on the map. We have been struggling for 200 years for that”).

69. *R v Marshall*, [1999] 3 SCR 456 [*Marshall (No 1)*]; *R v Marshall*, [1999] 3 SCR 533 [*Marshall (No 2)*].

70. NB05:

(This decision was the first tangible manifestation of section 35. It dealt with fishing rights and it had direct consequences here, in the fishing industry. There were violent demonstrations. The fishermen were worried, they were under the impression that a preserve was being created; [they were saying to themselves:] ‘[W]e are the ones that developed [this economic sector] and now they are going to give it to the Indigenous People?’).

signed in 1760 and 1761, between the British Crown and local Indigenous Nations.<sup>71</sup> In the weeks that followed the decisions, violent tensions arose in New Brunswick between Indigenous and non-Indigenous fishermen, for instance with the Mi'kmaq of the Burnt Church First Nation.<sup>72</sup> In the aftermath of this legal decision, there were great concerns regarding the future of this economic asset, central to the Acadian culture.<sup>73</sup> The emergence of Indigenous issues in the modern Acadian social space came with this confrontation.<sup>74</sup>

Indigenous topics have also recently acquired a visual presence in Moncton: During the summer of 2017, British artist Wasp Elder painted a forty-one metres high mural depicting Molly Muise, a female Mi'kmaq Elder from nineteenth-century Nova Scotia on the Lafrance residence building.<sup>75</sup> This is the tallest building on UMoncton's campus, and the painting is one of the first sights of the area that visitors encounter from the highway. The mural was still a recent monumental addition to the visual landscape when I conducted my fieldwork. In the weeks preceding my arrival, historian Maurice Basque had given a widely publicized talk at UMoncton on the context for the mural and the history of

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71. *Marshall (No 1)*, *supra* note 69; *Marshall (No 2)*, *supra* note 69.

72. See e.g. documentary film *Is the Crown at War With Us?* (2002) directed by Alanis Obomsawin, online (video): *National Film Board* <[https://www.nfb.ca/film/is\\_the\\_crown\\_at\\_war\\_with\\_us/](https://www.nfb.ca/film/is_the_crown_at_war_with_us/)>.

73. PD Clarke, "Pêche et identité en Acadie: nouveaux regards sur la culture et la ruralité en milieu maritime" (1998) 39 *Recherches sociographiques* 59 (discussing the centrality of fisheries in Acadian cultural practices and identity).

74. But note the more recent instance of cooperation between the Acadian and Mi'kmaq communities to oppose shale gas development in Kent County, NB in the early 2010s: see Eddie, *supra* note 64 at 160ff (describing the coordinated strategies of the French, English and Mi'kmaq local communities to oppose the project); Susan Levi-Peters, *Standing up to Shale Gas Standing Up for My People* (2019) at 57 (the author is a former Chief of Elsipogtog Migmag Nation and relates the movement opposing shale gas development from her perspective, including that she had never dreamed of seeing "the English, the French and the Aborigines ... unite to protect [their] land and water, but they did"). Violent tensions similar to those witnessed in 1999 arose in the fall of 2020 between Indigenous Peoples and Acadian (though not only Acadian) fishermen in the region, this time in southwestern Nova Scotia. The discourse from Acadian leaders show a marked evolution in their relations with Indigenous issues over the past twenty years, see e.g. Alexandre Cédric Doucet, "Statement by the President of the SANB: 'Acadians must denounce the violence against Mi'kmaq fishers'" (16 October 2020), online: <[www.sanb.ca/fr/communiqués/statement-by-the-president-of-the-sanb-acadians-must-denounce-the-violence-against-mi-kmaq-fishers](http://www.sanb.ca/fr/communiqués/statement-by-the-president-of-the-sanb-acadians-must-denounce-the-violence-against-mi-kmaq-fishers)>.

75. To see a visual of the painting, see e.g. Wasp Elder, "Mi'kmaq Molly Muise," online: <[www.waspelder.com](http://www.waspelder.com)>

Molly Muise herself.<sup>76</sup> This explains why a participant started responding to my question regarding Indigenous issues by a reference to the mural and the conference. The interviewee shared that the choice to depict Molly Muise, instead of an Acadian figure, triggered surprise and even shock for some.<sup>77</sup> The same participant considered the University's efforts to situate this artwork in a broader attempt to display a strong connection between Acadians, the University, and Indigenous Peoples as "artificial."<sup>78</sup>

Despite this historical distance, Indigenous issues have started garnering attention at UMoncton.<sup>79</sup> A press release dated 24 April 2018 from the University announced the creation of a working group on reconciliation with Indigenous Peoples.<sup>80</sup> The document opened with the following statement: "Le mouvement de réconciliation avec les peuples Autochtones, amorcé depuis plusieurs années à travers le pays, fait ses *premiers pas* au campus de Moncton" and mentioned the mural painting of Molly Muise and several events that had taken place during the 2017-2018 academic year to support this idea.<sup>81</sup> It also stated that the first course on the theme ("langues et cultures autochtones") had been offered during the winter 2018 term and qualified it as a first step towards indigenizing the curriculum.

The university is not isolated from the general shift in political and public attitudes towards Indigenous Peoples that has accelerated in the past few years across Canada and also feels the increased presence of Indigenous topics in academic discourse and research. There are currently incentives for academics to pay greater attention to this theme. Two participants affirmed that using appropriate "buzz words" and connecting proposed research to Indigenous

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76. BiblioChamplain, "Qui est Molly Muise, l'Amérindienne mi'kmaq qui est représentée sur la façade du pavillon Lafrance?" (21 February 2018), online: *Youtube* <[www.youtube.com/watch?v=HmX\\_tIVjmDw](http://www.youtube.com/watch?v=HmX_tIVjmDw)> (recording of Maurice Basque's presentation on 15 February 2018 at the Champlain Library of UMoncton).

77. NB05 (mentioning Zachary Richard, a popular singer and song writer from Acadian Louisiana, as an example of Acadian figure that the university could have chosen to honour instead).

78. NB05; Université de Moncton chose this proposal among a total of three, none of which included an Acadian figure. See Basque "Qui est Molly Muise?", *supra* note 76.

79. NB04, NB05.

80. Université de Moncton, Press Release, "Un groupe de réflexion sur la réconciliation avec les peuples Autochtones se forme à l'Université de Moncton" (24 April 2018), online: <[www.umoncton.ca/nouvelles/info.php?page=1&id=20715&campus\\_selection=all](http://www.umoncton.ca/nouvelles/info.php?page=1&id=20715&campus_selection=all)>.

81. *Ibid* ("[T]he movement towards reconciliation with the Indigenous Peoples, which started several years ago across the country, is in the *early stages* at the Moncton campus") [emphasis added].

issues in grant proposals, for instance, increased success prospects and testified to the political push for universities to take interest in the field.<sup>82</sup> One of them even shared a belief that much of the academic discourse on the topic was primarily opportunistic.

Three quarters of UMoncton participants (six out of eight) qualified some aspect of the discourse emphasizing Indigenous issues in legal education as either artificial or akin to a fad. For instance: “[C]’est une mode passagère,”<sup>83</sup> “c’est à la mode aujourd’hui,”<sup>84</sup> “c’est dans l’air du temps,”<sup>85</sup> “j’ai l’impression que c’est dans l’air du temps.”<sup>86</sup> This stands in sharp contrast with both UQAM and UAlberta, where no participant shared similar views. Most often, what UMoncton professors considered to be a fad was the requirement to have a mandatory course on Aboriginals people and the law, as formulated by the TRC. We will see their attitudes, in greater detail, on this and other issues in the following Parts of this article. It was apparent from the UMoncton participants’ views that their primary entry point to discussing Indigenous issues in legal education was the TRC’s prescription of a distinct and mandatory course. UMoncton members did not express opposition to the principles underlying reconciliation, sometimes even manifesting support for the overall enterprise; rather, they were critical of the uniform discourse on the topic, which they perceived to sound hollow in their local context, and of the blanket modality mandated to all law faculties. Key to understanding the attitude at UMoncton is the institution’s central, enduring, and distinctive focus on empowering and contributing to the cultural survival

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82. NB04. The participant stated:

Là politiquement on est dans un discours plus favorable, mais je trouve souvent, si les Autochtones intègrent le discours, c’est par opportunisme politique, ou même à des fins de subventions de recherche parce que l’on sait que c’est un *hot topic*. Avec les bons *buzz words* on va pouvoir avoir un CRSH.

(Politically, the discourse is currently favorable, but I often find that, if Indigenous topics are part of the discourse, it is just political opportunism or in order to receive research grants, because we know it is a hot topic. With the right buzz words, you can get a SSHRC).

NB05: “Quand le politique veut nous orienter, il cible les subventions. [En ce moment] les subventions sont ciblées autour [des questions autochtones]. En mettant les bons mots dans une demande de subventions, ça aide à l’obtenir.” (“When political authorities want to steer us, they target research grants. [Currently] grants are focused on [Indigenous issues]. When you include the right words in a grant proposal, it helps to obtain it”).

83. NB01 (“it is a fad”).

84. NB07 (“it is popular right now”).

85. NB05 (“it is timely”).

86. NB08 (“I get the impression that it is timely”).

of a given community, the Acadians, who have historically been remote from Indigenous issues.<sup>87</sup>

The situation is very different at UAlberta. As we have seen above, participants situated their faculty in the broad cultural sphere of Western Canada where Indigenous Peoples have long enjoyed a much stronger presence in the canvas of society. UAlberta features a well-established Faculty of Native Studies, reflecting the place of Indigenous issues in the university teaching and research. The academic unit dedicated to Native Studies at UAlberta came to life in the early 1980s and started offering a dedicated Bachelor of Arts by the end of the same decade.<sup>88</sup> UAlberta created an Indigenous Law Program in 1991.<sup>89</sup> In contrast, UQAM only started offering an undergraduate concentration in Indigenous Studies, in 2016, within its Faculty of Human Sciences,<sup>90</sup> while UMoncton has never offered a dedicated program on a similar theme.

Certain UAlberta participants spoke of a consensus for greater efforts towards reconciliation.<sup>91</sup> This highlights that beyond individual attitudes, engaging with Indigenous issues has become an established and expected practice at this faculty.

87. See *e.g.* NB01. Speaking about opposing a dedicated mandatory course on Aboriginal People and the law, the participant noted:

La faculté ici prend une position que je crois être exceptionnelle. Les autres doyens ont tous accepté sans contestation l'exigence d'avoir un cours de droit autochtone. Pour eux un cours de plus ça ne change pas grand-chose. Ils ont les moyens d'accommoder cette demande. Ici ça ne rentre pas dans la mission, surtout avec le peu de ressources qu'on a.

(The faculty, here, takes a position, which I believe is exceptional. The other deans have all accepted the requirement to offer a course on Aboriginal People and the law without questioning it. For them, an extra course does not change much. They have the means to accommodate this request. Here, it does not align with our mission, especially given that our resources are limited).

88. See the testimony of Carl Urion, a Métis man and one of the founders of the unit in Ellen Shoeck, *I Was There: A Century of Alumni Stories about the University of Alberta, 1906–2006*, (University of Alberta Press, 2006) at 497–98. The University of Alberta Native studies department is currently the only independent faculty of native studies in North America. It offers 4 undergraduate programs, a master program, and a PhD program. See *e.g.* Juris Graney, “Five Indigenous students make history by undertaking PhD in native studies at University of Alberta,” *Edmonton Journal* (8 November 2017), online: <edmontonjournal.com/news/local-news/five-Indigenous-students-make-history-by-undertaking-phd-in-native-studies-at-university-of-alberta>. For more information, see University of Alberta, “Faculty of Native Studies,” online: <www.ualberta.ca/native-studies/>.
89. John M Law & Roderick J Wood, “A History of the Law Faculty” (1996) 35 Alta L Rev 1 at 22; see *e.g.* Borrows, “Issues, Individuals, Institutions and Ideas,” *supra* note 10 at xvi, n 19.
90. Université du Québec à Montréal, Faculté de sciences humaines, “Concentration de premier cycle en études Autochtones,” online: UQAM <etudier.uqam.ca/programme?code=F019>.
91. *E.g.* AB02 (also expressing that some professors had concerns regarding resources to do so).

Indigenous Peoples are one of the several constituencies whose needs UAlberta considers in implementing its mission to serve, taking into consideration the faculty's generalist approach to legal education and mainstream conception of the public good.

The quantitative look at circumstances leading to discussing Indigenous issues in interviews suggested that UQAM was comparable to UAlberta. However, a qualitative analysis of the responses shows a much different approach. In Montreal, and the province of Quebec in general, Indigenous Peoples have not had the same presence in mainstream society as in the West,<sup>92</sup> despite certain milestones such as the Oka crisis. Nonetheless, a defining feature of UQAM is its deep commitment to social justice ideals. This includes awareness and sensibility to the issues touching those who have suffered a history of oppression and marginalization. In furtherance of this mission, UQAM is located in a part of Montreal where many homeless or otherwise vulnerable persons gather and find services dedicated to helping them. As in other urban centers, Indigenous Peoples are over-represented among the Montreal homeless population.<sup>93</sup> Therefore, UQAM is predisposed to an intellectual sensibility to and physical proximity with Indigenous issues. A participant affirmed the following: “[Ç]a fait très sens de dire que [les enjeux autochtones sont] importants à l’UQAM et au département des sciences juridiques.”<sup>94</sup> Another participant asserted that such questions were novel for the faculty.<sup>95</sup> As the faculty's conception of social justice

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92. See *e.g.* QC05 (“Au Québec on est en retard ... sur la Colombie-Britannique par exemple, possiblement l’Alberta et possiblement l’Ontario.”).

93. In 2015, Aboriginal people made up 10 per cent of Montréal homeless population, whereas they only made up 0.6 per cent of the general population; we can further note that 41 per cent among them were Inuit, whereas Inuit people make up only 10 per cent of Montréal's Aboriginal population. Eric Latimer et al, “I Count MTL 2015: Count and Survey of Montréal's Homeless Population on March 24, 2015” (July 2015), online: <ville.Montréal.qc.ca/pls/portal/docs/page/d\_social\_fr/media/documents/I\_Count\_MTL\_2015\_report.pdf> at vi.

94. QC06 (“it makes sense to say that [Indigenous issues are] important to UQAM and to the law department”). The participant also spoke of “incohérences” or “décalages” in the way such issues are integrated within the faculty's teaching and research and perceiving that “une partie de l’institution est dans l’urgence d’agir et pourrait le faire d’une manière qui pour moi n’est pas la bonne” (“a part of the institution believes that urgent action is needed and could act in a way that for me is not appropriate.”)).

95. QC08: “Vous avez parlé de la question autochtone, c’est quelque chose de tout récent” (“You mentioned Indigenous issues, it is a very recent topic”).

evolves over time,<sup>96</sup> Indigenous issues are now being integrated to the range of considerations that UQAM nurtures.

The faculty's central, enduring, and distinctive commitment to a social justice approach may make it more sensitive to Indigenous issues than other law faculties in Quebec. For instance, a participant at UMoncton who spoke of a French–English divide in engagement with Indigenous issues<sup>97</sup> asked me if my own study showed such a trend. I replied that the only other Francophone university included in my project was UQAM, and the participant acknowledged that it would not be representative or support the point: “[Ç]a me surprendrait que l’université de Montréal, Sherbrooke, Laval soient aussi accrochées sur les questions autochtones que l’UQAM. L’UQAM c’est [after a brief pause] l’UQAM!”<sup>98</sup> This did not prevent a UQAM participant from perceiving that engagement with Indigenous issues in this institution could sometimes be “un intérêt un petit peu superficiel.”<sup>99</sup>

Consequently, we see evidence of faculty-specific patterns in approaches and attitudes towards Indigenous issues. We see once again that the TRC Call to Action has played a pivotal role in transforming discourse and attitudes towards Indigenous issues among legal educators. Second, we can see remarkable coincidences between the universities’ social and cultural contexts, as well as the faculties’ conceptions of their own missions and the ways participants engaged with Indigenous issues. Indigenous issues resonate very differently depending on

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96. See e.g. QC07:

La conception de la justice sociale évolue, les enjeux ne sont pas forcément toujours les mêmes, ça se transforme. Jusqu’à un certain point c’est une sensibilité pour les personnes en situation de vulnérabilité, mais comme la société évolue les situations de vulnérabilités changent, donc cette mission va changer en fonction de comment on est capable de mieux remplir cette mission.

(The understanding of social justice evolves, the issues are not necessarily always the same, it changes. To some extent, people in vulnerable situations are sensitive to this, but as society evolves, vulnerable situations change. This mission, therefore will change depending on how we are better able to fulfill this mission).

See also QCXX (“Justice sociale, c’est très grand, puis *maintenant* ça inclut aussi protection de l’environnement, droits des communautés—moi j’ai commencé avec droits des femmes, *mais maintenant ça s’est étendu*, [par exemple aussi] les droits des usagers face à l’administration publique”) (“Social justice, it is very big, and *now* it includes protecting the environment, collective rights—I started with women’s rights, *but now that has expanded*, [for example also] the rights of users regarding the public service”) [emphasis added]).

97. *Supra* note 66 (see accompanying text).

98. NB08 (“I would be surprised if the Université de Montréal, Sherbrooke and Laval were as committed to Indigenous issues as UQAM. UQAM is [after a brief pause] UQAM”).

99. QC06 (“an interest that is a little bit superficial”).



the meanings associated with legal education at each faculty and constitutive of their institutional culture. I do not aim to infer conclusions generalizable across the landscape of Canadian legal education and the correlation I point to here may not exist everywhere in Canada. However, they appear clearly in the three case studies included here and helps us see the role of institutional meanings in legal education at these institutions.

With these two points in mind, we can now turn to analyzing the attitudes of UQAM, UAlberta, and UMoncton faculty members on three aspects of legal education in relation to Indigenous issues: The acknowledgment of traditional territories, the inclusion of Indigenous issues in the curriculum through dedicated courses or into traditional courses, and the recruitment of Indigenous members in their communities, as faculty and students.

#### IV. LAND ACKNOWLEDGEMENTS

In recent years, some individuals and institutions have started to acknowledge the traditional relationship between certain Indigenous Peoples and the land on which they gather during important events, or even to conduct their usual activities. This echoes a long-standing practice in many Indigenous cultures. The following section will analyze attitudes and practices in the three law faculties regarding such territorial acknowledgements. Public acknowledgement of this relationship does not appear among the recommendations formulated by the TRC; although, as we will see below, at least one actor who engages in this practice does so in direct response to the TRC report.

Before turning to this practice in more detail, it is important to situate the three law faculties in relation to the history of the land on which they stand today, especially as it concerns Indigenous Peoples. The previous section offered a contemporary portrait of urban Indigenous presence; what follows will contribute to our understanding of the current situation as well as provide context to discuss the practice and content of territorial acknowledgments. Incidentally, this is also an opportunity for me to acknowledge the land on which I conducted my research.

In the early 1600s, prior to contact with the French, the inhabitants of present-day New Brunswick were the Mi'kmaq, the Maliseet, and the Passamaquoddy Peoples. The Haudenosaunee and Anishinabeg Peoples were the main habitants in the region of Montréal. By the mid-1700s, the British Crown established its control over the land and the peoples living in these regions. It engaged in treaty making with the Mi'kmaq, the Maliseet, and the Passamaquoddy through the 1760-61 treaties discussed in the *Marshal*

decisions.<sup>100</sup> The first Europeans in Edmonton's region were French and English fur traders who only arrived in the late 1700s. The main First Nations in this region were the Cree and the Blackfoot, and the Métis soon emerged. The area where Edmonton is located was the subject of Treaty 6 signed in 1876.<sup>101</sup> The total area covered by Treaty 6 stretched from western Alberta to Manitoba; it included fifty First Nations.<sup>102</sup> Treaty 6 was part of Canada's efforts to pave the way for political and economic integration of these lands and peoples into the Dominion shortly after Confederation.<sup>103</sup>

The first event I observed for the present study was the welcome ceremony for new students in law and political science at UQAM. As explained in the opening paragraph of this article, the dean of UQAM's FSPD included in the very beginning of his welcome speech an acknowledgement that the ceremony was happening on unceded traditional Indigenous territory. When I interviewed him, he offered the following explanation for engaging in this practice:<sup>104</sup>

[C]'était dans une perspective de réconciliation que l'on reconnaissait [que nous sommes présentement en territoire traditionnel autochtone non cédé], et que l'on devait, comme nous appelle à le faire le rapport de la Commission de vérité et réconciliation, se rappeler de ce fait là dans les moments solennels.

He added that the aim was to extend a friendly hand, and “espérer pouvoir construire de meilleurs rapports avec les Premières Nations dans le respect.”<sup>105</sup>

As mentioned in the introduction, there was also a statement made by a member of the faculty council during the meeting that took place immediately after the welcome ceremony. The professor asserted that the dean had not spoken in their name or in the name of the undergraduate program in political science

100. *Marshall (No 1)*, *supra* note 69; *Marshall (No 2)*, *supra* note 69.

101. *Treaty 6 between Her Majesty the Queen and the Plain and Wood Cree Indians and other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions*, 9 September 1876, online: <[www.tcm.ca/wp-content/uploads/PDFs/Treaties/Treaty%206%20Text%20and%20Adhesions.pdf](http://www.tcm.ca/wp-content/uploads/PDFs/Treaties/Treaty%206%20Text%20and%20Adhesions.pdf)>.

102. *Ibid.*

103. See e.g. Howard Palmer & Teresa Palmer, *Alberta: A New History* (Hurtig, 1990).

104. QC07 (attributed with permission) (“it was in the context of reconciliation that we recognized [that we are currently on unceded traditional Indigenous territory], and that we had to, as the Truth and Reconciliation Commission report urges us to do, remember that fact during formal occasions”).

105. QC07 (attributed with permission) (“hope to establish better relationships with the First Nations in a respectful manner”).

that they represented when performing the acknowledgement.<sup>106</sup> During my interview with the dean a few weeks later, he turned to this event. He made sure to impart that said faculty member was a professor in the political science department, representing a program from that unit, and not a member of the law department (DSJ).<sup>107</sup> He did so to illustrate the difference between DSJ and its political science counterpart in attitudes towards reconciliation.

According to the dean, the political science faculty members entertained a debate regarding whether reconciliation was an appropriate concept at all in the circumstances, and the nature of duties that had emerged from it, if any.<sup>108</sup> On the contrary, the idea of reconciliation and the specific practice of acknowledging that UQAM is located on a traditional land that Indigenous Peoples never ceded to settlers was not an issue within DSJ. There was a form of consensus about it, even though there could have been some discussions about when and how often such acknowledgment should occur in order to avoid stripping the practice of its symbolic meaning (“le banaliser” (“to trivialize it”)). As we will see below, this does not mean that DSJ members all share the same attitudes on other aspects, such as the recruitment of Indigenous members or indigenizing the curriculum, as the interviews with other faculty members demonstrate.

On 5 September 2017, after brief introductions by the vice-dean and the dean, the orientation event at UAlberta opened with an invocation by two Cree Elders, Adelaide McDonald and Mabel Wanyandie from the Aseniwuche

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106. The question of the uncaded character of the island of Montreal became a topic of public debate in the following weeks and months. See the series of articles in *La Presse* (between 26 September and 1 October 2017) and *Le Devoir* (23 May 2018) and responses from the Mohwak Council of Kahnawà:ke. See Mohwak Council of Kahnawà:ke, “MCK Answers Back” MCK (29 May 2018 & 26 October 2017), online: <[www.kahnawake.com/answersback/](http://www.kahnawake.com/answersback/)>.

107. The member of the faculty council at UQAM FSPD act as representatives of a constituency that elected them, such as an academic program; only those representatives attend and participate in the meetings of the council.

108. We can note, for instance, that all 4 members of FSPD’s faculty council who filed a nominal dissent to the council’s decision to adopt the TRC final report and recommendations at the 31 May 2017 meeting of this governing body belonged to the political science and not the law department. See FSPD, *Procès-verbal de la quatre-vingt-douzième assemblée ordinaire du Conseil Académique de la FSPD* (31 May 2017) at 17, online: <[fspd.uqam.ca/wp-content/uploads/sites/10/pv\\_31\\_mai\\_2017\\_revu.pdf](http://fspd.uqam.ca/wp-content/uploads/sites/10/pv_31_mai_2017_revu.pdf)>.

Winewak Nation.<sup>109</sup> The Elders had acted as co-instructors for a summer course in their community for students in UAlberta's faculties of Law and Native Studies. It was an experience the dean described as "the inaugural Wahkohtowin Project, an on-the-land, for-credit course, focused on Indigenous legal concepts and practices."<sup>110</sup> Since 2014, UAlberta has invited Elders to address the incoming law class during Orientation.<sup>111</sup> For several minutes, Ms. McDonald and Ms. Wanyandie welcomed the students and guests in Cree, telling them that they were thankful and grateful for their presence.<sup>112</sup> Inviting Elders to welcome newcomers takes the idea of having (settler) leaders acknowledge the Indigenous character of the land one step further. In doing so, UAlberta recognizes and celebrates the traditional connection of the Cree Peoples with the land on which it carries its activities.

UAlberta also encourages all of its members to use statements of territorial acknowledgements, whether those it developed through the Provost Office and in consultation with several stakeholders, including Indigenous faculty and staff,<sup>113</sup> or their own words to the same effect, as "part of written U of A documents such as websites, brochures or papers."<sup>114</sup> The UAlberta Calendar, for instance, starts with the following statement:<sup>115</sup>

The University of Alberta acknowledges that we are located on Treaty 6 territory, and respects the histories, languages, and cultures of the First Nations, Métis, Inuit, and all First Peoples of Canada, whose presence continues to enrich our vibrant community.

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109. The official speeches at the welcome ceremony for new law students at UAlberta on 5 September 2017 were all video recorded and are publicly available: UAlberta Orientation 2017 Video, *supra* note 31. It was impossible to attend the orientation at all three institutions as they all happened in a short period of time; public documents such as this video, and the published program of the event (not available online), offer the best proxy for comparisons in spite of the inherent limitations (*e.g.* limited frame, potential editing, promotional character of the public documents, et cetera).

110. UAlberta Orientation 2017 Video, *supra* note 31 at 00h:01m:00s.

111. *Ibid* at 00h:00m:40s.

112. *Ibid* at 00h:05m:45s.

113. "Acknowledgement of the Traditional Territory," online: *University of Alberta* <[www.ualberta.ca/toolkit/communications/acknowledgment-of-traditional-territory](http://www.ualberta.ca/toolkit/communications/acknowledgment-of-traditional-territory)>; see also "University of Alberta Developed Territorial Acknowledgments," online: *University of Alberta* <[cloudfront.ualberta.ca/-/media/ualberta/aboriginal-hub/territorial-acknowledgements-english-french-27july16.pdf](http://cloudfront.ualberta.ca/-/media/ualberta/aboriginal-hub/territorial-acknowledgements-english-french-27july16.pdf)>.

114. Acknowledgement of the Traditional Territory, *supra* note 113.

115. "University of Alberta Calendar 2018-2019," online: *University of Alberta* <[calendar.ualberta.ca/index.php?catoid=28](http://calendar.ualberta.ca/index.php?catoid=28)>.

On 25 October 2017, I observed an official event at UAlberta: the signing of a Memorandum of Understanding between the Faculty of Law and the Judge Advocate General (JAG) of the Canadian Armed Forces. It was a ceremony with military personnel in dress uniforms, a choir to sing the national anthem, and many flags on display. While no Indigenous Elders took part in the event, the dean acknowledged that it was happening on Treaty 6 territory. The practice of acknowledging the traditional territory is, therefore, well-established and encouraged at the highest institutional level at UAlberta. No participant shared their views in this specific practice during interviews. While we should be cautious of inferring anything from silence, the overall tone of the conversations on the broader topic of reconciliation and Indigenous issues in legal education leads me to believe that this practice is rather consensual; at the very least, it is not the object of heated debate in the community of the kind observed between political science and law faculty members at UQAM.

At UMoncton, no recording of the welcome event was available, and I have not encountered any published program of the event.<sup>116</sup> A participant shared that the faculty had never organized a Pow-Wow, “dans le sens autochtone,” even though they believed it could easily be done.<sup>117</sup> My presence on site nonetheless coincided with the most important official event of the year at UMoncton: the eleventh J-F Landry Conference that took place on 15 March 2018. The guest speaker was the Right Honourable Michaëlle Jean, the former Governor General of Canada and the then-Secretary-General of the Organisation Internationale de la Francophonie (OIF). While they had different purposes, this event was comparable with the signing ceremony with JAG at UAlberta in light of its very official character, as I could gather from the visual signals on display (red carpet, numerous flags, et cetera) and the presence of many local dignitaries. At no point during this event did any speaker mention the traditional relationship of local Indigenous Peoples with the land on which they had gathered.

During the interviews, two participants shared diverging views on the practice. While none spoke specifically about the presence or absence of such a practice during UMoncton events, it was clear from context that this practice did not take place. One participant recalled attending a conference elsewhere where the printed materials that had been circulated included a statement at the bottom acknowledging the presence of the participants on traditional Mi'kmaq territory

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116. We can note that the Cree Elders invocation did not appear on the published program of the UAlberta Orientation event.

117. NB02.

that had never been officially ceded; this participant approved of this practice.<sup>118</sup> On the other hand, another participant expressed skepticism about this practice, having witnessed similar statements in other universities. The same participant called it as a form of tokenism or lip service: “[C]’est un vœu pieux, c’est un geste complètement creux. Ça sert à quoi de dire ça si on n’est pas prêt à leur céder les terres nous-mêmes, si on n’est pas prêt à compenser ces sociétés là pour la perte de terres qu’ils revendiquent?”<sup>119</sup> The participant further offered an illustrative analogy to explain the position: “[C]’est comme si je te volais ta bicyclette et je continuais à m’en servir, mais je disais ‘je reconnais que c’est ta bicyclette, mais tu ne peux pas la ravoir.’ Je ne sais pas, je trouve ça un peu étrange.”<sup>120</sup> The core of this participant’s criticism seems to lie with the qualification of the territory as unceded, or the otherwise recognition of outstanding legal claims to the land by Indigenous communities; it is not an opposition to recognizing the cultural and historical character of the land for local Indigenous communities, but rather a criticism of the apparent hypocrisy.

Beyond the diverging feelings and concerns about the practice that the interviews reveal, we can infer from them that this practice is indeed not established at UMoncton. There does not seem to be an ongoing debate about it either, as is the case at UQAM. This further illustrates that UMoncton has only very recently started engaging with Indigenous issues altogether.

The practice and attitudes regarding the recognition of the traditional character of the land on which the faculties operate for local Indigenous people vary greatly between the three institutions in this study. Individual sensibilities and institutional engagement with Indigenous issues play a large role in such variations. We can see the faculties’ institutional cultures at play in the patterns of attitudes towards acknowledging the traditional character of the territory for local Indigenous people.

## V. INDIGENOUS CURRICULAR CONTENT

The TRC Call to Action 28 asked law faculties to “require all law students to take a course in Aboriginal People and the law.”<sup>121</sup> It included Indigenous law

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118. NB03.

119. NB08 (“it is just lip service, it is a completely hollow gesture. What is the point of acknowledging that if we are not willing to cede them the lands, if we are not willing to compensate those societies for the loss of the lands they are claiming?”).

120. NB08 (“it is as if I stole your bicycle and I continued to use it, but I said ‘I recognize that it is your bicycle, but you cannot have it back.’ I don’t know, I find that a bit strange.”).

121. See *supra* note 3, Call to Action 28.

in the specified content for such a course, changing the paradigm. Until then, law faculties mainly considered the teaching of Canadian law as it relates to Aboriginal rights (Aboriginal law), with a few notable exceptions.<sup>122</sup> Whereas SCC jurisprudence highlighting the obligation for lawyers and judges to engage with Indigenous laws when dealing with Aboriginal law had long preceded the TRC report,<sup>123</sup> it is the later that really placed the spotlight on the place of Indigenous legal traditions in the law curriculum and triggered legal educators to consider how they could include Indigenous legal traditions, concepts and practices in their teaching.

In accord with the Call to Action's phrasing, comments often focused on the question of a mandatory dedicated course in Aboriginal People and the law, as we will see from interviews at UMoncton. However, as we will see, mostly from interviews at UAlberta, there is growing consideration for the indigenization or decolonization of the traditional law courses. A literature on the topic is burgeoning,<sup>124</sup> mostly in English<sup>125</sup> and responding to the TRC's Call to Action, which is a pressing challenge for every law faculty in Canada. While some have already announced ambitious initiatives,<sup>126</sup> the discussion is ongoing

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122. See e.g. Borrows, "Issues, Individuals, Institutions and Ideas," *supra* note 10 at xii (affirming that "[d]eans, professors, and students ... could quote the cases dealing with [Indigenous People's] issues" before they considered learning about Indigenous laws).

123. See e.g. *R v Sparrow*, [1990] 1 SCR 1075 at 1112; *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at 1099; *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44 at paras 34-35; see also Drake, *supra* note 6 (providing examples of failures on the part of judges to do so properly, often in spite of their best intentions).

124. A few months following the TRC report in 2016, the McGill Law Journal and Windsor Yearbook of Access to Justice published special issues related to the topic. See e.g. Special Issue, *Indigenous Law and Legal Pluralism* (2016) 61 McGill LJ 721; Special Issue, *Indigenous Law, Lands and Literature* (2016) 33:1 Windsor YB Access Just v. These special issues included, notably, works by Harland, Mills, Napoleon, Friedland, Borrows, and Hewitt (*supra* notes 6-8); the Reconciliation Syllabus project, a collaborative collection of TRC-inspired materials for teaching law, online: <reconciliationsyllabus.wordpress.com>.

125. There are remarkably few publications in French on the topic. The limited examples published in French-language law journals include Sheilah L Martin, "La reconciliation: notre responsabilité à tous" (2019) 60 C de D 559 at 576; Ghislain Otis, "La production du droit autochtone: comportement, commandement, enseignement" (2018) 48 RGD 67 (only discussing the question of curriculum or university legal education more broadly in passing).

126. The most ambitious initiative remains the University of Victoria JD/JID program. See University of Victoria, Law, "Joint Degree Program in Canadian Common Law and Indigenous Legal Orders JD/JID," online: <www.uvic.ca/law/about/indigenous/jid/index.php>. See also McGill's Property course, which integrates "common law, civil law and Indigenous traditions in respect of property." See McGill University, "LAWG 220D1 Property," online: <www.mcgill.ca/study/2018-2019/courses/lawg-220d1>.

everywhere. To date, the FSLC is still studying how to include this element in the National Requirement. There is no doubt that we should expect further changes in the coming years.

It is noteworthy that discussions on this topic have concerned exclusively Bachelor of Laws (“LLB”) and Juris Doctor (“JD”) programs,<sup>127</sup> perhaps unsurprisingly given the hegemonic place of professional undergraduate programs in legal education.<sup>128</sup> This is in spite of the all-encompassing phrasing of the Call to Action referring to “all law students.” The next generation of law scholars and teachers in Canada would benefit greatly from robust methodological training to conduct research in the field and adequate preparation to integrate Indigenous legal traditions in their teaching; this is apparent from several interviewees calling for more resources to develop their abilities for the task.<sup>129</sup>

The required components of the LLB or JD curriculum and the courses *découpage* can be perceived as core to the identity of a faculty.<sup>130</sup> Even as regulators’, students’, and other stakeholders’ intertwined expectations play a role in the process, it is the law faculty that chooses, and more importantly mandates, course offerings. It signals what the law faculty deems important components of legal education. Analyzing attitudes towards the place that each institution gives to Indigenous issues in its undergraduate students’ educational journey, and how professors perceive pedagogical expectations to that effect, will further demonstrate the relevance of the faculties’ cultural patterns to understanding the role of indigenous issues in contemporary legal education.

First, interviews revealed that the discussion about *how* to integrate Indigenous legal content in the curriculum is taking place in all three law faculties studied.<sup>131</sup> The terms of the discussion are not the same between universities, and as we will see, some still question the *whether* and *why*. It remains, however, that everyone is talking about the *how*, even if they feel forced to do so. Regardless of the differences among them—history, language, geographic location, communities

127. The only counter example I found is Borrows, “Outsider Education”, *supra* note 7 at 22 (discussing how he fostered land-based learning of Indigenous laws for his graduate students).

128. See Rosalie Jukier & Kate Glover, “Forgotten? The Role of Graduate Legal Education in the Future of the Law Faculty” (2014) 51 *Alta L Rev* 761; Dia Dabby, Bethany Hastie & Jocelyn Stacey, “Doctoral Studies in Law: From the Inside Out” (2016) 39 *Dal LJ* 221 at 223 (“graduate studies, and particularly, doctoral studies in law largely have been absent from the conversation”); Habermacher, *supra* note 1 at chap 4, s 1.2 (for more details on the different importance accorded to undergraduate and graduate studies in law at UQAM, UAlberta and UMoncton).

129. See *e.g.* AB02, quote accompanying note 143.

130. See Habermacher, *supra* note 1 at ch 4, s 2.

131. See Harland, *supra* note 6.



served, intellectual sensibility, or legal tradition taught—all three faculties have to position themselves on this topic. Even if future directions are still uncertain, the TRC has succeeded in imposing a Canada-wide dialogue on the role of Indigenous Laws in the law curriculum.

A participant at UAlberta affirmed that there is “an expectation that Indigenous issues be addressed in all sort of classes.”<sup>132</sup> Another professor considered that there was “less of a debate and more of an accepted fact that we need to do more” to incorporate Indigenous perspectives in various courses.<sup>133</sup> It is on this front that the discussion is developing at UAlberta. At the time of my fieldwork, the faculty offered a small number of courses dedicated to Indigenous legal perspectives and course descriptions indicate that about half a dozen traditional courses included considerations of Indigenous issues.<sup>134</sup>

A professor affirmed being “very excited” to engage with the question, and that finding the role for Indigenous legal perspectives was a “critical part” of the “national objective of reconciliation.”<sup>135</sup> Another participant affirmed that “[professors] ha[d] talked a lot in serious ways [about] the integration of material in [their] curriculum and [their] courses related to the experience of Indigenous Peoples and Indigenous law, so responding to the TRC recommendations.”<sup>136</sup> Asserting that it was an important conversation, the same added that although “[they] have a long way to go to accomplish that, [they] are actively thinking about and working on doing that better.”<sup>137</sup> Another participant affirmed

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132. AB04.

133. AB03.

134. University of Alberta, “Faculty of Law 2017-2018 Course Descriptions” (on file with the author). In 2017-2018, the faculty offered the following courses focused on Aboriginal Peoples, Indigenous laws or Indigenous perspectives: “Aboriginal Peoples and the Law”; “Indigenous Peoples, Law, Justice and Reconciliation”; “Indigenous Laws: Questions and Methods for Engagement”; “Wahkotowin Intensive: “Miyowicēhtowin Principles and Practice” (summer course taught partly in Aseniwuche Winewak territory); “Gladue Seminar & Externship” (with Alberta Justice in criminal law and sentencing); and the Kawaskimhon moot on Aboriginal law. Of the 125 courses listed for the same year (excluding 1L courses), we can find the words “Aboriginal” or “Indigenous” in the description of only half a dozen other courses: “Water Law”; “Women Law & Social Change”; “Jurisprudence: Property Rights”; “Constitutional Litigation”; “Basic Oil and Gas”; “International Human Rights Law” (*ibid*). To this list we can add the blanket exercise in the 1L introductory Foundations of Law course. We should, however, keep in mind the inherent limitations of relying on course descriptions to assess their content.

135. AB03.

136. AB08.

137. AB08.

knowing that “a number of people have tried to incorporate Indigenous content into their courses.”<sup>138</sup>

Several participants perceived that Indigenous perspectives could more readily find a place in certain courses than others. The participants generally cited private law courses as examples of where it is more difficult to integrate Indigenous content.<sup>139</sup> For instance, about Contracts, one of them affirmed that their own efforts had proven unsatisfactory in this regard. Citing a colleague at University of Ottawa and affirming that they had done “the best job [they] can in integrating Indigenous perspectives on Contracts,” the same participant had to admit that “in the end, it [was] pretty disappointing.”<sup>140</sup> On the other hand, for other courses, participants maintained that one could “certainly incorporate Indigenous perspectives.”<sup>141</sup>

As we can see, many professors are engaging with this issue. This discussion takes many forms, as a participant affirmed the following:<sup>142</sup>

There has been a significant number of us, individually, institutionally, and institutionally both sort of led from the top down and from the faculty up, [engaged with] how to integrate the recommendations of the [T]ruth and [R]econciliation [C]ommission and Indigenous issues in general into our curriculum, into [their] teaching, into [their] own courses, into new courses and new programs, and there has been a lot of discussions.

This discussion is ongoing, although it may not be organized or formalized. At least one participant expressed the view that indeed things were happening, but more so from individual rather than institutional initiatives:<sup>143</sup>

I would say more that there hasn't been an institutional push to do it. ... I mean ... we have got funds this year to hire somebody who is of Indigenous heritage, and that has come from the Provost ... . But a lot of what has been happening in the school is more individual initiatives. ... A group of [professors] got together and read the

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138. AB02.

139. ABXX & ABXX (unfortunately, providing the precise course titles here would jeopardize the anonymity of participants).

140. ABXX, the participant noted that:

In fact, we tried to find a way to do that in Contracts this year. Unsuccessfully. There is a woman called Jane Bailey at Ottawa who has done the best job she can in integrating Indigenous perspectives on Contracts, but you would have to say in the end it is pretty disappointing.

See also Sandomierski's insights on Indigenous issues in the teaching of contracts.

Sandomierski, *supra* note 11 at 213-18.

141. *E.g.* ABXX (citing courses relating to natural resources).

142. AB11.

143. AB02.

Truth and Reconciliation Report and talked about it, but that was very much just a group of professors deciding that we were going to do that. We did have a meeting about doing more, and one of the concerns was: “[Y]eah that is fine we will do more, but we are going to need resources, and if you are not giving us resources, don’t expect us to do this.” I know a number of people have tried to incorporate Indigenous content into their courses and there is a person through [the] Center for Teaching and Learning who is tasked with helping people incorporate Indigenous content into their courses. I would say she has a very challenging job because she is not even a lawyer [and] she is helping all the Faculties. ... There are some resources out there, but really what has happened in the Faculty has been largely the initiatives of people who think that is something that we should do that’s important, as opposed to a consensus, or a lengthy discussion about how we are going to proceed.

From this interview, we can see that there exist some institutional incentives and resources. The dean of UAlberta affirmed that his faculty would be “very much part of things ... doing with Indigenous initiatives, which is a priority for the university.”<sup>144</sup> Official communications also promote the same message and advertise efforts made in this direction.<sup>145</sup> Promotion, however, does not amount to coercion. One of the participants who found it difficult to integrate Indigenous perspectives in their teaching area affirmed that “this Faculty [had] always been ... very respectful of individual professors being autonomous and deciding how they want to handle any sort of pedagogical issue, including content.”<sup>146</sup> As such, this participant did not feel pressured to include more Indigenous content than they had determined to be adequate. They thought that it was “overall a good thing.”<sup>147</sup>

The previous participant who perceived a lack of institutional push was not, however, advocating for the administration to mandate content in certain courses. The remarks expressed frustration in response to ineffective or insufficient support for those professors who wanted to revise their materials and practices in order to give a greater place to Indigenous legal traditions.<sup>148</sup> Transforming one’s teaching takes a lot of time and effort as it requires researching and familiarizing oneself

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144. ABXX (attributed with permission).

145. See e.g. UAlberta, News Release, “Orientation concludes with impactful exercise on Indigenous-Canadian history” (12 September 2017), online: <[www.ualberta.ca/law/about/news/main-news/2017/september/blanket-exercise](http://www.ualberta.ca/law/about/news/main-news/2017/september/blanket-exercise)>; the same exercise had taken place in 2016 too, see Kairos Canada, “First-year law students participate in KAIROS Blanket Exercise” (12 January 2017), online: <[www.kairoscanada.org/first-year-law-students-participate-in-kairos-blanket-exercise](http://www.kairoscanada.org/first-year-law-students-participate-in-kairos-blanket-exercise)>; AB02 also mentioned this during the interview.

146. AB04.

147. AB04; compare to Drake, *supra* note 6 (debunking usual concerns about academic freedom on the topic).

148. AB02.

with new practices and materials; the cultural gap between mainstream Canadian and Indigenous perspectives makes this all the more difficult.<sup>149</sup> In the extract reproduced above, we can see that the same participant had sought help from a staff member at UAlberta's Center for Teaching and Learning, who specialized in helping educators bring Indigenous perspectives into their teaching.<sup>150</sup> However, we can also see that it had not proven as helpful as expected, mainly because the suggestions were not perceived as being relevant to the subject areas of the course.<sup>151</sup> The overall encouraging discourse, absent sufficient specialized resources or incentives, does not seem to be enough for professors to be able to meaningfully integrate Indigenous legal traditions in their courses. This is especially the case in an environment where research in the form of grant applications and publications often takes precedence over teaching performances in career advancement.

The conversation about the place of Indigenous content in the law curriculum was very different at UMoncton. First, several participants spoke against the mandatory course recommended by the TRC. They generally did not distinguish whether their opposition was to a required course on Aboriginal law, Indigenous legal traditions, or both.<sup>152</sup> One of them recognized that Indigenous issues formed part of the legal history that the faculty should teach, implicitly condemning the previous absence of discussion about them: "Ça fait partie de l'histoire du droit qu'on devrait enseigner à nos étudiants. Autant droit civil, Québec, common law, droits linguistiques, droits autochtones, selon moi ça fait partie d'un apprentissage de notre histoire."<sup>153</sup> Contrasting it with the traditional content of legal history courses ("l'histoire du Royaume-Uni et puis des reines

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149. See e.g. Mills, *supra* note 6, Gordon Christie, "Culture, Self-Determination and Colonialism: Issues Around the Revitalization of Indigenous Legal Traditions" (2007) 6 Indigenous LJ 13 (on the incommensurability between the liberal philosophy embedded in the Canadian legal system and Indigenous legal traditions). See Borrows, "Heroes," *supra* note 7; Napoleon & Friedland, *supra* note 7 (for an understanding of how Canadian common law reasoning can be used to teach Indigenous laws).

150. See University of Alberta, "Centre for Teaching and Learning," online: <[www.ualberta.ca/centre-for-teaching-and-learning](http://www.ualberta.ca/centre-for-teaching-and-learning)>.

151. AB02 ("You say: 'what should I be doing in [this course]?' and she says: 'what about this?,' and you say: 'this is not really related to anything I cover in [this course],' which is fine because you do not expect her to know [this field of law]").

152. This is partly because in French, at least in oral conversations, the terms "droit(s) (des) autochtone(s)" do not allow for the same clear distinction as between "Aboriginal law" and "Indigenous law(s)."

153. NB06 ("It is a part of the legal history that we should teach our students. As far as I am concerned, civil law, common law, language rights and Indigenous rights are all a part of our history that should be learned").

et des rois”), the same participant insisted that Indigenous legal perspectives formed part of “notre histoire à nous.”<sup>154</sup> However, they also affirmed that mandating a dedicated course was pushing the metaphorical pendulum “d’un extrême à l’autre.”<sup>155</sup>

Another participant also expressed opposition to the requirement, calling it a fad (“mode passagère”).<sup>156</sup> Nonetheless, they continued with an explanation that there wasn’t much debate to be had about it because the faculty would be compelled to follow the FSLC’s requirements in any case.<sup>157</sup> Enabling Francophones to join common law bars is UMoncton’s *raison d’être*;<sup>158</sup> as the FLSC and provincial law societies hold the privilege of granting entry to the legal professions, the faculty will follow the requirements they set to continue fulfilling its mission. The same participant implied that opposition to this specific requirement was widely shared at UMoncton but also acknowledged that the faculty’s position stood out compared to its counterparts: “[L]a faculté ici prend une position que je crois être exceptionnelle. Les autres doyens ont tous accepté sans contestation l’exigence d’avoir un cours de droit autochtone.”<sup>159</sup>

Several participants exposed comparable perspectives justifying this stance. One noted that: “Pour [les autres facultés] un cours de plus ça ne change pas grand-chose. Ils ont les moyens d’accommoder cette demande. Ici ça ne rentre pas dans la mission, surtout avec le peu de ressources qu’on a.”<sup>160</sup> Another stated: “Si je compare l’importance des droits autochtones au sein de notre faculté à l’importance des droits linguistiques, pour moi il y en a un qui,

154. NB06 (“the history of the United Kingdom and Queens and Kings”; “of our history”).

155. NB06 (“too far the other way”).

156. NB01.

157. NB01; See also *supra* note 32 and FLSC, “National Requirement” (1 January 2018) online: <flsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf> (the FLSC currently requires that common law students in Canada acquire an understanding of “the rights of Aboriginal Peoples in Canada” as part of the principles of public law in Canada, but no exposure to Indigenous laws).

158. See generally Jacques Vanderlinden, *Genèse et jeunesse d’une institution : l’école de droit de l’université de Moncton* (Université de Moncton, 1998); see also Habermacher, *supra* note 1 at ch 2, s 4.

159. NB01 (“The faculty, here, takes a position, which I believe is exceptional. The other deans have all accepted the requirement to offer a course on Aboriginal People and the law without questioning it”).

160. NB01 (“For [the other faculties], an extra course does not change much. They have the means to accommodate this request. Here, it does not align with our mission, especially given that our resources are limited”).

personnellement, est beaucoup plus important à notre mission que l'autre."<sup>161</sup>  
 A third participant noted that:<sup>162</sup>

Ici on est une minorité linguistique, donc vraiment la question qui nous préoccupe c'est de pouvoir continuer à enseigner le droit dans la langue de la minorité linguistique et pouvoir s'assurer qu'on a les ressources nécessaires pour le faire. Donc c'est déjà une grande préoccupation. Bien sûr, parce qu'on est une université, on s'intéresse à la question autochtone, mais on est quand même préoccupé par cette question principale [*i.e.* la situation de minorité linguistique].

Yet, another participant stated that Indigenous issues "ne tombent pas naturellement dans [leur] champ d'intérêt ou [leur] champ d'affaires."<sup>163</sup>

We can see two themes emerging from these explanations: a perceived insufficient congruity with the faculty's mission, and a need to allocate scarce resources to other parts of the curriculum. The question of resources is indeed more pressing at UMoncton than elsewhere as it is the smallest law faculty in Canada. In September 2017, its entering JD class was about a quarter of the size of UAlberta's (forty-six compared to 185). Moreover, UAlberta could count on thirty-six full-time professors and offers a range of 125 courses in upper years, compared to only twelve full-time professors and thirty-six courses offered in upper years at UMoncton.<sup>164</sup>

The allocation of resources derives from institutional preferences and priorities, and, therefore, the two themes are intertwined and complementary. UMoncton's perception of its mission lies at the core of these preferences. It focuses on empowering the minority francophone community in New Brunswick and improving the socio-economic prospects of its members. The faculty pursues these objectives through two main activities: educating common lawyers in French and researching and advocating for language rights. When we

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161. NB06 ("If I compare the importance of Indigenous rights within our faculty to the importance of language rights, for me, there is one that, personally, is much more important to our mission than the other one").

162. NB07

(Here, we are a linguistic minority. The issue that really concerns us, therefore, is to be able to continue to teach the law in the language of the linguistic minority and to ensure that we have the necessary resources to do so. Thus, that is already a great concern. Of course, because we are a university, we are interested in Indigenous issues, but we are also concerned with the central issue [*i.e.* the linguistic minority's situation]).

163. NB02 ("do not naturally fall within [their] area of interest or [their] area of business").

164. The number of courses includes externships listed as courses but excludes moot court options.

consider this central, enduring, and distinctive mission in connection with the historical distance between the Acadian community and Indigenous issues in general, we can see how allocating scarce resources to a specific course dedicated to preoccupations that are remote from the faculty's essential objectives would encounter resistance.

One participant, however, perceived a slow change in the institution's mission that could affect this situation. While acknowledging that serving the French language minority had been the almost exclusive historical focus on the faculty and that this would undoubtedly remain core to UMoncton's activities, they had witnessed an incremental widening of the faculty's purpose towards the protection of minorities generally.<sup>165</sup> This resulted from the series of recent hires, where UMoncton had brought in younger individuals with more diverse backgrounds than the previous generation of founders, now retiring. The same participant saw this context as an opportunity to pay greater attention to Indigenous issues. Moreover, they also pointed to the fact that a specialist of minority rights had taught the Aboriginal law course in the previous year. Another participant, who is not a recent hire, shared similar ideas: "[C]'est une faculté qui est basée sur les droit des minorités. Tu ne peux pas ignorer les Autochtones."<sup>166</sup>

The discourse opposing a dedicated course as recommended by the TRC also featured rhetoric about consistency. The course on language rights is not mandatory at UMoncton, even though it is closely connected to the institution's mission.<sup>167</sup> A participant affirmed: "[D]ire que les droits autochtones devraient être un cours obligatoire et pas les droits linguistiques, pour moi c'est un non-sens *ici pour notre faculté*."<sup>168</sup> These participants, nonetheless, imparted that they did not advocate for language rights to be a mandatory course either. We can

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165. NB03. The participant noted that:

La faculté de droit ici, ... en tout cas de ma vision, et de plus en plus avec le corps professoral qu'on a, c'est beaucoup "protection des minorités." Je trouve que ce thème-là revient beaucoup au niveau des minorités linguistiques, mais aussi au niveau des minorités autochtones. ... Donc c'est un peu une sorte de trajectoire qu'on est en train de creuser je crois.

(The Faculty of Law, here, ... at least from my perspective, and increasingly, with the faculty that we have, focuses on the "protection of minorities." I find that that theme keeps coming up with respect to linguistic minorities, but also with respect to Indigenous minorities. ... Therefore, it is in a sense a sort of path that we are following I think.)

See also Habermacher, *supra* note 1, ch 2, s 4.3.

166. NB02 ("this faculty is based on the rights of minorities. You cannot ignore Indigenous People").

167. For more details on required courses, see also Habermacher, *supra* note 1, ch 4, s 2.2.

168. NB06 ("in my opinion, to say that a course on Indigenous rights should be mandatory but not a course on language rights does not make sense *here for our faculty*") [emphasis added].

see here that the opposition to the mandatory character of the course lies in a comparison with other courses.<sup>169</sup> When compared to a course closely connected to the institution's mission that has never been required in the JD curriculum, Indigenous legal perspectives are not perceived important enough to warrant rising to the level of a dedicated mandatory course.

The comparison was not only to language rights, as the same participant also stated the following: "[J]e ne pense pas que le droit autochtone soit un des cours les plus importants pour s'assurer que l'avocat pratique bien le droit [en pratique privée]. Il y a beaucoup de matières qui devraient être obligatoires avant que cette matière soit obligatoire."<sup>170</sup> They did not perceive learning about Aboriginal law or Indigenous legal traditions to contribute substantially to preparing students for the legal profession and private practice; for instance, they later suggested that gaining exposure to both the civil and common law traditions was more important to fulfil this objective.<sup>171</sup>

This stands in contrast with the attitudes at UAlberta. There, "providing foundational legal education to people who want to practice law,"<sup>172</sup> most often for private practice, is understood as the faculty's mission. Professors conceived Indigenous legal perspectives to form part of the fundamental building blocks

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169. NB06 also compared the relative importance of learning about Indigenous issues with other socio-legal issues:

L'analyse féministe est aussi importante que l'analyse des enjeux autochtones. Les enjeux autochtones c'est un enjeu qui est d'actualité ... où il y a eu des problèmes marqués, qui n'ont jamais été résolu et maintenant qui débordent. On dit que c'est un problème social. Oui, mais l'égalité des femmes est un problème social. ... [I]l y a eu des progrès, mais il y a encore des progrès à faire ... les femmes sont cinquante pourcents de la population, et souvent on oublie le progrès encore qui reste à faire.

(The feminist analysis is as important as the analysis of Indigenous issues. Indigenous issues are a timely topic ... where there were serious problems that were never resolved and are now overflowing. We say that it is a social problem. Yes, but women's equality is a social problem. ... [T]here have been progress, but there is still progress to be made ... women represent fifty per cent of the population, and we often forget the progress that still needs to be done.)

170. NB06 ("I do not believe that a course on Indigenous law is one of the most important courses that students should take for them to be a good lawyer [in private practice]. There are a lot of academic subjects that should be mandatory before this subject should be mandatory").

171. NB06 ("Est-ce que les enjeux autochtones sont plus importants que connaître droit civil/ common law partout?" ("Are Indigenous issues more important than learning civil law/ common law everywhere?")).

172. AB04.



of law that students need to learn to become well-rounded lawyers.<sup>173</sup> The idea of a comparatively high number of required courses also takes on significant importance at this faculty.<sup>174</sup> The lack of opposition at UAlberta to the mandatory character of a dedicated curricular component testifies to their perception that a greater understanding of Indigenous Peoples' relationship to law forms part of the generalist education they want to provide, and is one of the fundamental elements to acquire before practicing law.

UMoncton participants shared the premise that Indigenous legal traditions should form part of their students' "culture juridique,"<sup>175</sup> but this did not lead them to embrace the idea of a dedicated mandatory course for that purpose. Only one participant came close to the idea; they affirmed that it was necessary for jurists to gain a better legal and political understanding of Indigenous realities and stated that it would be "intéressant d'enseigner ... un cours qui par exemple fait la comparaison entre un système de droit autochtone et le système de droit canadien, pour faire ressortir les différences, et qui pourrait faire guise d'introduction à un système de droit autochtone."<sup>176</sup> Indeed, the opponent mentioned above insisted that what they opposed was a three-credit mandatory course on Aboriginal People and the law, Indigenous legal traditions, or even Aboriginal Law, but proposed that Indigenous legal perspectives be included in a

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173. for more details on UAlberta's approach to foundational legal education, see Habermacher, *supra* note 1, ch 2, s 3.2.

174. For more details on required courses, see *ibid*, ch 4, s 2.2.

175. NB08, see quote in note 176.

176. NB08 ("interesting to teach ... a course for example that compares an Indigenous legal system to the Canadian legal system, to highlight the differences, and that could serve as an introduction to an Indigenous legal system"). The participant continued to note (*ibid*):

Je pense que ça serait intéressant que ça fasse partie de la culture juridique de nos étudiants. Et ça pourrait également être un moyen d'augmenter nos contacts entre nos étudiants et la communauté autochtone si on faisait venir un des experts en droit autochtone pour enseigner une certaine partie du cours. Et je pense que c'est une réalité à laquelle le Canada devra faire face dans les décennies à venir: comment conceptualiser les rapports entre la ... *mainstream Canadian society*, qui est définie en partie par un certain système juridique, ... et les diverses sociétés autochtones qui ont été repoussées vers les marges par ce système-là. Il va falloir réfléchir à comment on fait pour intégrer ces deux réalités là et bâtir un certain vivre ensemble qui convient suffisamment à tout le monde. Et pour faire ça il va falloir une meilleure connaissance de l'autre, et donc je pense qu'il va être nécessaire pour les juristes d'avoir une meilleure connaissance, une meilleure compréhension des réalités autochtones sur le plan juridique et politique.

broad required course such as Legal History.<sup>177</sup> The same participant went on to say that “une composante [autochtone] devrait être matière obligatoire, et devrait être enseignée, et les professeurs devraient être encouragés d’inclure cette matière dans leurs cours.”<sup>178</sup>

Other professors at UMoncton expressed enthusiasm for the inclusion of Indigenous issues and perspectives in a larger range of courses. One of them affirmed trying to integrate Indigenous perspectives in their courses and spending a considerable amount of class time on them in a specific course.<sup>179</sup> Another participant declared trying to incorporate an Indigenous perspective in all of their courses, insisting that these did not include Aboriginal law.<sup>180</sup> Nonetheless, echoing remarks presented earlier from UAlberta participants, the UMoncton participant admitted that in certain courses, “ça ne s’y prête pas.”<sup>181</sup> A third participant shared that “le droit autochtone s’insère certainement” in the topic they taught.<sup>182</sup> However, these participants expressed awareness and regretted that not all of their colleagues endeavoured to do the same, for instance:

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(I think it would be interesting for it to be a part of the legal culture of our students. And it would also be a way to foster contacts between our students and the Indigenous community if we invited Indigenous law experts to teach part of the course. And I believe that it is a reality that Canada will have to deal with in the coming decades: how to conceptualize the relationship between ... mainstream Canadian society, which is defined in part by a certain legal system, ... and the various Indigenous societies that were marginalized by that system. We will have to reflect on how best to integrate those two realities and build a society in which everyone agrees to a certain extent. And to do that, there will have to be a better understanding of one another, and therefore, I believe it will be necessary for lawyers to have a better knowledge, a better understanding of Indigenous realities from both a legal and political standpoint.)

177. NB06, quotes accompanying *supra* note 153 (affirming that students should learn about it as part of Canada’s legal history). Droit Moncton students must take either Legal History (DROI2321) or Legal Philosophy and Sociology (DROI2322) during their second or third year. See Université de Moncton, “Nos Programmes” (02 July 2019), online: <[www.umoncton.ca/repertoire/](http://www.umoncton.ca/repertoire/)>.

178. NB06 (“an [Indigenous] component should be mandatory, and should be taught, and the professors should be encouraged to include this subject matter in their courses”).

179. NB04 (the said course was in the field of public law).

180. NB03 (“J’essaie d’intégrer la question autochtone dans chacun de mes cours. C’est certain que ce n’est pas moi donne le cours de droit des Autochtones, mais c’est un sujet qui revient, une thématique qui revient un peu dans chacun de mes cours.”) (“I try to incorporate Indigenous issues in each of my courses. I do not give the Aboriginal law course, but it is a recurring subject, a recurring theme in each of my courses”).

181. NB03 (“it does not apply”).

182. NB07 (“Aboriginal law is certainly applicable”).

“[J]e pense que mes collègues de la faculté de droit n’intègrent pas beaucoup la thématique autochtone.”<sup>183</sup>

We can therefore see that at UMoncton there is widespread opposition to a mandatory course on Aboriginal People and the law as recommended by the TRC, even though there is support for the integration of Indigenous issues and perspectives throughout the rest of the curriculum. At UAlberta, doing both appeared to be a consensual idea. In both faculties, professors expressed attempting to do so in a variety of courses but affirmed that certain areas of law were more adequate venues.

At UQAM, only two participants talked about the role of Indigenous legal traditions in teaching. Current debates regarding Indigenous issues seemed to be more about the recruitment of Indigenous students and professors, as we will explore in the following Part of this article. What one participant shared was, nonetheless, very informative:<sup>184</sup>

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183. NB04 (“I think that my colleagues at the Faculty of Law do not incorporate the Indigenous theme”). The participant added that (*ibid*):

Je ne pense pas que c’est de la mauvaise foi, je ne pense pas que c’est du racisme, je pense que ce sont des questions hyper compliquées. Ce n’est pas facile d’intégrer ou d’assimiler le droit autochtone ... et je pense aussi qu’il faut être très critique par rapport à ça. Parce que ce sont des concepts qui sont une invention de la perspective colonisatrice. Si on demandait aux autochtones, ils auraient un point de vue complètement différent sur l’état du droit. Donc il y a cette tension là à enseigner des droits autochtones qui vraiment ne font que perpétuer un rapport de domination qu’on constate aujourd’hui.

(I do not believe that they are being disingenuous, I do not think that it is racism, I think that these are issues that are very complex. It is not easy to incorporate Indigenous law ... and I also believe that we must be very critical with respect to this. These are concepts that were invented from a colonial viewpoint. If we asked the Indigenous People, they would have a completely different opinion on the state of the law. Therefore, there is that tension that we must highlight regarding Indigenous rights that only serves to perpetuate a relationship of domination that we are seeing today).

184. QC06:

I sense a willingness, but I also feel like there is ... a disconnect and maybe a pressure. ... I sense a pressure, an urgency to include those issues, especially regarding the students educational journey and how to include Indigenous students, and therefore maybe a lack of expertise, because we cannot do this haphazardly, we cannot—there is a lot of history in our relationships between non-Indigenous Canadians and Indigenous People, ... and therefore we must adopt an informed approach. We cannot act with urgency, and I sense that a part of the institution has an urgent need to act, and could do so in a way that, for me, is not appropriate. ... With respect to Indigenous issues, I find that yes, it makes sense to say that it is important for UQAM and the law department to include research and courses on Indigenous issues, but after, as I was saying, I feel that there are inconsistencies or discrepancies regarding

Je sens une volonté mais je sens aussi ... un décalage et peut-être une pression. ... Je sens une pression, une urgence d'inclure ces enjeux-là notamment au plan du parcours des étudiants puis de la manière d'inclure notamment les étudiants autochtones, et donc peut-être un manque de maîtrise parce que l'on ne peut pas faire cela n'importe comment, on ne peut pas—il y a tout un historique de nos relations entre allochtones et autochtones, ... et donc une démarche avertie à entreprendre. Donc on ne peut pas agir dans l'urgence, et je sens qu'une partie de l'institution est dans l'urgence d'agir, et pourrait le faire d'une manière qui pour moi n'est pas la bonne. ... Au niveau des enjeux autochtones je sens que oui, ça fait très sens de dire que c'est important à l'UQAM et au département des sciences juridiques que ce champ-là de recherche et d'enseignement fasse partie du département, mais après comme je disais je sens des incohérences ou des décalages par rapport à comment intégrer et à quel niveau on intègre, à quel degré. ... Cette volonté affichée d'intégrer ce champ-là du droit et du social ... j'ai l'impression, je ne sens pas un intérêt profond, je sens qu'il y a un intérêt un petit peu superficiel derrière tout ça. Puis une urgence d'intégrer les enjeux autochtones au parcours du département.

We can see in these extracts that the conversation about including Indigenous issues in the legal curriculum was happening within UQAM, even if it arose only in a few interviews. This participant shared observing a sense of urgency within the faculty to respond to this challenge. This gave rise to concerns about doing so meaningfully and respectfully.

At UQAM, only one law course seemed dedicated to Indigenous issues in the 2017–2018 academic year and it concerned Aboriginal law.<sup>185</sup> The course catalogue indicates the existence of a course on Aboriginal People and the law, whose description matches the TRC's Call to Action 28 as it integrates Indigenous legal traditions, intercultural literacy, and conflict resolution in Indigenous communities; this course, however, is offered by the law department to non-law students and does not form part of the LLB offering.<sup>186</sup> Since my fieldwork, UQAM has released a new LLB curriculum. It now includes an optional course

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how to incorporate and at which level do we incorporate, to which degree. ... This expressed willingness to incorporate that area of the law and society ... I have the impression, I do not feel a profound interest, I feel that the interest is a little bit superficial. There appears to be an urgency to incorporate Indigenous issues to the department's curriculum.

185. Université de Québec à Montréal, "JUR6540 - Droit des Autochtones," online: <etudier.uqam.ca/cours?sigle=JUR6540>. But note that the format in which the course descriptions are made available at UQAM has not allowed me to survey all of them in the same way as for UAlberta (a single and searchable document compiling all course descriptions provided by the faculty), thus preventing full comparability between the two datasets. See *supra* note 134.

186. Université de Québec à Montréal, "JUR1056—Droit et peuples Autochtones," online: <etudier.uqam.ca/cours?sigle=JUR1056>.

matching the TRC's Call to Action 28 entitled "Droit, peuples Autochtones et État canadien" as well as the possibility for students to take a minor in Indigenous studies alongside their LLB.<sup>187</sup>

Another participant confirmed that debates on the topic of creating a new course within the UQAM revolved around the extent and manner of doing so. They affirmed that the idea of creating a new course to sensitize students to issues surrounding reconciliation did not trigger opposition among law professors and gave rise to debates "sur le comment," whereas their political science colleagues had expressed concerns regarding academic freedom and made it "un enjeu de principe."<sup>188</sup>

The literature now offers forceful justification for making space in university legal education for Indigenous legal traditions and exposes the problematic meaning of not doing so.<sup>189</sup> Nonetheless, we can see that there remain significant obstacles in the way. Professors most willing to engage with Indigenous legal traditions face great difficulties with regards to accessing resources and acquiring the expertise to do so meaningfully and respectfully. These obstacles are reinforced when they evolve in an environment that does not incentivize engaging in this

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187. Université de Québec à Montréal, "Baccalauréat en droit", online: <etudier.uqam.ca/programme?code=8308&version=20203 and : Université de Québec à Montréal, "JUR6541 – Droit, peuples Autochtones, et État canadien", online : <https://etudier.uqam.ca/cours?sigle=JUR6541>>.

188. QC07 ("on how"; "a question of principles."). The participant further noted that:

Les discussions de créer un cours pour sensibiliser [les étudiants à la réconciliation], du côté [du département] de sciences juridiques la question ça va être "est-ce qu'on a les moyens appropriés pour prendre soin des personnes qui auraient pu avoir été victimisées si on donne le cours pour qu'elles puissent se retirer, pour qu'elles soient accompagnées, qu'elles ne soient pas laissées seules." Donc c'est sur le comment. Du côté [du département] de science politique, la question va être 'si c'est un cours universitaire, c'est un cours universitaire: il faut laisser la liberté entière d'expression et l'indépendance du professeur sur les approches qu'il va choisir. ... Donc là c'est un enjeu de principe, on va poser par exemple le principe de l'indépendance universitaire.

(The discussions surrounding the creation of a course to sensitize [students to issues surrounding reconciliation], from the law department's perspective, the question will be "do we have the appropriate means to take care of the people who could have been victimized, if we give the course, for them to withdraw, for them to be accompanied, for them not to be left alone?" The question is therefore on the how. From the political science department's perspective, the question will be 'if it is a university course, it is a university course: the professor must have complete freedom of expression and independence on the approaches they will choose. ... It is therefore a question of principles, the principle of academic freedom for example.)

On the topic of academic freedom in discussions regarding inclusion of Indigenous perspectives in university courses, see Drake, *supra* note 6 at 33-45.

189. See e.g. Borrows, "Heroes", *supra* note 7 at 807.

enterprise, and rewards other activities (such as research and publication). Institutional cultures regarding legal education, including the faculties' self-conception of their mission and their intellectual sensibilities, also play a primordial role in shaping how they approach the inclusion of Indigenous issues and legal perspectives in their undergraduate law curriculum, either through a dedicated mandatory course in accordance with the TRC's Call to Action 28 or through a diffused inclusion in a broad range of courses.

## VI. INDIGENOUS RECRUITMENT

At the same time that law faculties across Canada are debating to what extent and how they should incorporate Indigenous legal perspectives and traditions in their curriculum, most of them are also looking to hire Indigenous professors. This responds to two ambitions. First, faculties seeking to increase the presence of Indigenous issues in their curriculum are looking for candidates with expertise in at least one Indigenous legal culture. Indigenous professors are therefore obvious candidates to fulfil this role. Nevertheless, having an Aboriginal identity is neither sufficient nor necessary to have expertise in Indigenous perspectives. Indeed, one can come from Aboriginal descent without having been exposed to their ancestors' culture; for instance, as a legacy of the residential school regime or other assimilationist policies. On the other hand, someone without an Aboriginal heritage may acquire significant knowledge of Indigenous perspectives through repeated and prolonged exposure to such perspectives, through research for example. Competency to bring an Indigenous perspective in law teaching, therefore, does not depend on one's identity, although there is certainly a correlation. Some disagree with this view, and there are ongoing debates in academia on who can speak for whom more generally.<sup>190</sup>

The second reason many law schools are trying to recruit more Indigenous faculty members is not connected to the ability to teach certain topics or concepts. It lies with the broader concern to have a faculty that represents the various identities that make up society broadly. It is similar to the concerns regarding the presence of sexual, gender, and racial minorities among the faculty.

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190. For example, during her presentations at McGill Grad Conference and UOttawa GSLEDD conference in May 2018, Sandrine Branchotte discussed the criticism she has received from colleagues at the University of Toronto for researching Aboriginal legal concepts while being a white European person. Sandrine Branchotte, "The Canadian Case Ktunaxa: How Can Courts Deal with Intermingled Rationalities: Using the Intellectual Style of Conflicts of Law to 'Carve Up' Indigenous Ontologies, State Law and Business Ethos" (delivered at GSLEDD Law: From Crisis to Opportunity, 11 May 2018) [unpublished].

The attitudes at UAlberta illustrate these ideas. At least three participants explained that their faculty was looking to hire a few more Indigenous professors, or at least professors with expertise in the area of Indigenous legal traditions. In the months preceding my fieldwork, UAlberta had already recruited one professor<sup>191</sup> who had expertise in the Cree legal tradition, adding to the small pool of expertise already present. The upcoming hires that the participants mentioned would further increase the presence of experts in the area. There seems to be consensus on pursuing this goal, as one participant affirmed that they were “trying to hire one or two Indigenous faculty members at the moment. And no one is actually arguing with it.”<sup>192</sup> They thought this was “very exciting,” but was not easy as the “pool of available applicants is not big” and “every law school in Canada” is trying to attract them.<sup>193</sup>

In response to a question about socio-political issues and their echo within the faculty, another UAlberta participant shared their thoughts:<sup>194</sup>

[T]here is a sub-current in [UAlberta's] hiring practices in doing a better job at having a faculty that is reflective of the culture, or the population that [they] are serving. [Coming from] the sense that we are under-representative as a teaching faculty, both on racial and gender diversity. [It raised questions regarding] what are the obligations that the institution has to become representative, or more representative.

The same participant immediately continued their answer by engaging with Indigenous issues:<sup>195</sup>

What is the obligation of the institution to deal with colonialism and the issues facing First Nations and Indigenous Peoples in Treaty 6 territory? Those are issues that the faculty has to and does, I think, grapple with increasingly. And some of that attaches specifically to who we hire or who is part of this community. But it's also I think about, especially on the Indigenous issues side, what does our curriculum look like, what is being taught, who is teaching it.

Hiring decisions engage faculties as communities, with their sense of identity and mission, revealing their values.<sup>196</sup> We can see here that UAlberta seeks to include more Indigenous persons and experts of Indigenous legal perspectives in

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191. Professor Hadley Friedland.

192. AB03.

193. AB03.

194. AB06.

195. AB06.

196. Interviews in all three law faculties highlighted this point, see Habermacher, *supra* note 1, ch 2, s 1.1.

its community both in order to be able to offer expertise on these topics and to reflect the society in which it finds itself.<sup>197</sup>

Some participants at UQAM shared their views in the recruitment of Indigenous experts. One of them remembered that in the previous hiring process, they had advocated, alongside others, for the position to be advertised as “droit autochtone” as they considered it necessary to have at least one professor expert in the area.<sup>198</sup> This proposal had encountered substantial resistance (“il y avait vraiment une grande résistance” (“there was really a lot of resistance”)) from colleagues, more so than they expected, and it is not how the position was eventually advertised.<sup>199</sup> This testimony revealed two kinds of resistance. A first group questioned the existence of Indigenous laws, or at least the pertinence of expertise in the field (for instance asking: “Qu’est-ce qu’elle va enseigner cette personne-là?” (“What is that person going to teach?”)).<sup>200</sup> Another type of concern arose from other colleagues, more supportive of the idea, but worried that the move would do little more than buying the faculty a good conscience.<sup>201</sup>

It is worth noting that on the same day that the faculty debated how to advertise the new position, it also debated whom it should honour with an honorary degree. This second discussion included a proposal to award the honour to a successful alumnus of Aboriginal heritage. It is therefore hard to distinguish from this testimony whether the criticisms regarding the artificial or even “tokenist” character of the proposal were directed at the advertised position or the honorary degree. The former is, evidently, a greater commitment, whereas the latter carries primarily symbolic weight. Nevertheless, we can see that what was the object of a wide consensus at UAlberta was the subject of heated debate at UQAM. Although the institution had not advertised the position for this

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197. One participant at UAlberta also insisted that the faculty should hire and promote more persons of colour, thus emphasizing that issues of racial diversity on the faculty are not unique to Indigenous groups.

198. QCXX.

199. QCXX.

200. QCXX.

201. QCXX. The participant noted that:

[I]l y avait des gens qui disaient: “c’est vraiment comme si on veut se donner bonne conscience” donc on dit “on va mettre entre parenthèse droit autochtone sur notre affichage” et on va bien dormir le soir, ... tout le monde se dit “on est tellement sympas, on est tellement ouverts,” mais que dans les faits, dans les pratiques il n’y a rien qui change vraiment.

([T]here were people who were saying “it’s as if we want to ease our conscience” so we say “we are going to put in parenthesis Indigenous law on our job postings” and we will sleep well at night,” ... everyone says “we are so nice, we are so open,” but in reality, in practice, nothing has really changed.)



specialty, UQAM nonetheless recruited an expert in Indigenous legal perspectives in the months preceding my fieldwork.

At the other end of the spectrum, no participant at UMoncton mentioned any discussion regarding initiatives or resistance to the hiring of Indigenous legal experts. The closest remark one offered to this idea was an observation that their faculty did not have anyone competent to introduce students to Indigenous legal traditions.<sup>202</sup> This statement fell short of expressing an opinion as to whether UMoncton should seek to hire such a person. As usual, we should be cautious to infer anything from silence. However, the comments analyzed above regarding the role of Indigenous legal traditions in the curriculum at UMoncton allow us some room for elaboration.

Given the resistance to creating and mandating courses dedicated to Aboriginal Peoples and the law—in order to prioritize resources on fulfilling the core mission of the institution—it would be highly surprising if UMoncton made it a priority to recruit an expert in the field. Moreover, due to the small faculty and the necessity to teach a wide range of topics, faculty members in Moncton cannot specialize in one teaching area.<sup>203</sup> Even though UMoncton necessarily covers a shorter range of topics than in bigger faculties, the course offering still needs to meet the requirements set by the FLSC, and the expectations of both the New Brunswick bar<sup>204</sup> and the students themselves. In general, UMoncton prioritizes wider fields of expertise that can inform teaching in a variety of courses.

Two UMoncton participants however offered pronouncements on the recruitment of Indigenous students. This is, of course, a different idea than recruiting experts to teach on Indigenous legal traditions. However, it similarly reveals attitudes as to who ought to be part of the faculty's community. In addition, the perceived obstacles to recruiting Indigenous students at UMoncton would apply equally to the recruitment of professors. The two participants both spoke of the same obstacle to recruit Indigenous members: the very limited pool of candidates.<sup>205</sup> As described above, there are very few French-speaking Indigenous

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202. NB08.

203. See several interviews, including two mentioning that some of the newest members of the faculty had had to teach over half a dozen different courses in the span of just a few years.

204. See *e.g.* the list of courses that the Law Society of New Brunswick “feels ... will provide basic knowledge of the substantive law required to facilitate the work of students-at-law during their articling period and will be useful throughout their entire legal career.” Law Society of New Brunswick, “Recommended Courses,” online: <[lawsociety-barreau.nb.ca/en/becoming-a-lawyer/recommended-courses-for-law-students/](http://lawsociety-barreau.nb.ca/en/becoming-a-lawyer/recommended-courses-for-law-students/)>.

205. NB02 & NB04.

individuals in New Brunswick.<sup>206</sup> One participant affirmed that “un des problèmes en ce qui concerne l’inscription des Autochtones ici c’est la langue”: Being able to understand and communicate in French, written and oral, is the “principe de base” for admission.<sup>207</sup> The same participant further insisted that contrary to Quebec, most of the Indigenous people in New Brunswick do not speak French.<sup>208</sup> Another affirmed that language competency constituted “un obstacle presque insurmontable ... pour avoir plus d’autochtones dans [leur] programme de droit.”<sup>209</sup> They further asserted that “l’assimilation vers l’anglais des Autochtones bloque, ou rend très difficile l’accès à [leur] institution.”<sup>210</sup> The earlier participant suggested that advertising in targeted communities might yield some results.<sup>211</sup> The recent agreements between UMoncton and French-language colleges in other parts of Canada, including some with a greater Indigenous presence, to make their law program accessible to a larger public, may widen the pool of potential candidates, although it adds the barrier of distance.<sup>212</sup> In his 1998 book on the history of the institution, Vanderlinden reported that the faculty had admitted Aboriginal students but none registered in the program due to

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206. See *supra* notes 52-56 (and accompanying text).

207. NB02 (“one problem with respect to Indigenous students enrolling here is the language”; “basic premise”).

208. NB02.

209. NB04 (“an almost insurmountable obstacle ... to having more Indigenous students in [their] law program”).

210. NB04 (“the assimilation of Indigenous Peoples to English blocks or makes access to [their] institution very difficult”).

211. NB02.

212. See e.g. Université de Saint-Boniface, “Les études en droit désormais plus accessibles pour les étudiants de l’USB” (19 January 2017), online: <[ustboniface.ca/les-etudes-en-droit-desormais-plus-accessibles-pour-les-etudiants-de-lusb-janvier-2017](http://ustboniface.ca/les-etudes-en-droit-desormais-plus-accessibles-pour-les-etudiants-de-lusb-janvier-2017)>; Etienne Alary, “Une collaboration entre Saint-Jean et l’Université de Moncton!” (5 May 2017), *University of Alberta*, online: <[www.ualberta.ca/campus-saint-jean/a-propos/nouvelles/2017/mai/collaboration-moncton](http://www.ualberta.ca/campus-saint-jean/a-propos/nouvelles/2017/mai/collaboration-moncton)>; Université Sainte-Anne, Nouvelles, “Études en droit plus facilement accessibles pour les étudiants inscrits à certains programmes à l’Université Sainte-Anne” (12 January 2017), online: <[www.usaintanne.ca/nouvelles/20170112324/nouvelles/etudes-en-droit-plus-facilement-accessibles-pour-les-etudiants-inscrits-a-certains-programmes-a-l-universite-sainte-anne](http://www.usaintanne.ca/nouvelles/20170112324/nouvelles/etudes-en-droit-plus-facilement-accessibles-pour-les-etudiants-inscrits-a-certains-programmes-a-l-universite-sainte-anne)>. See also NB01 (“on va chercher des étudiants à l’ouest. L’incitatif qu’on offre c’est qu’ils peuvent venir en droit avec un an de moins à leur baccalauréat. Le campus St Jean, mais aussi Ste Anne et d’autres” (“we go look for students in the West. The incentive that we offer is that they can come in law with one less year in their bachelor. Campus St Jean, but also Ste Anne and others”)).

language and financial obstacles.<sup>213</sup> Given this context, it is therefore remarkable that the faculty's admissions policies features specific accommodation provisions for Indigenous applicants.<sup>214</sup> UMoncton's niche specialization and *raison d'être*, offering a common law program in French in New Brunswick, constitutes the very obstacle to attracting Indigenous students.

This shortage of potential Indigenous students competent in the language is, among my case studies, unique to UMoncton. This was not a concern in Montreal or in Edmonton. At UAlberta, recruiting more Indigenous students is not only feasible, it is encouraged:<sup>215</sup>

There is wide consensus, if not a universal consensus on [recruiting and supporting more Indigenous students]. I think that the discussions are not about whether [UAlberta] should do it, but how we should do it ... we are just trying to gather information and ideas and experience that would help guide us in how we should do it.

In that sense, "there is no real debate about, it is more a learning process."<sup>216</sup> As we observed above, UAlberta's region features one of the largest urban Indigenous populations in Canada, and almost all of the potential candidates speak English. Seeking to welcome more Indigenous law students at UAlberta is, moreover, consistent with the attitudes analyzed above regarding the role of

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213. Jacques Vanderlinden, *supra* note 158 at 96; see also NB02, affirming that there had been at least one Indigenous graduate from the program:

Nous avons eu des étudiants autochtones ici, mais pas dans la tradition d'autochtone. ... Les Autochtones qui sont venus ici, et on n'a pas eu beaucoup, ont été des francophones qui demeuraient à l'extérieur des réserves. Et si on ne m'avait pas dit que c'était un autochtone, je n'aurais pas su. ... Il y a des Autochtones ... qui sont venu ici comme étudiants, et moi j'ai seulement su qu'ils étaient autochtones après qu'ils ont fini.

(We had a few Indigenous students here, but not from an Indigenous background... The Indigenous students who came here, and there were not many, were francophones who lived off-reserves. And if nobody had told me that they were Indigenous, I would have never know... There are Indigenous students ... who came here and I only learned that they were Indigenous once they had graduated.)

No statistical data on Indigenous enrolment was available at either of the three institutions.

214. See Université de Moncton, "Nos Programmes: Répertoire 2019-2020, *Juris Doctor* (pour étudiante ou étudiant régulier)," online: <[www.umoncton.ca/repertoire?programme\\_select=81](http://www.umoncton.ca/repertoire?programme_select=81)> ("consciente de la discrimination systémique subie par les Autochtones au Canada, la Faculté de droit tiendra compte de ce facteur dans l'évaluation des candidatures d'autochtones" ("conscious of the systemic discrimination suffered by Canada's Indigenous People, the Faculty of Law will consider this factor when evaluating Indigenous candidates")).

215. AB08.

216. AB08.

Indigenous perspectives in the curriculum and recruiting Indigenous members on the faculty.

At UQAM, one participant asserted that the main socio-political issue the faculty wrestled with was admitting more Indigenous students:<sup>217</sup>

L'admission des Autochtones ... ça c'est une grosse affaire. En dépit du fait qu'on voudrait juste accueillir [environ] trois étudiants. Mais c'est immense. Ça c'est un gros enjeu, c'est un sacrément beau projet ... . Au Québec on est en retard, sur la Colombie-Britannique par exemple, possiblement l'Alberta et possiblement l'Ontario. En tout cas je sais que la Colombie-Britannique sur l'intégration des Autochtones dans le système éducatif, puis dans l'éducation supérieure, on est à des années lumières de ce qu'ils font.

The remainder of the same participant's observations indicates that while there seems to be a wide consensus to promote such recruitment in the law department, there are again tensions with the political science department on this topic:<sup>218</sup>

Le problème c'est que [au département de] science politique ça ne passe pas chez certaines personnes. Fait que là on est comme pognés. Donc on ne sait pas si ça va fonctionner, et on ne sait pas si on va avoir un budget pour les accueillir, puis les faire réussir, c'est ça le but aussi. On ne pas les accueillir pour qu'ils échouent, c'est les accueillir pour les placer dans des conditions où ils vont réussir, ça c'est sans qu'on fasse de compromis sur le programme, donc la mission et tout ça.

Dedicating a budget line to the project is the reason why UQAM needs the cooperation of the political science department. Budgetary matters are decided at the FSPD level. While UQAM could very well pursue targeted recruitment on its own, it would only like to do so if it can provide educative or cultural support for

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217. QC05:

The admission of Indigenous Peoples ... that is a big deal. Despite the fact that we would just like to accept [approximately] three students. But it is huge. That is a big issue, it is a very nice project ... . In Quebec, we are behind British Columbia, for example, possibly Alberta and possibly Ontario. I know that we are certainly light years away from British Columbia with respect to integrating Indigenous students in the education and post-secondary education systems.

218. QC05:

The problem is that in the political science department, certain people do not agree. We are therefore kind of stuck. We do not know if it is going to work and we do not know if we are going to have a budget to welcome them and help them succeed, that is also the goal. We are not going to welcome them to have them fail. We need to welcome them and give them the tools so that they can succeed, without making compromises with respect to the program and the mission.

Indigenous students. As we have seen above, there are deep ideological differences regarding the very idea of reconciliation between the two groups.

The remarks quoted above regarding a sense of urgency and concerns for hasty decisions apply equally to the inclusion of more Indigenous Peoples in the student body as to curricular matters, and the participant's concerns for hasty decisions.<sup>219</sup> The participant's tone on this issue and background spoke to genuine preoccupations to avoid the pitfalls of tokenist policies rather than an insincere objection in an attempt to delay and deprioritize the project.

In May 2018, UQAM joined the vast majority of law faculties across Canada, including UAlberta and UMoncton, featuring special admission streams for Indigenous applicants.<sup>220</sup> It issued a call for applications from Indigenous candidates, stating that four seats for admission in September 2018 would be reserved for Indigenous candidates.<sup>221</sup> It therefore appears that the debate within the faculty evolved in the few months following my fieldwork so as to make this pilot project possible.

## VII. CONCLUSION

The discourses and attitudes at UQAM, UAlberta, and UMoncton differ greatly with regards to acknowledging the traditional character of the land on which they sit, the place of Indigenous content in their undergraduate curriculum, and the recruitment of Indigenous members for their faculty or student body. My observations and the interviews I conducted reveal divergences on these topics among faculty members in each institution, but also distinct trends that define how the collective engages with the issues. These trends are remarkably similar to what an outsider could expect when looking at their core, enduring, and distinctive characteristics, as well as their history, organizational structure,

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219. QC06; see *supra* note 184 (and accompanying text).

220. As of March 2019, only University of Ottawa Civil Law section and University of Windsor (holistic review of applications) do not feature a special stream of admissions for Indigenous applicants. For University Alberta, see UAlberta, "Indigenous Applicants," online: <[www.ualberta.ca/law/programs/juris-doctor/admissions/Indigenous-applicants](http://www.ualberta.ca/law/programs/juris-doctor/admissions/Indigenous-applicants)>; for UMoncton, see Nos Programmes: Répertoire 2019-2020, *Juris Doctor*, *supra* note 214. See also Larry Chartrand et al, "Law Students, Law Schools, and Their Graduates" (2001) 20 Windsor YB Access Just 211 at 215 (indicating that in 1992–1995, University of Alberta, Dalhousie University, Western University, and University of Windsor, but not University of Montréal, featured a separate category for Aboriginal students).

221. See e.g. Université du Québec à Montréal, "Appel à des candidatures d'étudiantes et d'étudiants autochtones" (2018), *Département des Sciences Juridiques*, online: <[juris.uqam.ca/wp-content/uploads/sites/49/2018/05/Appel-a-Candidature-ProjPilote.pdf](http://juris.uqam.ca/wp-content/uploads/sites/49/2018/05/Appel-a-Candidature-ProjPilote.pdf)>.

and social space. The discourses and attitudes on Indigenous issues in the law faculties I studied resonate with their institutional cultures and environments.

The institutional cultures, and what they tell us about how faculties relate to their environment, are a relevant element to understanding the ongoing dialogue in response to the TRC Call to Action 28 at UQAM, UAlberta and UMoncton. Without accounting for their institutional cultures, we would only obtain a very partial comprehension of faculties' attitudes towards questions related to Indigenous issues in legal education. For instance, the CCLD's summary of initiative at each law faculty regarding the TRC report suggests that all faculties share the same attitude towards responding to the Call to Action 28 even though their individual initiatives may vary.<sup>222</sup> The data and analysis offered throughout this chapter demonstrates clear distinct patterns specific to each faculty with regards to such attitudes. Although institutional cultures are subject to constant change, contested and sometimes contradictory, we can see how they form a loosely coherent web of significances that defines each faculty in comparison with each other and seems to play an important role in how they address contemporary challenges.

Looking at context enhances our understanding of how law faculties respond to contemporary challenges. We should not mistake this for an attempt at a simplistic explanation based on social functionalism. The leaders and members of each faculty indeed retain a great level of agency, and their discourses and attitudes are not predetermined. Context does not mandate behavior. However, the unique combination of features that institutions establish over time in response to their environment and internal forces certainly guide today's actors in the way they engage with the needs of the time. Members of these communities remain free to steer the wheel in new directions, and they always do: Institutional cultures are constantly being redefined. Nevertheless, we cannot understand their actions without consideration of the existing paths and environments.

This conclusion will not turn the readers' perceptions upside down. Nonetheless, it serves to remind us of the complex realities of legal education across Canada. The literature on university legal education often overlooks the uniqueness of each law faculty, as do catch-all requirements and recommendations. While we can welcome the overall consistency of common and civil law education from one institution to the next that allows graduates to receive recognition for their credentials across the country, we should not dismiss the equally important specific features of each law faculty. These features go much beyond slight changes in the curriculum, for instance the mandatory character of certain courses or the

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222. See CCLD *TRC Report*, *supra* note 36.

availability of experiential learning opportunities. These specific features lie at the core of the law faculties' identities since they each have different priorities in light of factors such as the local communities they serve, the unique set of values they perpetuate, and the personalities that animate them in a given time.

I hope that readers will seize my invitation to grasp and account for such complexity when they themselves discuss the state and future of legal education in the country. Canadian law faculties have now been warned,<sup>223</sup> repeatedly, of the necessity to engage meaningfully and respectfully with Indigenous legal traditions. The contextualized portrait of ongoing dialogues on Indigenous issues at UQAM, UAlberta, and UMoncton presented here should assist all actors in knowing better why and how responses vary. Knowing the truth about ourselves and our peers is a necessary step on the way to reconciliation in legal education and should enlighten the path forward.

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223. Hewitt, *supra* note 8. Hewitt relies on the story of the Nightbirds as cautionary tale against "an exhaustion of patience by those who are watching and contributing in quiet but profound ways, such as the Animiiki, who may harshly correct us if we fail to do it ourselves" (*ibid* at 83).