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Reproducing the French-Canadian Settler Collective in Ontario through French Language Rights

MONIQUE WOOLNOUGH*

Much of settler colonial theory and studies in Canada has focused on the dominant British settler colonial power, with an emerging spotlight on Quebec. Little attention has been paid to French-Canadian settler colonialism in French-Canadian minority provinces such as Ontario. This research aims to make visible this gap in attention and begin to fill in its contours by understanding how the French-Canadian settler colonial project operates in Ontario through law. Through the application of Indigenous, settler colonial, socio-legal and critical feminist and race theories to a review of narrative themes in the jurisprudence of courts and tribunals interpreting Ontario's *French Language Services Act*, including the purposes of the Act, the vulnerability of Francophones and the role of Francophone institutions, the author endeavors to explore the unique ways in which settler colonial consciousness is deployed, reproduced and reinforced in law.

*There has been a significant francophone presence in what is now Ontario since the beginning of the 17th century. Francophones founded communities and built them upon their French language and culture. Within those communities they lived, worked, sang, studied, loved, quarrelled, suffered and died in French. Like other minorities, however, the Franco-Ontarian community has suffered from the forces of assimilation by the dominant English language and culture.*¹

THIS POETIC STATEMENT by a unanimous Divisional Court in Ontario, in what has colloquially come to be known as *l'affaire* or *le dossier Montfort*,² captures many layers of the importance of an inquiry into the role of French language rights in reproducing settler-colonialism in Ontario. The Court recognized the recent arrival of Francophones to "what is now Ontario"³ and the attempt to build communities "upon their French language and culture."⁴ They pointed to the suffering caused by assimilation into the dominant English language and culture. Absent from the description of what happened in these communities, namely living, working, singing, studying, loving, quarrelling, suffering and dying, is any mention of the communities' relationship to the

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¹ *Lalonde v Ontario (Commission de restructuration des services de santé)*, [1999] OJ No 4488 (ON SCDC) at para 10 [*Lalonde Div Ct*].

² A pair of cases that successfully stopped the Ontario government from restructuring Ottawa's Hôpital Montfort such that it would lose its French character: *Lalonde Div Ct*, *supra* note 1; *Lalonde v Ontario (Commission de restructuration des services de santé)*, [2001] OJ No 4767 (ON CA) [*Lalonde ONCA*]; for reference to *le dossier Montfort* see Anne Gilbert, "La signature frontalière de l'identité franco-ontarienne" (2012) 34 *Francophonies d'Amérique* 137.

³ *Lalonde Div Ct*, *supra* note 1.

⁴ *Ibid.*

land, which was central to early French-Canadian settlements and their economic prosperity.⁵ Absent as well is any mention of who was in what is now Ontario prior to and since the seventeenth century, namely Indigenous peoples and their legal and political orders.⁶

The focus on suffering caused by assimilation, I argue, reflects a settler move to innocence, pervasive in French-Canadian communities, that is narrativized and legalized in the jurisprudence on French language rights in Ontario.⁷ This paper applies Indigenous, settler colonial, socio-legal and critical feminist and race theories to a review of narrative themes repeated in the jurisprudence of courts and tribunals interpreting Ontario's *French Language Services Act*,⁸ namely the purposes of the *Act*, the vulnerability of Francophones and the role of Francophone institutions. I will argue that the French language rights regime in the province reinforces and legalizes a settler move to innocence: it enshrines the French-Canadian as a settler while disavowing the violence of the settler colonial project and legalizes settler futurity.⁹

I. DEFINING AND TROUBLING KEY TERMS

The Divisional Court recognized the recent arrival of French-Canadian communities in what is now known as Ontario in the quote that opened this paper, thus calling attention to the process of settlement, and the concept of “settler” in its descriptive sense as a term used to “distinguish [I]ndigenous peoples from later comers.”¹⁰ While discussions and conflicts about the role of settlers in perpetuating the settler colonial project and genocide are often normative or prescriptive, I prefer to use the term not as a moral or ethical judgement but as a “statement of situation.”¹¹ The space for evaluation or challenge to action is more focused on whether a person or system “actively participates with empire and spreads the imperial sphere of influence.”¹² There would be no motivation for this inquiry without the recognition that settlers “can and do act in noncolonial ways.”¹³

The term “French-Canadian” was used by French-speaking communities in Ontario until the 1960s, when the terms “Franco-Ontarian”, frequently associated with education, and “francophone,” used by the federal government in a more inclusive fashion, became more

⁵ The choice of the phrase “French-Canadian” over Franco-Ontarian or the more inclusive French-speaking or Francophone will be explored in the text.

⁶ *Calder v British Columbia (AG)*, [1973] SCR 313 at para 328; *Pastion v Dene Tha' First Nation*, [2018] 4 FC 467 at para 8 citing *Mitchell v Minister of National Revenue*, 2001 SCC 33 at para 10.

⁷ For a definition of settler moves to innocence, see Eve Tuck & Wayne K Yang, “Decolonization is not a metaphor” (2012) 1:1 *Decolonization: Indigeneity, Education and Society* 1 at 17.

⁸ *French Language Services Act*, RSO 1990, c F 32.

⁹ For discussions of settler moves to innocence and settler futurity, see Tuck & Yang, *supra* note 7 at 17, 35, respectively. For discussions of the role of disavowal in settler colonialism, see Sherene Razack, “When Place becomes Race” in Sherene Razack, ed, *Race, Space and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002) 1 at 2; Lorenzo Veracini, *Settler Colonialism: a theoretical overview* (Houndmills: Basingstoke, 2010) at 14, 24. Naming the erasure of dispossession, theft and legislative attempts to erase Indigenous peoples, see Bonita Lawrence, “Rewriting histories of the Land: Colonization and Indigenous Resistance in Eastern Canada” in Sherene Razack, ed, *Race, Space and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002) 21 at 23.

¹⁰ Adam J Barker, “The Contemporary Reality of Canadian Imperialism: Settler Colonialism and the Hybrid Colonial State” (2009) 33:3 *American Indian Quarterly* 325 at 329.

¹¹ *Ibid* at 339.

¹² *Ibid*.

¹³ *Ibid*.

frequent.¹⁴ The shift from French-Canadian to the provincially grounded identity of Franco-Ontarian was, in part, a response from within Francophone communities in Ontario to the more nationalist and territorially bound identity being deployed by Québécois francophones as part of the separatist movement.¹⁵ Instead of “Franco-Ontarian”, “Francophone” or the broader “French-speaking,”¹⁶ I deliberately use the older and less frequently used term “French-Canadian” to refer to the communities descended from early Francophone settlers in Ontario who construct their vision of community in certain hegemonic ways.

“French-Canadian,” instead of the more inclusive “Francophone” or “French-speaking,” is also used to demarcate and distinguish those communities that trouble the binary between settler and Indigenous.¹⁷ Jody Byrd’s use of Kamau Braithwaite’s term “arrivants” to “signify those people forced into the Americas through the violence of European and Anglo-American colonialism and imperialism around the globe”¹⁸ expands the scope of analysis of the forces shaping life on Turtle Island today. It also points to “the kinds of colonial occupations effected by those who did not come voluntarily to stay.”¹⁹ It is crucial to acknowledge the presence and contributions of Francophones racialized as non-white, in particular Black communities, from a time before Confederation to the present.²⁰ These communities have different relationships to the French language rights project and to Indigenous lands and treaties. There are also French-speaking Indigenous peoples in Canada who have their own subjectivities to articulate around the role of French in their lives. These perspectives enrich the conversation and enliven this research about what Amal Madibbo has dubbed the “strategic nationalism”²¹ of Francophone activists. This strain of nationalism has elevated a white supremacist vision of the French-Canadian community to accomplish political goals.²² Anne Levesque has argued that French-Canadian institutions continue to reinscribe a vision of a white male homogeneous French-Canadian collective. This allows elites to drive the French language rights political agenda in a way that excludes those living at multiple marginalizations in the French speaking world and who may mobilize French language rights for quite different ends and reasons.²³ She notes that there “seems to be little interest in

¹⁴ Serge Dupuis, “Sudbury’s Francophones: A Brief History,” (June 2021) Commissioned by L’Association Canadienne-française de l’Ontario du grand Sudbury at 36, online: <quifaitquoisudbury.ca/ressource/les-francophones-de-sudbury-une-breve-histoire/> [perma.cc/VU3N-ML5B].

¹⁵ Gilbert, *supra* note 2 at 137.

¹⁶ “Francophone” and “French-speaking” are both used in provincial and federal language to acknowledge the diversity within French-speaking communities; “French-speaking” is the language used in the preamble to *French Language Services Act*, *supra* note 8.

¹⁷ A binary reinforced in part by some of the seminal theorists in settler colonial studies, see for example Lorenzo Veracini, “Introduction: Settler Colonialism as a Distinct Mode of Domination” in Edward Cavanagh & Lorenzo Veracini, eds, *The Routledge Handbook of the History of Settler Colonialism* (New York: Routledge, 2017) 1 at 4.

¹⁸ Jody Byrd, *The transit of empire: Indigenous critiques of colonialism* (Minneapolis: University of Minnesota Press, 2011) at xix; Byrd borrowed this term from Edward Kamau Brathwaite, *The Arrivants: A New World Trilogy—Rights of Passage / Islands / Masks* (New York: Oxford University Press, 1988) at 11.

¹⁹ Jane Cary & Ben Silverstein, “Thinking with and beyond Settler Colonial studies: New Histories after the Postcolonial” (2020) 23:1 *Postcolonial Studies* 1 at 10-11.

²⁰ Amal Madibbo, *Blackness and la Francophonie: Anti-Black Racism, Linguicism and the Construction and Negotiation of Multiple Minority Identities* (Québec: Presses de l’Université Laval, 2021) at 8.

²¹ *Ibid* at 133.

²² *Ibid* at 3.

²³ Anne Levesque, “Les francophones oubliés?: L’intersectionnalité et la mise en œuvre des droits linguistiques législatifs hors Québec” (2022) 34:2 *Canadian Journal of Women and the Law* 246 at 276 [“Francophones Oubliés”]; Anne Levesque, “French language rights and the community legal clinic system” (Presentation delivered to

mobilizing legislated language rights to protect Francophones facing considerable structural risks tied to their ethnic origins, race and nationality and upon whom minority linguistic communities rely for their demographic survival.”²⁴ By illuminating another facet of how whiteness and settler coloniality are reproduced in the French-Canadian settler collective, I hope to enrich this existing conversation about disrupting and dismantling white supremacy in Ontario’s Francophone world.

The term “French-Canadian” in this research is thus not meant to be used demographically. Instead, it offers a theoretical construct to guide the analysis and invoke the somewhat imaginary community of European-descended Francophones who, over time, have been granted the privileges of whiteness and belonging in the dominant body politic, reflected through, for example, a higher median income than the rest of Ontario’s population at last census.²⁵ Nonetheless, the demographic context is informative. French-speaking people make up just under five per cent of Ontario’s population, mainly located in Eastern and Northeastern Ontario, with a large proportion in Central Ontario.²⁶ Sixteen per cent of these French-speakers identify as “visible minorities” and one out of five were born outside the country.²⁷ Although the Ontario specific statistic is not available, nationally, almost five per cent of Indigenous peoples speak only French.²⁸ This demographic reality calls for intersectional analyses of power, privilege and oppression within French-speaking collectives, which is an emerging area of research, scholarship and community activism in Canada.²⁹

II. LOCATING THIS RESEARCH AND WHAT IT IS NOT

This research is grounded in my experience growing up and living in Ontario as a descendant of French settlers who arrived from France in what is now known as Québec around 1670. It also incorporates my experiences working in the non-profit sector on anti-war and environmental issues and practicing law in Ontario’s community legal clinic system, particularly in Northern Ontario and in Vanier, a Francophone neighbourhood of Ottawa. The choice to write this research in English is explained by my own experiences of assimilation and anglonormativity in Ontario, despite having had the privilege of attending primary and secondary school in French and working in bilingual workspaces for most of my career.³⁰

community legal clinic managers, Association of Community Legal Clinics of Ontario, April 25 2024) [“French and CLCs”].

²⁴ Levesque, “Francophones Oubliés”, *supra* note 23 [translated by author].

²⁵ For comments on whiteness and Francophone identity, see Corrie Scott, “How French Canadians became White Folks, or Doing Things with Race in Quebec” (2016) 39:7 *Ethnic and Racial Studies* 1280; Levesque, “Francophones Oubliés”, *supra* note 23. For demographic statistics on Francophones in Ontario, see Ministry of Francophone Affairs, “Profile of the Francophone population in Ontario-2016” (29 July 2021), online: <ontario.ca/page/profile-francophone-population-ontario-2016> [perma.cc/2A9P-9DN5].

²⁶ Ministry of Francophone Affairs, *supra* note 25.

²⁷ *Ibid.*

²⁸ Statistics Canada, “Aboriginal peoples and language” 2011 National Household Survey (25 July 2018), online: <https://www12.statcan.gc.ca/nhs-enm/2011/as-sa/99-011-x/99-011-x2011003_1-eng.cfm> [perma.cc/Z5DM-2M79].

²⁹ See Madibbo, *supra* note 20; Scott, *supra* note 25; Levesque, “Francophones Oubliés”, *supra* note 23.

³⁰ Alexandre Baril defines anglonormativity as “a system of structures, institutions, and beliefs that marks English as the norm. In Anglonormative contexts, Anglonormativity is the standard by which non-Anglophone people are judged, discriminated against, and excluded.” Alexandre Baril, “Intersectionality, Lost in Translation? (Re)thinking intersections between Anglophone and Francophone intersectionality” (2017) 38:1 *Atlantist* 125 at 127, online: <journals.msvu.ca/index.php/atlantis/article/download/4088/125-137%20PDF/7283> [perma.cc/VE5C-9TQG].

Much of settler colonial theory and studies in Canada has focused on the dominant British settler colonial power, with an emerging spotlight on Québec.³¹ Little attention has been paid to French-Canadian settler colonialism in French-Canadian minority provinces such as Ontario. This research aims to make visible this gap and begin to fill in its contours by understanding how the French-Canadian settler colonial project operates in Ontario through the French language rights regime.

Law and language are two of the central tools of settler colonialism.³² The destruction of Indigenous languages and their replacement with colonial languages is a central feature of the settler colonial project.³³ At the time of the elaboration of the residential school system, “federal leaders agreed that teaching children to speak French or English was a critical step in acculturating Aboriginal children.”³⁴ While much attention is rightly paid to the violent imposition of English through the residential school system as the primary vehicle for attempted linguistic genocide of Indigenous languages, the simultaneous imposition of French, although it impacted a smaller minority of Indigenous nations for demographic and political reasons, nonetheless warrants analysis.³⁵ The National Inquiry on Missing and Murdered Indigenous Women and Girls, for example, spoke to the imposition of French on Indigenous peoples. The Inquiry called for space for francophone Indigenous survivors of residential schools and colonial violence to be heard and their distinct experiences integrated into policy changes, while recognizing that the simultaneous imposition of two colonial languages by the state has “served, in some cases, to erect language barriers to promoting solidarity with other First Nations across Canada.”³⁶ These language barriers impact French-speaking Indigenous peoples, the minority compared to English-speaking Indigenous peoples, in particular ways.

Madibbo draws attention to the reclamation of French in a decolonizing way by French-speakers in former French colonies in Africa and, consequently, the support of these French-speakers for the French language rights project in their new home of Alberta.³⁷ Anne Levesque highlights the fact that after unmet calls from the Indigenous Bar Association to remove the bilingualism requirement for Supreme Court judges, an effort to clear the way for more Indigenous judges, a French-speaking Indigenous judge was appointed and able to hear a case brought by French-speaking Indigenous peoples from Québec in French.³⁸ While these examples point to the

³¹ See for example Lorenzo Veracini’s description of the appropriation of “Canadien,” initially used by French-Canadians to describe Indigenous people (*supra* note 9 at 24, 48; see also Shiri Pasternak, *Grounded Authority: The Algonquins of Barriere Lake against the State* (Minneapolis: University of Minnesota Press, 2017); Trycia Bazinet, “Tracing Understandings of Sovereignty and Settler-Colonial Violence in the Quebec’s Viens Commission (2016-2019)” (2022) 13:2 *Settler Colonial Studies* 174; Adam Gaudry & Darryl Leroux, “White Settler Revisionism and Making Métis Everywhere: The Evocation of Métissage in Quebec and Nova Scotia” (2017) 3:1 *Critical Ethnic Studies* 116.

³² Tuck & Yang, *supra* note 7 at 21; see also Veracini, *supra* note 9 at 13.

³³ *Ibid.*

³⁴ Lorena Sekwan Fontaine, “Our languages are sacred: Finding constitutional space for Aboriginal language rights (PhD Thesis, University of Manitoba Department of Peace and Conflict Studies, 2018) [unpublished] at 82, online: <hdl.handle.net/1993/32864> [<https://perma.cc/98CF-QYW9>].

³⁵ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015) at 80, 153.

³⁶ National Inquiry on Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report on the National Inquiry on Missing and Murdered Indigenous Women and Girls*, Vol. 1a (Ottawa: National Inquiry on Missing and Murdered Indigenous Women and Girls, 2019) at 261.

³⁷ *Supra* note 20 at 118.

³⁸ Levesque, “Francophones Oubliés”, *supra* note 23 at 276.

agency and resilience of colonized communities using French to advance their own goals, it is ultimately up to Indigenous peoples in their great diversity to speak to the nuanced role of French in their lives today.

This research should not be read as a call to dismantle French language rights. Indigenous scholarship on Indigenous language rights reflects the strategic deployment of the French language rights regime to support and advance Indigenous language rights in the Canadian constitutional framework.³⁹ The fact that Canadian courts have rich jurisprudence recognizing the centrality of language to the well-being of a people and culture could support those who would fight for Indigenous language sovereignties through Canada's multi-juridical constitution.⁴⁰ Crucially, this reclamation of Indigenous languages has and continues to happen on a daily basis in Indigenous communities, far from the terrain of courtrooms and legislatures.

The inequality of resources and rights invested in the survival of French and Indigenous languages invites comparison and is an unavoidable backdrop to this research.⁴¹ In its final report, the Truth and Reconciliation Commission compared the \$9.1 million that the federal government budgeted for Indigenous languages in 2014-2015 to the projected \$348.2 million for the federal Official Languages Program alone, and the \$44 per Inuk person for Inuit language initiatives to the \$4,000 a person for Francophone minorities in Nunavut.⁴² Language rights, however, are not a zero-sum game.⁴³ It would be a failure of the political imagination to imagine that the only source of resources for supporting the reclamation and revitalization of Indigenous language rights, led by Indigenous communities in response to attempted genocide, is the resources invested in another language rights regime.

In the search to build an innocent white Canadian identity, the Anglophone world has often depicted the demands of French Canada as intolerant and racist, with Anglophones portraying themselves as the opposite.⁴⁴ Popular historical narratives, in fact, depict Canada on the whole as peaceful colonizers compared to, say, the United States or Australia, often referring to the French *coureurs de bois* as evidence of this myth.⁴⁵ With English Canada often perceiving itself as less racist and more tolerant of Indigenous peoples than Québec to justify anti-separatist sentiment, Indigenous peoples have been used as “weapons in war between two founding nations”⁴⁶ and English Canada has purported to “transcend... the particularisms of Francophone ‘ethnic nationalism’ and become... a universal model of civic nationhood.”⁴⁷ Clearly, the British Crown and settler colonial project has lots to answer for, past and present, and this is well-trodden terrain.

³⁹ See for example Fontaine, *supra* note 34 at 10, 108, 125.

⁴⁰ For an in-depth articulation of Canada's multi-juridical constitution, see John Borrows, *Canada's Indigenous Constitution*, (Toronto: University of Toronto Press, 2010); for a discussion by the Supreme Court on the braiding of distinct legal traditions within the Canadian constitutional context, see *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at paras 7, 90, 131. Levesque has also argued that French language rights can support Indigenous language rights, Levesque, “French and CLCs”, *supra* note 23.

⁴¹ Fontaine, *supra* note 34 at 10, 108.

⁴² *Supra* note 35 at 156.

⁴³ Levesque, “French and CLCs”, *supra* note 23.

⁴⁴ Eva Mackey, *The House of Difference: Cultural Politics and National Identity in Canada* (Toronto: University of Toronto Press, 2002) at 15, 25-26.

⁴⁵ Jeff Benvenuto, Andrew Woolford & Alexander L Hinton, “Introduction: Colonial Genocide in Indigenous North America” in Andrew Woolford, Jeff Benvenuto & Alexander Laban Hinton, eds, *Colonial Genocide in Indigenous North America* (Durham: Duke University Press, 2014) 1 at 4.

⁴⁶ Mackey, *supra* note 44 at 16.

⁴⁷ *Ibid* at 15.

This “race to innocence”⁴⁸ between those benefitting from genocide and settler colonialism was also reflected, interestingly, in one study of the relationship between Franco-Ontarians and Québec nationals in the borderlands of Ottawa/Gatineau, as Franco-Ontarians saw themselves and Ontarians as less racist than Francophones in Québec.⁴⁹ It seems then that the race to innocence is foundational to identity building for many Canadian settler collectives.

III. THE MYTH OF THE BENEVOLENT FRENCH COLONIZER AND THE HISTORY OF FRENCH-CANADIAN SETTLEMENT IN ONTARIO

The history of French settlement in Ontario is inexorably woven with the history of settlement in Québec and its attached foundational myths. In his body of work on the race shifting of Québécois to appropriate Indigenous identity, Darryl Leroux draws attention to how “French Québécois narratives tell a celebratory story of unmatched colonial genius, involving an incredible benevolence towards Indigenous peoples in the immediate postcontact era.”⁵⁰ In her work on settler colonialism and the Viens Commission, Trycia Bazinet highlights several specific myths that normalize settler colonialism in Québec, including that “the Quebecois are innocent in their colonization role as their identity is supposedly mixed (métis), making them an Indigenous nation in a way.”⁵¹ Ironically, mirroring the English tactic of portraying the French as more brutal than the English, reviewed above, “Quebecois purport that they were political allies of Indigenous people compared to the English whose colonialism was ‘more brutal.’”⁵² Bazinet argues that it is “a common settler move in Quebec to circulate the idea that Quebecois cannot be colonizers as they have themselves been colonized by the English.”⁵³

French-Canadian settlement in what is now Ontario started in the seventeenth century but accelerated in the nineteenth century due to incentives in *Free Grant and Homestead Act, 1868*,⁵⁴ which granted land patents to settlers in exchange for clearing and cultivating fifteen hectares of land and building a residence until the 1930s.⁵⁵ These settlers came mostly from Québec and this settlement was inextricably tied with farming, mining, forestry and building the railroad, all central pillars of the settler colonial economy that displaced Indigenous economies and their land tenure systems.⁵⁶ As work on the Canadian Pacific Railroad began in earnest in the so-called Sudbury

⁴⁸ A concept coined to describe the experiences of women claiming marginality to erase their subordination of other women in Mary Louise Fellows & Sherene Razack, “The race to innocence: Confronting hierarchical relations among women” (1998) 1:4 *The Journal of Gender, Race & Justice* 335 at 335.

⁴⁹ See Gilbert, *supra* note 2 at 143. This study repeats the myth that Franco-Ontarians in Ontario are in “their own territories” [translated by author].

⁵⁰ Darryl Leroux, “‘We’ve Been Here for 2,000 Years’: White Settlers, Native American DNA and the Politics of Indigeneity” (2018) 48:1 *Social Studies of Science* 80 at 80.; see also Scott, *supra* note 25 at 1283.

⁵¹ *Supra* note 31 at 4.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *The Free Grants and Homestead Act of 1868*, SO 1868, c 8.

⁵⁵ *Ibid.*, s 9; Joseph D Conwill, “Return to the Land: Quebec’s Colonisation Movement” *History Today* (April 1984) at 16, online: <<http://historytoday.com/archive/return-land-quebecs-colonisation-movement#:~:text=The%20pioneer%20spirit%20was%20different,of%20the%20church%20and%20state>> [perma.cc/E28Y-BJVC]; Dupuis, *supra* note 14 at 11 [n.b. Dupuis’ manuscript mistakenly says that fee simple was granted in exchange for the clearing of six hectares, not fifteen].

⁵⁶ Dupuis, *supra* note 14 at 11; Bazinet, *supra* note 31 at 2.

basin, one-third of the woodcutters and railroaders who arrived were French.⁵⁷ There were also incentives to settle in the *Act Respecting Mining Companies*,⁵⁸ including a lack of fees owed to the government to mine the ore, that attracted French-Canadian prospectors to the area.⁵⁹

Despite these legal privileges afforded early French-Canadian settlers, whiteness was not always ascribed to French-Canadians in the early days of Canada. Indeed, Madibbo points out that French-Canadians were among the targets of the first wave of organized white supremacists in Canada.⁶⁰ The expression “speak white,” for example, was “once a common insult used by English Canadians to slight French Canadians”⁶¹; it was even used even in Parliament to demean French language interests.⁶²

The possibility of whiteness being granted to French-Canadians was prefigured by some factions of the early white supremacist movement, however, as Eva Mackey points out that the Canada First movement attempted to include the French “as they too were seen to share the same northern racial characteristics”⁶³; in their eyes, “the racial similarities of the English and French made Canada homogeneous.”⁶⁴ This inclusion, however, was based in the belief in the “inevitable decline of the French.”⁶⁵ This prefiguration of ascribing whiteness to the French reflects the contemporary critique by David MacDonald, leading scholar of genocide in Canada, that “central to any genuine reconciliation must be the adoption of a new form of binationalism, one that is properly between Aboriginal peoples and *Shognosh* peoples, not between two very similar white European Christian colonizing peoples, as it has been for centuries.”⁶⁶ Reflecting a more nuanced understanding of the differences between the French and the English, James Sa’ke’j Youngblood Henderson describes one of the constitutional pillars of Canada as the “irresistible desire for self-rule by two settler communities with similar knowledge systems but with different languages, cultures and legal systems.”⁶⁷

The legal privileges of early settlement for French-Canadians co-existed with experiences of oppression in work, with exclusion from, for example, management roles and schooling.⁶⁸ In Ontario, *Regulation 17* limited the instruction of French starting in 1912 for a period of forty years, sparking resistance and defiance in French-Canadian communities which led to some

⁵⁷ Dupuis, *supra* note 14 at 7-8.

⁵⁸ *An Act Respecting Mining Companies*, RSO 1877, c 156.

⁵⁹ Dupuis, *supra* note 14 at 9.

⁶⁰ *Supra* note 20 at 89; see also Scott, *supra* note 25 at 1285 for a discussion of political cartoons depicting Francophones as not quite white during the nineteenth century.

⁶¹ Scott, *supra* note 25 at 1283.

⁶² *Ibid.*

⁶³ Mackey, *supra* note 44 at 31.

⁶⁴ *Ibid.*

⁶⁵ *Ibid* at 32.

⁶⁶ David B MacDonald, “Genocide in the Indian Residential Schools: Canadian History through the Lens of the UN Genocide Convention” in Andrew Woolford, Jeff Benvenuto & Alexander Laban Hinton, eds, *Colonial Genocide in Indigenous North America* (Durham: Duke University Press, 2014) 306 at 318. MacDonald uses the Anishinaabe word *Shognosh* “to refer to Canada’s European settler populations as well as multi-cultural people like [him] who are assimilated into European ways of thinking and acting” (307).

⁶⁷ James Sa’ke’j Youngblood Henderson, “‘Creating Inclusive Canadian Federalism’ in Amy Swiffen & Joshua Nichols, eds, *Indigenous Peoples and the Futures of Canadian Federalism* (Toronto: University of Toronto Press, 2024) at 13.

⁶⁸ Dupuis, *supra* note 14 at 10.

improvements in 1927.⁶⁹ Over time, however, French-Canadians became racialized as white and gained socio-economic advantages beyond the early incentives to settle and clear land.⁷⁰

French-Canadians today continue to experience anglonormativity.⁷¹ Speaking to the Québec context, no less applicable to French-Canadians in Ontario, Scott acknowledges that Anglocentric American and Canadian authority continues to marginalize French-Canadians, but that they are also “now part of the dominant racial grouping and have access to white privilege and the everyday unearned institutional and material advantages of being white.”⁷² French-Canadian communities had legal privileges others did not from the time of Confederation that expanded over time through struggle and organizing.⁷³

Despite the key role of extractive industries in building the economic base of French-Canadian communities, Dupuis’s history of French-Canadian settlement in the Sudbury area omits any connection to what Indigenous communities have dubbed the slow genocide of “extractive capitalism and development.”⁷⁴ The narrativizing of French-Canadian history in Ontario, which aligns with the myth of the benevolent French colonizer in Québec, is also reflected in the preambles to the *Franco-Ontarian Emblem Act*⁷⁵ and the *Franco-Ontarian Day Act*.⁷⁶ Passed in 2001, the preamble of the *Franco-Ontarian Emblem Act* reads: “[t]he French language has been present in Ontario for 350 years. The first French speakers to come to Ontario were the missionaries who established the mission of Sainte-Marie-among-the-Hurons in 1639.”⁷⁷ The *Franco-Ontarian Day Act* was passed nine years later, legislation that traced French presence in the province back thirty years earlier than the above *Act*:

The French language has been spoken in Ontario since the 17th century. The year 2010 represents the 400th anniversary of the French presence in this province, which began with a series of explorations that eventually led to the mapping of the vast waterways of the interior, the establishment of partnerships with First Nations and the first Francophone settlements in modern day Ontario.⁷⁸

The description of the missions and the partnerships with First Nations in such neutral language obscures the structural violence that came to characterize that relationship. Both preambles also name the territory Ontario despite referencing history prior to 1867: the *Emblem Act* reached back over 200 years before this date and the *Day Act* over 250 years before it. The effect of this is to naturalize the inevitability of Ontario, as if it could not have been anything but Ontario in the more

⁶⁹ Ontario Department of Education, “Instructions 17: Circular of Instruction No. 17 for Ontario Separate Schools for the School Year 1912–1913” (June 1912), online <reglement17.ca/circular-of-instructions-no-17/> [perma.cc/KE2H-9JG4]; *Lalonde Div Ct supra* note 1 at paras 11, 13.

⁷⁰ Scott, *supra* note 25 at 1290-1293.

⁷¹ Baril, *supra* note 30.

⁷² Scott, *supra* note 25 at 1293.

⁷³ *Constitution Act, 1867 (UK)*, 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, Appendix II, No 5, S 133 [*Constitution Act, 1867*] and expanded on by *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being *Schedule B to the Canada Act 1982 (UK)*, 1982, c 11, s 23.

⁷⁴ Adam Barker, Tobby Rollo, & Emma Battell Lowman, “Settler Colonialism and the Consolidation of Canada in the Twentieth Century” in Edward Cavanagh & Lorenzo Veracini, eds, *The Routledge Handbook of the History of Settler Colonialism* (New York City: Routledge, 2017) 153 at 161.

⁷⁵ *Franco-Ontarian Emblem Act*, RSO 2001, c 5 [*Emblem Act*, 2001].

⁷⁶ *Franco-Ontarian Day Act*, RSO 2010, c 4 [*Day Act*, 2010].

⁷⁷ *Emblem Act*, 2001, *supra* note 75, Preamble.

⁷⁸ *Day Act*, 2010, *supra* note 76, Preamble.

than two centuries before Confederation when relationships between Indigenous peoples and French settlers were quite different than they became as Confederation approached and afterwards.

IV. SETTLER MOVES TO INNOCENCE NARRATIVIZED IN LAW

Settler colonial theories have invited a “focus on the settlers, on what they do, and how they think about what they do,”⁷⁹ as “the stories settlers tell themselves and about themselves are crucial to an exploration of settler colonial subjectivities.”⁸⁰ This emphasis helps address the risk of considering solely the impacts of settler colonialism on Indigenous peoples in a way that normalizes and erases settlers from the picture and normalizes Indigenous suffering as an inevitable result of the clash of two worlds.⁸¹ It also speaks to the importance of narrative and storytelling in reproducing the settler colonial project.

Eve Tuck and Wayne Yang defined settler moves to innocence as “those strategies or positionings that attempt to relieve the settler of feelings of guilt or responsibility without giving up land or power or privilege, without having to change much at all.”⁸² They go on to elaborate that these moves attempt to deflect or deny complicity in settler colonialism.⁸³ One particular strategic move to innocence bears particular relevance for this research, that of “colonial equivocation,”⁸⁴ expressed through “describing all struggles against imperialism as ‘decolonizing’ creat[ing] a convenient ambiguity between decolonization and social justice work, especially among [...] groups minoritized by the settler nation-state.”⁸⁵

The general concept of settler moves to innocence and the specific strategy of colonial equivocation is useful for understanding the French-Canadian tendency to focus on the pain of oppression by English Canada to define ourselves as “innocent non-oppressors”⁸⁶ and equate our struggle with Indigenous peoples’ struggle or other racialized peoples’ struggles. Veracini identifies that the recurrent need to disavow the violence of settler colonialism is expressed through settlers hiding behind the label of persecuted as well as their labour and hardship.⁸⁷

Socio-legal, critical feminist and critical race theories assist in focusing on the role of the law in the settler colonial project, conceived of as “the spatial and legal practices required in the making and maintaining of a white settler society.”⁸⁸ Socio-legal scholarship contributes tools for understanding “the role of law in creating and supporting conditions for naked and structural violence”⁸⁹ but also so-called slow violence, defined as “a form of violence that [...] occurs

⁷⁹ Veracini, *Settler Colonialism*, *supra* note 9 at 15; Tuck and Yang, *supra* note 7 at 21.

⁸⁰ Veracini, *Settler Colonialism*, *supra* note 9 at 103.

⁸¹ *Ibid* at 15; Tuck and Yang, *supra* note 7 at 22; for an in-depth exploration of the normalization of Indigenous pathology and death as the inevitable result of the clash of two worlds, see Sherene Razack, *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody* (Toronto: University of Toronto Press, 2015).

⁸² Tuck and Yang, *supra* note 7 at 22

⁸³ *Ibid*.

⁸⁴ *Ibid* at 17.

⁸⁵ *Ibid*.

⁸⁶ *Ibid* at 16.

⁸⁷ Veracini, *Settler Colonialism*, *supra* note 9 at 14.

⁸⁸ Razack, “When Place Becomes Race”, *supra* note 9 at 1.

⁸⁹ Mariful Alam, Patrick Dwyer, & Katrin Roots, “Socio-legal Perspectives on Law’s Violence” in Mariful Alam, Patrick Dwyer and Katrin Roots, eds, *Violence, Imagination, and Resistance: Socio-Legal Interrogations of Power* (Athabasca: Athabasca University Press, 2023) 1 at 5.

gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all.”⁹⁰ These categories help us draw the links between school officials physically abusing Indigenous children for speaking their language in a French residential school;⁹¹ a constitutional order that requires massive amounts of resources devoted to the preservation of English and French through the public school system and in public institutions while Indigenous languages are systematically neglected; and the long-term impacts on health and well-being for Indigenous communities struggling to revive their languages.

The repetition of the myth of Canada’s two founding nations in law and jurisprudence about French language rights, both federally and in Ontario, reflect the proposition that law itself is a repository for mythologies or national stories, as well as a constructor of narrative itself. Anishinaabe legal theorist John Borrows is among many Indigenous legal theorists and practitioners who have drawn attention to the fact that, ultimately, “case law, although lionized and vaunted as unique, is at its core narrative.”⁹² For Borrows, “law is a story and should be treated as such.”⁹³ Razack draws our attention to how disavowal, denial and complicity are abetted in particular ways by the stories of legal positivism.⁹⁴

Razack inspired the narrative analysis methodology I have chosen here.⁹⁵ While filling in the details of Pamela George’s life that were left out of the courtroom, such as violent displacement from her territories and urban racial segregation, Razack also reads in how the settler colonial white masculinity of her murderers was constructed and narrativized in the criminal courtroom.⁹⁶ She demonstrates through her analysis what settler colonial theories ask us to do in order to better understand settlers themselves, as well as how they reproduce themselves and genocidal violence through legal processes.

V. FRENCH LANGUAGE RIGHTS IN ONTARIO

In this section, I will place Ontario’s *French Language Services Act* in constitutional context and place the *French Language Services Act* within the broader French language rights regime in Ontario. Then, I will turn to the central themes in the law and jurisprudence coming out of the *French Language Services Act*.

⁹⁰ *Ibid* at 3.

⁹¹ Notably, the first residential school pre-dates Confederation and was a French Roman Catholic School outside Québec City; for this and a discussion of violence against children for not speaking French, see Truth and Reconciliation Commission, *supra* note 35 at 50, 82, 153. For more discussion of violence against children for not speaking French or English, see Fontaine, *supra* note 34 at 85, 91.

⁹² Stacy Douglas, “Jurisdiction and other Settler-Colonial Legal Imaginaries” in Mariful Alam, Patrick Dwyer and Katrin Roots, eds, *Violence, Imagination, and Resistance: Socio-Legal Interrogations of Power* (Athabasca: Athabasca University Press, 2023) 59 at 72-73 citing John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002).

⁹³ *Ibid*.

⁹⁴ Sherene Razack, *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998) at 40.

⁹⁵ Sherene Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George” in Sherene Razack, ed. *Race, Space and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002) 123-136.

⁹⁶ *Ibid* at 126-127; applying the outsider jurisprudence methodology first articulated by Mari Matsuda, “Public Response to Racist Speech: Considering the Victim’s Story” (1989) 87 Michigan Law Review at 2322.

A. FRENCH LANGUAGE RIGHTS IN CONSTITUTIONAL CONTEXT

Far from an isolated area of jurisprudence in Canada's broader settler colonial constitutional framework, the British courts and the Supreme Court of Canada have recognized that the minority language rights regime is foundational to Confederation itself: "it is important to keep in mind that the preservation of the rights of minorities was a condition on which such minorities entered into the federation, and the foundation upon which the whole structure was subsequently erected."⁹⁷

Minority language protection was not a given for all of Confederation, however, as "fifty years after Confederation, in a highly controversial decision, the Privy Council held that s. 93 was limited to denominational protection and included no minority language protection."⁹⁸ According to the Ontario Court of Appeal, "the historic grievance of the linguistic minority in relation to the language of education was finally addressed in 1982 by s. 23 of the Charter."⁹⁹ The *Charter* represented an expansion of minority language rights for Francophones outside Québec and for Anglophones in Québec with its *Official Languages of Canada* and *Minority Language Educational Rights* sections.¹⁰⁰

The Supreme Court has discussed the special nature of language minority rights, a rare area where the law recognizes positive obligations on the state, commenting that section 23 "confers upon a group a right which places positive obligations on government to alter or develop major institutional structures."¹⁰¹ The Supreme Court has expressed its nuanced understanding of the role of language in a case finding that Manitoba statutes and regulations must be translated into French:

The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus to live in society.¹⁰²

In the *Secession Reference*, the Supreme Court explicitly drew a connection between French speaking minorities and Indigenous communities.¹⁰³ As Larry Chartrand has poignantly emphasized, "when [the Supreme Court] classified Aboriginal people in the Québec Secession case as being entitled to benefit from the 'minority protections' of the Constitution, as distinct from a political community with the ability to express a will to separate like Québec,"¹⁰⁴ the

⁹⁷ *Re Regulation and Control of Aeronautics in Canada*, 1931 CanLII 466 (UK JCPC), [1932] AC 54 at para 70, 101 LJPC 1; affirmed by the Supreme Court of Canada in *Reference re Authority of Parliament in Relation to the Upper House* (S. 55), [1980] 1 SCR 54 at para 71, 1979 CanLII 169 (SCC), 102 DLR (3d) 1.

⁹⁸ *Lalonde ONCA supra* note 2 at para 85 citing *Trustees of the Roman Catholic Separate Schools for the City of Ottawa v. Mackell*, 1916 CanLII 418 (UK JCPC), [1917] AC 62, 86, LJPC 65 (PC).

⁹⁹ *Lalonde ONCA, supra* note 2 at para 85.

¹⁰⁰ *Ibid.*

¹⁰¹ *Mahe v Alberta*, 1990 CanLII 133 (SCC), [1990] 1 SCR 342 at para 365 [*Mahe*]; see also David Leitch, "Canada's Native Languages: The Right of First Nations to Educate Their Children in Their Own Languages", (2006)15-3 Constitutional Forum 107 at 116, online: <canlii.ca/t/t0mr>.

¹⁰² *Reference re Manitoba Language Rights*, 1985 CanLII 33 (SCC) at para 46; see also *Mahe, supra* note 101 at para 362; *Ford v Quebec (Attorney General)*, 1988 CanLII 19 (SCC) at paras 748-49 [*Ford*].

¹⁰³ *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC) at para 96.

¹⁰⁴ Larry Chartrand, "Indigenous Peoples: Caught in a Perpetual Human Rights Prison" (2016) 67(1) University of New Brunswick Law Journal 167 at 184.

Supreme Court trapped Indigenous nations “in a liberal human rights nightmare with no means of escape.”¹⁰⁵

B. FRENCH LANGUAGE RIGHTS IN ONTARIO

According to Official Languages Directorate, Department of Justice Canada’s *Annotated Language Laws of Canada*,¹⁰⁶ there are 121 acts and 34 regulations making reference to French language rights in Ontario. There are thematic clusters around education, healthcare, insurance and more. In addition, the language protections in the *Courts of Justice Act*¹⁰⁷ are the subject of litigation due to the quasi-constitutional nature of language rights contained therein.¹⁰⁸ While language is not a recognized ground of discrimination in the *Human Rights Code*,¹⁰⁹ there have been attempts to have the Human Rights Tribunal of Ontario (HRT) recognize it as such, in particular by tying discrimination on the basis of language to other grounds of discrimination like nationality and race.¹¹⁰ It is in this legal landscape that we can place the *French Language Services Act*.

C. THE FRENCH LANGUAGE SERVICES ACT

The choice of the *French Language Services Act* for the purposes of this research is explained by its centrality in explaining the history and scope of French language rights in Ontario. It is also the most litigated in terms of its content and application. While the Ontario Court of Appeal characterized the protections of the *French Language Services Act* as quasi-constitutional in *l’affaire Montfort*, they also held that these protections had not been constitutionalized.¹¹¹ The Court of Appeal also specified that the unwritten constitutional principle of the protection of minorities required the *French Language Services Act* to be given a liberal and generous interpretation.¹¹²

The Ontario Court of Appeal reviewed the history of the promulgation of the *French Language Services Act* in 1986:

In introducing the legislation on May 1, 1986, the Honourable Bernard Grandmaître, the Minister for Francophone Affairs, stated (Debates of the Legislative Assembly of Ontario, pp.203-04):

¹⁰⁵ *Ibid* at 185.

¹⁰⁶ Official Languages Directorate, Justice Canada, *Annotated Language Laws of Canada: Constitutional, Federal, Provincial and Territorial Laws (2019)*, (Montreal: Department of Justice Canada, 2017), online: <canlii.ca/t/29>.

¹⁰⁷ *Courts of Justice Act*, RSO 1990, c C 43 [*Courts of Justice Act*].

¹⁰⁸ *Belende v Patel*, 2008 ONCA 148 at para 24 [*Belende*].

¹⁰⁹ *Human Rights Code*, RSO 1990, c H 19 [*HRC*].

¹¹⁰ See for example *Guay v Commission de la sécurité professionnelle et d’assurance contre les accidents du travail*, 2011 HRT 1216 [*Guay*]; *Lang v Ontario (Community and Social Services)*, 2003 HRT 8 [*Lang*]; *Morin v Kaymic Developments*, 2015 HRT 1354 [*Morin*].

¹¹¹ *Lalonde ONCA*, *supra* note 2 at paras 2 and 92; This distinction between the quasi-constitutional but not constitutional nature of the *FLSA* seems to have informed the Ontario Court of Justice when distinguishing the quasi-constitutional nature of healthcare services in French and a French training hospital from unilingual parking signs in Toronto in *City of Toronto v Braganza*, 2011 ONCJ 657 [*Braganza*].

¹¹² *Lalonde ONCA*, *supra* note 2 at paras 125, 132, followed in *Canadians for Language Fairness v Ottawa (City)*, 2006 CanLII 33668 (ON SC) at para 88 [*Canadians for Language Fairness*].

Our province has a special responsibility in this regard [to ensure that francophones receive services in their own language] because Ontario is home to the largest group of French-speaking Canadians outside Quebec. It is for that reason the government of Ontario intends to guarantee through legislation the rights of francophones to receive government services in French.

The various measures contained in this bill are inspired by the basic principles of justice and equality which we value so highly in this province. These are two fundamental principles on which our country has been built by the two founding peoples. The government of Ontario believes that it is now appropriate that this reality and this duality should be reflected in the operations of all ministries.¹¹³

The reference by the Honourable Bernard Grandmaître to the two founding peoples in the introduction of the legislation, far from a benign statement of fact unrelated to Indigenous peoples, reflects how “Canadian myths of origin are based on the reconstruction of British and French colonialism as the acts of two founding ‘races’ and that Canadian constitutional recognition of cultural duality created a theory of empty land, of *terra nullius*, which erased Canada’s First Nations.”¹¹⁴ Echoing these words, Mackey points out that the sovereignty and land claims of Indigenous peoples disappeared in the compromise between the English and French power bloc at Confederation.¹¹⁵ The long-held view that “the essential conflict of the nation”¹¹⁶ was or is between the English and the French, as expressed through the establishment of the Royal Commission on Bilingualism and Biculturalism by the Pearson government in 1963, had and has the effect of continuously reinscribing the erasure of Indigenous peoples and nations.¹¹⁷ As Sunera Thobani convincingly argues, “the definition of the nation as primarily bilingual and bicultural reproduced the racialized constructs of the British and French as its real...(and also white)...subjects.”¹¹⁸ Through his omission of Indigenous peoples in his speech explaining why the *Act* is being passed, Grandmaître embodies the strategy of erasure central to the settler colonial project and reinscribes the myth of two founding nations. The reference to two founding peoples permeates the jurisprudence on French language rights. The Supreme Court is explicit that the purpose of section 23, for example, is to “preserve and promote the two official languages of Canada, and their respective cultures, by ensuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population.”¹¹⁹ Having demonstrated how the origins of the *French Language Services Act* are tied to a white supremacist myth of how Canada came to be a nation, I turn to the jurisprudence interpreting the *Act*.

I have grouped the comprehensive case review into three relevant themes to give life to the analysis of settler colonial narratives: (1) the purposes of the *French Language Services Act*; (2) the vulnerability of Francophones; and (3) the role of Francophone institutions.

¹¹³ *Lalonde ONCA*, *supra* note 2 at para 141.

¹¹⁴ Scott, *supra* note 25 at 1283.

¹¹⁵ Mackey, *supra* note 44 at 14.

¹¹⁶ *Ibid.*

¹¹⁷ Royal Commission on Bilingualism and Biculturalism, *Report of the Royal Commission on Bilingualism and Biculturalism* (Ottawa: Royal Commission on Bilingualism and Biculturalism, 1969); Mackey, *supra* note 44 at 55.

¹¹⁸ Sunera Thobani, *Exalted Subjects: Studies in the Making of Race and Nation in Canada* (Toronto: University of Toronto Press, 2011) at 145; see also Himani Bannerji, *The Dark Side of the Nation: Essays on Multiculturalism, Nationalism and Gender* (Toronto: Canadian Scholars Press, 2000).

¹¹⁹ *Mahe*, *supra* note 101 at para 362; see also *Lalonde Div Ct*, *supra* note 1 at para 44.

1. THE PURPOSES OF THE *FRENCH LANGUAGE SERVICES ACT*

The preamble to the *French Language Services Act*, reproduced in part below, contains other important information about the purposes of this statute:

Whereas the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; ... and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations; and whereas it is recognized that the cultural heritage of the French speaking population is enriched by its diversity; ...¹²⁰

In commenting on the interpretive role of the *French Language Services Act* preamble in its 2001 incarnation, the Ontario Court of Appeal recognized that “while a preamble is not a source of positive law in contrast to the provisions that follow it, a preamble can contribute to the interpretation of a law.”¹²¹ Levesque has pointed out that the 2021 addition to the preamble—specifically, the reference to the cultural heritage of the French speaking population being “enriched by its diversity”—reveals a vision of the Francophone community anchored in a mythical past.¹²² Recognizing that the demographic survival of the French speaking community is now reliant on immigration, she argues that the references to preserving the cultural heritage of the French speaking population for future generations speaks to an intention to conserve a culture of the past. This culture was only recently recognized in the *French Language Services Act* to be enriched by its diversity, with this diversity still not phrased as inherent and integral to the French speaking community.¹²³ Levesque’s analysis of the *French Language Services Act* illustrates Madibbo’s argument that French speaking people racialized as non-white have been excluded from visions of the French-speaking community as part of strategic nationalism anchored in whiteness.¹²⁴

In *l’affaire Montfort*, the Divisional Court commented on the purpose of the *French Language Services Act* when it was first promulgated in 1986: “the law was remedial and meant to form part of the unfinished edifice of fundamental language rights pertaining to the francophone minority in the field of health care in Ontario.”¹²⁵ The Court of Appeal in *l’affaire Montfort* identified two underlying purposes to the *French Language Services Act*: “the protection of the minority francophone population in Ontario”¹²⁶ and the “advancement of the French language and promotion of its equality with English.”¹²⁷ The Court went on to affirm the Divisional Court’s finding that “the language and culture of the francophone minority in Ontario ‘hold a special place

¹²⁰ *French Language Services Act*, *supra* note 8, Preamble.

¹²¹ *Lalonde ONCA*, *supra* note 2 at para 145.

¹²² Levesque, “Francophones Oubliés”, *supra* note 23 at 261 [translated by author].

¹²³ *Ibid* at 261-262. The purposes of federal immigration acts have included the development of minority language communities since 1976. See *Immigration and Refugee Protection Act*, SC 2001, c 27, s 3(1)(b.1), *Immigration Act 1976-1977*, RSC 1985, c I-2 at S.3 (a) and (b.)

¹²⁴ Madibbo, *supra* note 20 at 133.

¹²⁵ *Lalonde Div Ct*, *supra* note 1 at para 65.

¹²⁶ *Lalonde ONCA*, *supra* note 2 at para 143.

¹²⁷ *Ibid*; for another reference to equality with English, see also *Canadians for Language Fairness*, *supra* note 112 at para 92.

in the Canadian fabric as one of the founding cultural communities of Canada and as one of the two official language groups whose rights are entrenched in the Constitution.”¹²⁸ This framing reinforces the myth of two founding nations, as seen above.

Although the Superior Court of Justice was not clear on the relationship between the *Constitution*, the *Courts of Justice Act* and the *French Language Services Act* in *Dehenne*—a case that ultimately affirmed that the *Act* required the Public Guardian and Trustee to guarantee access to French speaking capacity assessors, not just French interpreters—the Superior Court commented in that case on the purpose of French language rights in general: “where they apply, language rights must be interpreted as an essential tool for the maintenance and protection of official language communities.”¹²⁹ This reference to the protection of Francophones in a discussion of the purpose of the *French Language Services Act* leads neatly into the discussion of the framing of the vulnerability of Francophones as pillars of the jurisprudence.

2. THE VULNERABILITY OF FRANCOPHONES

References to the vulnerability of Francophones as French-speakers are a persistent thread throughout the jurisprudence. I will begin with the characterizations offered by claimants, recognizing that the claimants themselves may have had little say in the strategy or wording used by their legal counsel if they had it, and that the decision we have only provides the judge or decision-maker’s repetition or translation of the claimant’s position.

In a case where the claimant was self-represented, and one that was improperly brought against an employee of the City of Toronto’s Employment and Social Services personally, the claimant alleged that by failing to provide him with a French interpreter, “the ESS directors damaged the honour of Francophones, who consider French an intangible heritage to promote, safeguard, and perpetuate” to “avoid any assimilation to English, a hegemonic language.”¹³⁰ This reference to the hegemony of English reflects the strategy, reviewed above, of painting French as the language of oppressed peoples rather than as also a hegemonic language. In a labour arbitration case where the arbitrators disagreed about the application of the *French Language Services Act* to a residence as opposed to a person, the history of Francophones’ experience of anglonormativity is reviewed by one of the arbitrators:

There was a time when 10 people would sit at a table in Ottawa, 9 being bilingual francophones, and one being unilingual anglophone, and the conversation was forced to be in English, simply for the sake of expediency. The francophones at that table were in effect bullied by the “times” into speaking a language which was not their own, despite the fact they were the majority at the table.¹³¹

The history of discrimination against French speakers in employment is referred to by Marion Dewar, a former Mayor of Ottawa. She was a witness in a case brought by Canadians for Language Fairness, a group seeking to dismantle French language rights, where she attested to an informal policy to exclude French-Canadians from management positions until the City’s 1982

¹²⁸ *Lalonde ONCA*, *supra* note 2 at para 181.

¹²⁹ *Dehenne v Dehenne*, 1999 CanLII 15118 (ON SC) at para 5.

¹³⁰ *Amrane v Abraham*, 2020 ONSC 6718 at para 3.

¹³¹ *Residence St.-Louis v Assoc des infirmières et infirmiers de Ontario*, 2011 CarswellOnt 104 (ON LA) at para 13.

Bilingualism policy began to change that.¹³² The City Respondent also relied on the “the vulnerability of Ontario’s linguistic minority”¹³³ in successfully defending its 2001 Bilingualism By-Law and Policy against the challenge brought by Canadians for Language Fairness. The By-Law and Policy had the combined effect of guaranteeing bilingual services from the City to residents of Ottawa.

In a case where the applicants unsuccessfully sought to quash the decision by the Minister of Training, Colleges and Universities to close Collège des Grands Lacs, the applicants argued that “the Minister's decision forces Francophones to use a language other than their maternal language in order to obtain a college education [...and] devalues the language and dignity of the Franco-Ontarian community.”¹³⁴ The claimants also “emphasize[d] that the Franco-Ontarian community is an extremely vulnerable minority group, and as such, requires its own institutions in order to survive and to assist in the struggle against assimilation.”¹³⁵

In *l'affaire Montfort*, the Divisional Court acknowledged the “firestorm of opposition from the Franco-Ontarian community [...] succinctly summarized in the phrase: “*Fermer Montfort, jamais!*”¹³⁶ The Health Services Restructuring Commission had responded to mobilization by the Francophone community by modifying its plans for the French hospital, but the Applicants continued to argue that proceeding in such a manner would cause “irreparable harm to the Franco-Ontarian community” because,

- [I]t will be impossible in the future for Montfort to continue to offer health care services and medical training in a francophone milieu;
- as a result, Montfort will not be able to continue to play its role as an institution essential to the survival of the Franco-Ontarian community; and,
- the direct result of putting the Directions in place will be to increase the already critically high rate of assimilation of the minority Franco-Ontarian community into the English majority.¹³⁷

In another case, the unsuccessful claimant seeking to stop the relocation of a Land Registry Office from Welland to St. Catharines maintained that “each closure of a bilingual Government of Ontario service point in Welland sends a message that it is not worth making the effort required to live in French. The relocation of the LRO effectively encouraged Franco-Ontarians' assimilation into the English-speaking majority.”¹³⁸

What unites these claimants and respondents is their framing of vulnerability, with references to survival, loss of dignity and assimilation as central to the French-Canadian experience in Ontario. What is interesting from a legal perspective is that this vulnerability is actually enshrined in Canadian and Ontarian jurisprudence on French language rights, giving a

¹³² *Canadians for Language Fairness*, *supra* note 112 at para 32.

¹³³ *Ibid* at para 33.

¹³⁴ *Gigliotti v Conseil d'administration du Collège des Grands Lacs*, 2005 CanLII 23326 (ON SCDC) at para 45 [Gigliotti].

¹³⁵ *Ibid*.

¹³⁶ *Lalonde Div Ct*, *supra* note 1 at 3.

¹³⁷ *Ibid*.

¹³⁸ *Giroux v Ontario*, 2005 CanLII 22131 (ON SCDC) at para 7 [Giroux].

legal aspect to the tendency identified by settler colonial theorists of settlers hiding behind their suffering to disavow their role in the settler colonial project.¹³⁹

The Divisional Court in *l'affaire Montfort*, for example, accepted the following framing of the vulnerability of the Francophone community:

The survival of the Franco-Ontarian community is threatened by an alarming rate of assimilation. It is not alone amongst minorities in this respect, of course, but the francophone community—as one of the founding constitutional groups in Canada—enjoys a special constitutional status which other minorities do not. Like other minority communities, Franco-Ontarians rely heavily on the strong presence of institutions in a wide variety of social activities for its preservation. These institutions have been built gradually over a long period of time. They are not only providers of vital French language services but are symbols reflecting the vitality and relevance of the Franco-Ontarian community in public life in Ontario and Canada. The disappearance or substantial decrease of such an institution has a negative impact on the ability of the community to survive.¹⁴⁰

The Ontario Court of Appeal affirmed this characterization of French-Canadians as under threat:

It is asserted that the French speaking minority population is constantly faced with the threat of assimilation. The respondents led evidence, accepted by the Divisional Court, to show that a linguistic minority's institutions are essential to the survival and vitality of this community, not only for its practical functions, but also for the affirmation and expression of cultural identity and sense of belonging.¹⁴¹

The Divisional Court also referenced the “fragility of the French language and culture in Welland” in a case about the relocation of the Land Registry Office from Welland to St. Catharines, noted above.¹⁴² The Court commented that “it is undeniable that Welland's francophone community is vulnerable in the sense that there is a high rate of assimilation and that maintaining French is a constant challenge for the community.”¹⁴³

The above review of cases reveals that there appears to be consensus between those who seek to assert French language rights and the courts that the French-Canadian community in Ontario is under threat and that this vulnerability must be protected by law, although of course the end result is not always the one sought by those who seek to protect or expand French language rights. The French language rights regime positions French-Canadian communities in Ontario as victims of the British colonial power and holds constitutional and statutory protections as remedies to that oppression.

¹³⁹ Tuck and Yang *supra* note 7; Razack, “When Place Becomes Race”, *supra* note 9; Veracini, *Settler Colonialism*, *supra* note 9.

¹⁴⁰ *Lalonde Div Ct*, *supra* note 1 at para 75.

¹⁴¹ *Lalonde ONCA*, *supra* note 2 at para 7.

¹⁴² *Giroux*, *supra* note 138 at para 7.

¹⁴³ *Ibid* at para 6; see also *Galganov v Russell (Township)*, 2012 ONCA 409 at paras 7, 75 [*Galganov*].

3. THE ROLE OF FRANCOPHONE INSTITUTIONS

The role of Francophone institutions in the survival of the Francophone world is narrativized in decisions related to a Land Registry Office, Hôpital Montfort and educational institutions like the University of Sudbury and Collège des Grands Lacs. While some jurisprudence recognizes bilingual institutions as a threat to French,¹⁴⁴ in *Giroux*, the claimants tried to stop the relocation of the bilingual Land Registry Office. They argued,

[T]hat minority institutions and bilingual government service locations play an important role in minority survival and that with the relocation of the LRO outside the Welland area, the community has lost part of its network of bilingual institutions. This has a significant negative effect on their community.¹⁴⁵

After Laurentian University filed for creditor protection in February 2021, the University of Sudbury sought to stop Laurentian University from dissolving their federation agreement with the University of Sudbury. In refusing to stop the dissolution of the agreement, the Superior Court focused on the opportunities the dissolution created for the University of Sudbury to become a francophone university, as the University itself had chosen to do in the wake of Laurentian's filing for creditor protection: "in consultation with the Assemblée de la Francophonie de l'Ontario ("AFO"), francophone stakeholders from Sudbury and other northern Ontario communities announced a resolution to become a university controlled by and for the Franco-Ontarian community."¹⁴⁶ This language of "by and for us" (par, pour et avec)—a frequent banner under which marginalized and oppressed communities organize themselves—was repeated by the University of Sudbury when handing the intellectual property for the Indigenous Studies program to an Indigenous institute as part of this restructuring, suggesting that the struggles of Francophones and Indigenous communities are equivalent.¹⁴⁷ The Court recognized the aspirations of the Francophone community as such: "for several years, the Franco-Ontario community has expressed a desire for a university by and for francophones. A 'bilingual' institution is not enough as English tends to be the dominant language in such institutions."¹⁴⁸

In *Gigliotti*, the Divisional Court acknowledged the expert evidence of Dr. Raymond Breton, who also testified in *Galganov* and *Lalonde*, that "advanced a theory of 'institutional completeness' — that is, the more minority institutions in place, the healthier the minority culture."¹⁴⁹ However, he distinguished the Collège des Grands Lacs from Hôpital Montfort,

¹⁴⁴ *Laurentian University v Sudbury University*, 2021 ONSC 3392 at para 51 [*Laurentian*]; *Lalonde Div Ct*, *supra* note 1 at para 16.

¹⁴⁵ *Giroux*, *supra* note 138 at para 7.

¹⁴⁶ *Laurentian*, *supra* note 144 at para 52.

¹⁴⁷ Jenny Lamothe, "Faculty Worried About the Future of University of Sudbury's Groundbreaking Indigenous Studies Program", Sudbury.com (7 April 2021), online: Sudbury.com <<https://www.sudbury.com/local-news/faculty-worried-about-the-future-of-university-of-sudburys-groundbreaking-indigenous-studies-program-3611728>> [perma.cc/JEN3-EHA6]; Sudbury.com staff, "University of Sudbury Transfers Indigenous Studies to Kenjgewin Teg Institute", Sudbury.com (8 October 2021), online: Sudbury.com <<https://www.sudbury.com/local-news/university-of-sudbury-transfers-indigenous-studies-to-kenjgewin-teg-institute-4498305>> [perma.cc/C2DC-UWRH]; Serge Miville, "Opinion: The storied and unfinished history of the University of Sudbury", Sudbury.com (11 November 2021), online: Sudbury.com <<https://www.sudbury.com/columns/guest-columns/opinion-the-storied-and-unfinished-history-of-the-university-of-sudbury-4748264>> [perma.cc/UM42-QPX3].

¹⁴⁸ *Laurentian*, *supra* note 144 at para 51.

¹⁴⁹ *Gigliotti*, *supra* note 134 at para 48.

finding that there was “no empirical evidence of the unique or valuable role of the Collège in the Francophone culture.”¹⁵⁰

The Divisional Court in *Lalonde* spent a significant amount of time reflecting on the role of Francophone institutions:

They are much more than providers of services. They are linguistic and cultural milieus which provide individuals with the means of affirming and expressing their cultural identity, and which by extension permit them to reaffirm their cultural adherence to a community. The individual and the family alone are incapable of maintaining the linguistic and cultural identity of a community. Thus, these institutions must exist in as wide a range of spheres of social activities as possible in order to permit the minority community to develop and maintain its vitality.

Institutions are also important symbols for the Franco-Ontarian community. They reflect the identity of the group, the French presence in Ontario and in Canada, the French reality in public life, and the strength and vitality of the community. Any reduction in an institution's sphere of activity will negatively impact the community and increase the probabilities of assimilation.¹⁵¹

The Divisional Court recognized the struggle for unilingual Francophone institutions that began in the 1970s with the fight for a “homogeneous francophone school system”¹⁵² and the strengthening of “francophone institutions in other areas such as the media, finance and the legal community.”¹⁵³ In deciding to protect the Francophone character of Hôpital Montfort, the Divisional Court used the language of defeat, recalling that the presence of the French has come through war and competition with the British Crown without explicitly mentioning it, reflecting the strategy of disavowal of the settler colonial project:

The potential loss of Hôpital Montfort as a general hospital is much more than just the loss of a service, as we have noted. In effect, the Franco-Ontarian community would lose an institution which, as Dr. Bernard stated, incarnates and evokes the francophone presence in Ontario. Hôpital Montfort is a standard bearer for the minority francophone community in Ontario, a symbol of the force and vitality of that community. According to Dr. Bernard, it will henceforward become a symbol of the defeat of the community, if unable to keep intact its place as a cultural institution in the Franco-Ontarian community.¹⁵⁴

Speaking to the role of Francophone institutions in assuring settler futures, the Divisional Court in *Lalonde* went on to comment,

There is, and always has been since Confederation, a constitutional imperative for the protection and preservation of francophone minority rights - including, in our view,

¹⁵⁰ *Ibid.*

¹⁵¹ *Lalonde Div Ct, supra* note 1 at para 14, 15.

¹⁵² *Ibid* at para 16.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid* at para 84.

the right to have at least minimal institutions necessary to feed and nurture the continued existence and vitality of their language and culture.¹⁵⁵

VI. REPRODUCING THE FRENCH-CANADIAN SETTLER COLLECTIVE IN ONTARIO THROUGH FRENCH LANGUAGE RIGHTS

The above analysis of the law and jurisprudence on French language rights in Ontario has demonstrated how, first and foremost, the French language rights regime reinforces and legalizes a settler move to innocence with attempts to equivocate French-Canadian experiences of oppression with those of Indigenous peoples and through repeated references to the vulnerability and pain of French-Canadian collectives in the face of this oppression. Although some provinces have at times refused to fund French language education, and in Ontario's case banned the instruction of French for some years in the early twentieth century, French communities have not "been subject to a state-sponsored attempt to eradicate its language."¹⁵⁶ Residential schools isolated children "from their families and communities for the express purpose of destroying their knowledge of their own languages and cultures"¹⁵⁷ for multiple generations. French-Canadians cannot claim this same history. The attempt to equivocate French-Canadians and Indigenous peoples erases the important differences in the types of oppression French-Canadians and Indigenous peoples have and do experience, as well as the fact that French-Canadians have gained economic wealth through legal incentives to settle Indigenous lands. Equivocation erases Indigenous nations as nations with their own legal orders and governance, whose sovereignty has implications for French-Canadians as a settler collective.

Secondly, and paradoxically, the law and jurisprudence actually forefront the fact that French-Canadians are indeed settlers. References to early French-Canadian settlement in *Lalonde* and in the preambles to the *Franco-Ontarian Day Act* and the *Franco-Ontarian Emblem Act* foreground the fact that French-Canadians arrived relatively recently.¹⁵⁸ This acknowledgement of French-Canadians as settlers, however, is done in a way that disavows the settler colonial project by failing to recognize the relationship of French-Canadians with the land and Indigenous peoples through complete omission or neutralization of that relationship by painting it as a benign one between missionaries and Indigenous peoples.

Thirdly, with repeated references to the protection, preservation and flourishing of French-Canadian communities, the law and jurisprudence legalizes concern and accountability for settler futures. Though this could be said for any area of law in settler colonial legal complexes, what is unique about the French language rights regime is the explicitness of the focus on the preservation and expansion of a settler colonial community.¹⁵⁹ Tuck and Yang have pointed out that the logical endpoint of minority activism is equality within the settler colonial order.¹⁶⁰ This emphasis on the future of French-Canadians in law reflects what Laura Hall theorizes in her work on Indigenist intersectionality, "that non-Indigenous allies are so often far more concerned with their own

¹⁵⁵ *Ibid* at para 83.

¹⁵⁶ Leitch, *supra* note 101 at 116.

¹⁵⁷ *Ibid*.

¹⁵⁸ *Lalonde Div Ct*, *supra* note 1 at para 10.

¹⁵⁹ Nikolas Rose & Mariana Valverde, "Governed by Law?" (1998) 7:4 Soc & Leg Stud 541 at 542.

¹⁶⁰ Tuck and Yang, *supra* note 7 at 18; Larry Chartrand, "Indigenous Peoples: Caught in a Perpetual Human Rights Prison" (2016) 67:1 University of New Brunswick Law Journal 167 at 281.

connections to land and place, rather than committed to the land return of Indigenous Peoples.”¹⁶¹ The jurisprudence analyzed reflects a generalized concern by the French-Canadian collective for its own future and survival in these territories, as well as to the exclusion of its relationship with Indigenous peoples and Indigenous futures.

VII. CONCLUSION

The question of when historical accountability begins—one that plagues Canada’s constitutional struggles—must be confronted when we justify the granting of special rights based on bargains struck at an earlier time.¹⁶²

In light of the fact that “immigrant groups are not entitled to the same rights as the French and the English collectivities in Canada,” Razack asks us to consider the source of collective rights and their effects in real time.¹⁶³ This research project has sought to make visible the narratives that the French-Canadian collective in Ontario are reproducing through law and jurisprudence, and which sustain the settler colonial project, in an attempt to destabilize the settler subject and cultivate cracks “through which an ethic of decolonization can emerge.”¹⁶⁴

Henderson’s contributions to understanding settler consciousness are helpful as we conclude this analysis. Much like Tuck and Yang, but aimed at identifying the psychic defenses of settlers, he describes multiple defensive strategies deployed “when settlers’ utopic visions are forced to confront the reality that the gentile community they imagine is founded in and perpetuates irredeemable suffering.”¹⁶⁵ His focus on settler anxiety helps us to understand the continued emphasis on and deployment of French-Canadians’ vulnerability divorced from their power and privileges, as “psychic precarity exists at the core of the settler subject because of the unending fear of its own dissolution, should [I]ndigenous sovereignty be recognized.”¹⁶⁶ Although this core anxiety is the source of violence, lashing out and defensiveness, Henderson emphasizes that this instability creates the opportunity to “restor[y] settler colonial history and culture, to decanter settler mythologies built upon and within the dispossession of [I]ndigenous peoples.”¹⁶⁷

Tuck and Yang have asked us to consider how to move from accountability to settler futures to accountability to Indigenous futures.¹⁶⁸ Robert Cover has used the metaphor of law as a bridge between the world-that-is and the world-that-might-be, arguing that “law is the projection of an imagined future upon reality.”¹⁶⁹ The imagined future projected in the law and jurisprudence on French language rights in Ontario is decidedly, for the moment, a settler future. Whether the shift

¹⁶¹ Laura Hall, “Indigenist Intersectionality: Decolonizing an Indigenous Eco-Queer Feminism and Anarchism” (2016) Perspectives on Anarchist Theory 29, online: <<https://anarchiststudies.org/2017/02/15/indigenist-intersectionality-decolonizing-an-indigenous-eco-queer-feminism-and-anarchism-by-laura-hall/>>.

¹⁶² Razack, *Looking White People*, *supra* note 94 at 28.

¹⁶³ *Ibid.*

¹⁶⁴ Phil Henderson, “Imagoed Communities: The Psychosocial Space of Settler Colonialism” (2017) 7:1 Settler Colonial Studies 40 at 51-52.

¹⁶⁵ *Ibid* at 50-51.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid* citing Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling and Reconciliation in Canada* (Ann Arbor, MI: Proquest, 2010).

¹⁶⁸ Tuck & Yang, *supra* note 7 at 35.

¹⁶⁹ Robert Cover, *Narrative, Violence and the Law: The Essays of Robert Cover*, Martha Minow, Michael Ryan & Austin Sarat, eds (Ann Arbor, MI: The University of Michigan Press, 1992) at 207; for Cover’s concept of world that is and world that might be and the metaphor of the bridge, see same at 101, 176.

in accountability and future-making occurs within law or within the community, or both, remains to be seen.

I hope this research will invite deeper engagement from French-Canadians in Ontario in imagining and fighting for a future beyond settler colonialism and genocide, as well as reflection on the resources and strategies devoted to the French language rights struggle that could be remobilized in solidarity with Indigenous peoples.¹⁷⁰ As Leroux and Caldwell summarize in their reflections on commemoration of settler history in Québec and Saskatchewan,

[I]t is time for White settlers ... to find it within ourselves to postpone celebrations of our history and divert our considerable efforts to the persistent disparities in life chances between White settlers and Indigenous peoples. This would entail a radical recalibration of priorities in the nation-state, and among settlers—a recalibration that future peoples might some day rightly celebrate.¹⁷¹

Thankfully, Indigenous nations and scholars and their allies have already spent centuries illuminating the pathways to do so by centering Indigenous Peoples' issues, perspectives and priorities and reorienting to treaty relationships in the territories where treaties govern.¹⁷² With regards to linguistic aspect of reparations, Macdonald concludes in his application of the *United Nations Genocide Convention* to the Canadian residential school system,

One crucial way in which reconciliation might proceed is in the official recognition and promotion of Aboriginal languages. A genuine focus on reconciliation would direct resources to reinvigorating Aboriginal languages, not just for Aboriginal peoples but for all Canadians. Such languages could be made official languages in provinces, and Shognosh children would learn Aboriginal languages that were indigenous to their region.¹⁷³

Remobilizing the energy and accountability of those who have almost two centuries of experience fighting for their language in Canada's constitutional framework, and telling a more honest and complete story of the role of the French-Canadian settler collective in settler colonialism and attempted genocide, may well prove to be a useful strategic investment into Indigenous futures in these territories.

¹⁷⁰ Truth and Reconciliation Commission of Canada, *supra* note 35; National Inquiry on Missing and Murdered Indigenous Women and Girls, *supra* note 36; National Inquiry into Missing and Murdered Indigenous Women and Girls, *A Legal Analysis of Genocide: Supplementary Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (Ottawa: National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019).

¹⁷¹ Darryl Leroux and Lynn Caldwell, "The Settler-Colonial Imagination: Comparing Commemoration in Saskatchewan and Québec" (2017) 12:4 *Memory Studies* 451-464 at 462.

¹⁷² See Hall, *supra*, note 161 for their discussion of the Kuswentha or Two-Row Wampum; see Henderson, *supra* note 166 for their proposals for treaty federalism.

¹⁷³ *Supra* note 66 at 318.