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3 October 2020

Dr. Patrick Deane
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Report on the consultation process regarding the name of Sir John A. Macdonald Hall

Dear Principal Deane,

I am writing to report on the consultation process you asked me to initiate on the name of the law school building at Queen's University – Sir John A. Macdonald Hall – and to provide you with my recommendation on a course of action in relation to this question. Attached to my report is the report and recommendation of the Advisory Committee to the Dean on the Building Name, the body which I established to collect and analyse submissions made during the consultation process. The Advisory Committee report outlines the consultation process in detail, and it engages with the arguments for and against de-naming the law school building in a careful and principled manner. The Advisory Committee concludes that if Queen's University is to honour the values of inclusion and reconciliation to which it has committed itself, then the answer to the question is clear: the name "Sir John A. Macdonald" should be removed from the law school building. For reasons that I elaborate below, it is my recommendation to you that the conclusion reached by the Advisory Committee should be adopted. I believe it is in the best interests of the University and the Faculty of Law for the name "Sir John A. Macdonald" to be removed from the law school building.

Before explaining my reasons, I wish to pause and acknowledge that addressing the building name question has not been easy for anyone involved, including the many people who participated in the consultation process. Addressing the name of the law school building forces us to struggle with matters relating to the identity of the country and the identity of the University and its law school. At one level, it is a debate about a person, Sir John A. Macdonald. At another level, however, the debate about Macdonald serves as the catalyst for deeper inquiries into how the complexities of Canada's past affect the character and aspirations of the country and its communities today, including academic communities such as ours. The manifestations of our past in our lives today raise hard moral questions

and produce responses that are not simple. If we start from the premise that this is not a simple question and that reasonable people will disagree about how to answer it, then we start in a positive and promising frame.

The debate about Macdonald Hall elicits deeply personal and emotional responses on all sides. I was reassured, however, to find that most participants in the process share a common interest in the wellbeing of the University and its law school, and a common commitment to basic values, including inclusion and reconciliation, to which we are committed. On these points, at least, there is a genuine sense of unity. I only wish there was some way of bringing people on both sides together with a single answer to the question of Macdonald—but I don't think that is possible. The best I can do is to try to give reasons for my conclusions that, even if they cannot be accepted by everyone, aspire at least to be appreciated by everyone. You will find that the report of the Advisory Committee, which I commend to you, adopts a very similar approach. Indeed, for the most part, I will simply defer to the reasoning that the Advisory Committee develops in its report.

Overview of the process

Sir John A. Macdonald has long been celebrated as one of Canada's principal founders. The decision to name the law building at Queen's University after Macdonald in 1960 was, at the time, entirely uncontroversial for most Canadians. There was an obvious link between the aspirations of the law school and the foundational values, including the values of justice and legality or the rule of law, that inspired Macdonald and the other framers of the Canadian constitution.

However, over time we have come to question Macdonald's understanding of these foundational values. In particular, Macdonald's policies relating to Indigenous peoples and racial and ethnic minorities have become a matter of increasing public concern. Recent events have contributed to evolving attitudes about Macdonald. I mention two such events at this point: the agreement reached in 2006 between the Government of Canada and Indigenous groups that settled class-action litigation arising from abuses committed at Indian residential schools, and the release in late 2015 of the final report of the Truth and Reconciliation Commission of Canada (TRC), which was one of the initiatives resulting from the 2006 agreement. The agreement and the report have led to an understanding of Macdonald's legacy in relation to Indigenous peoples in Canada that did not exist before, at least within the non-Indigenous public. I return to this legacy below.

In the years after the TRC report, many non-Indigenous Canadians have begun to see how a commitment to the foundational values that Macdonald and other constitutional framers advanced, including justice and legality, requires that the hard realities of Canada's history be acknowledged and addressed. Non-Indigenous Canadians are beginning to understand, in other words, that seeking the value of justice and respecting the principle of legality means pursuing the ideal of *reconciliation* with Indigenous peoples and communities. In the law school, we have been very conscious of the fact that Canadian judges have been grappling since the early 1990s with the relationship between justice, legality, and reconciliation. Indeed, long before the release of the TRC report, the principle of reconciliation had become a fundamental principle of Canadian constitutional law. According to the Supreme Court of Canada, reconciliation demands that we understand and acknowledge the wrongs that have been committed against Indigenous peoples and that we make genuine efforts to mend the "ongoing rift in the national fabric" by measures that seek to introduce a sense of normative balance,

or “constitutional harmony”, within the complex and pluralistic country that is Canada.¹ Reconciliation thus implies a kind of “redemptive constitutionalism”.² The Court may have been speaking of the duties that reconciliation places on governments; however, the ideal of reconciliation is one that, as the TRC report recommends, non-governmental bodies, including universities and university law schools, must work toward. For non-Indigenous Canadians, the burden of mending the rift in the national fabric, of redeeming the country’s promise of justice, is a heavy moral burden that must lead to meaningful action. In my opinion, any Canadian university law faculty that did not embrace the ideal of reconciliation would be failing in its mission of advancing legal education and legal scholarship in Canada today.

The commitment to reconciliation has encouraged a series of on-going reforms and initiatives within the Law Faculty in recent years. However, the Macdonald building name remains—and it remains controversial. On June 15th of this year, a petition, later supplemented with a series of supporting letters from students and faculty at Queen’s, was submitted to the Queen’s University Board of Trustees requesting that the “Sir John A. Macdonald” name be removed from the law school building and replaced with an alternative name, the name suggested being “Patricia Monture”, a Mohawk legal scholar and graduate of Queen’s (LL.B.’87, LL.D.’09) who, sadly, passed away in 2010. When the petition was submitted to the Board, it had over 1,600 signatures (it now has almost 5,000).

In response, you asked me to initiate a consultation process with a view to soliciting opinions on the name of the law school building, and then to give you a recommendation on an appropriate course of action. Of course, my recommendation to you is just that—a non-binding recommendation. But I understand that you will take this recommendation into consideration when you frame your own recommendation to be submitted to the Board of Trustees, the body with authority over campus building names.

You indicated to me that the focus of the consultation process that I was to launch should be on the present name of the building and whether it should be removed or addressed in some other way. Any process aimed at identifying an alternative name for the building would be a separate one initiated only if the Board of Trustees decided to remove the “Macdonald” name.

To conduct the consultations that you requested, I established an Advisory Committee to the Dean on the Building Name to receive comments and opinions from both within and outside the Queen’s community, and I asked this Committee to consider these submissions and to make a recommendation about the building name to me.

The terms of reference for the Committee, including a list of its members, is appended to its report. I wish to acknowledge and thank the co-chairs of the Committee, Professor Gail Henderson (the Associate Dean of Faculty Relations in the Faculty of Law) and Jeffrey Fung (Queen’s Law’08), and all of the other members of the Committee for their hard work on this controversial matter. According to the terms of reference, the Committee was to abide by principles of procedural fairness, and

¹ *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623, McLachlin C.J. and Karakatsanis J. for the majority at para. 140.

² I borrow this phrase from Robert M. Cover, “The Supreme Court 1982 Term Forward: Nomos and Narrative” (1982) 97 *Harvard Law Review* 4 at 33-35.

Committee members were to approach their work with an open mind and listen to and consider submissions impartially. I believe that they have performed their duties in this respect admirably.

The consultation process opened on July 30, 2020, and closed on September 18, 2020, and the Advisory Committee submitted its report and recommendation to me on September 29, 2020. During the consultation period, there were 2,850 responses to an online survey, 158 email submissions, one voicemail, two video statements, and seven live oral submissions. The Advisory Committee also examined the letters that were submitted in support of the above-mentioned petition by groups and individuals that included 26 Queen's student clubs; PSAC Local 901, representing tutorial assistants, research assistants and post-doctoral scholars at Queen's; the Department of Film Studies; the Department of Gender Studies; nine Law Faculty professors; and 50 law school alumni. The Committee or its co-chairs met with advisors from the Human Rights and Equity Office, the Queen's Elders Allen Doxtator and Wendy Phillips, the Office of Indigenous Initiatives, and representatives of the City of Kingston; the Committee also heard from the Queen's Aboriginal Council and two neighbouring Indigenous communities. The Committee considered views expressed during two talking circles organized by two Indigenous members of the Queen's community. Finally, the Committee had access to transcripts of five focus group meetings organized by the Office of Advancement with different alumni groups.

Although the time for the consultation process was relatively compressed, the Committee's engagement with members of the Queen's community and members of the broader public was, it is fair to say, impressive. The consultation process was thorough and extensive. It provided the Committee with a full range of views on the building name controversy, and it revealed the level of support for opposing views amongst various groups and stakeholders. The Committee thus had a rich informational record to analyse and upon which to base its conclusions.

The breakdown of views expressed on the building name is explained in the Committee's report and its appendices. 2,850 people answered the online survey question: "Do you believe that the law school building should continue to be named Sir John A. Macdonald Hall?" 1,338 or 46.95% indicated that the building should continue to be named after Macdonald, and 1,437 or 50.42% indicated that it should not (and 75 or 2.68% expressed no opinion). It is important to note that a large majority of the participants in this survey—2,331—identified themselves as members of the Queen's community (students, staff, faculty, or alumni). Of the 203 respondents who identified as members of the local community or individuals interested in the question, the responses were relatively even between those for and against de-naming the building. So, to sum up, the Queen's community and others interested in the question are, roughly speaking, evenly divided on whether to keep or remove the Macdonald name from the law school building.

For reasons that I develop below, I believe that the views of the Queen's law school community about this question are particularly important. The appendices attached to the Committee's report indicate that, of the law school alumni who answered the survey, 44% wish to keep the Macdonald name, while 38% wish the name to be removed. There is a generational divide, however, with law alumni graduating in the last decade tending to favour de-naming the building. This trend continues with the opinions expressed by current law students who answered the survey, 21% of whom wish to keep the Macdonald name and 58% of whom wish to have the Macdonald name removed.

Also important for determining the views of the Queen's law school community is the position taken by the Law Faculty Board independently of the consultation process conducted by the Advisory Committee. At a Faculty Board meeting on September 18, a motion was introduced recommending to the Principal and Board of Trustees that the Macdonald name be removed from the law school building. The meeting was attended by 28 faculty members, six student representatives (including members of the Law Students' Society executive), and six directors/administrators/staff representatives (two Assistant Deans, the Head Law Librarian and the Reference Law Librarian, the Director of the Queen's Legal Clinics, and the Indigenous Recruitment and Support Coordinator). The position adopted by the Faculty Board is important because the Faculty Board is the only forum in which members of the law school community can officially express a collective opinion. The resolution recommending that the Macdonald name be removed from the building was passed by a vote of 29 to 3 (with 5 abstentions).

Although the numbers I have just summarized are important, they are, of course, not determinative. In my view, the answer to the challenging question of the building name cannot be found simply by tallying votes on either side of the debate. Many participants in the consultation process took the time to develop careful, detailed, well-researched, and eloquent reasons for the positions they advanced. The decision that the University makes in response to their submissions should likewise be reasoned and principled. I will note that the Advisory Committee report focuses, rightly in my view, on the substantive reasons for and against de-naming the building rather than the numbers I have just summarized.

In developing my recommendation, I have considered the work and conclusions of the Advisory Committee closely and carefully. I have considered, as well, the resolution adopted by the Law Faculty Board. As I will explain below, I considered the conclusions reached by the Advisory Committee and the Faculty Board to be highly persuasive—though for different reasons. In the end, however, I did not consider the conclusions reached by either the Advisory Committee or the Faculty Board as binding upon me. I have assumed that my recommendation to you should be based upon my own independent assessment of the various submissions, reports, and recommendations produced during the consultation process.

For this reason, I thought it best to avoid taking sides during the consultation process. Once the consultation process began, I respected the independence of the Advisory Committee and did not participate in or interfere with its work. Although I am a member of Faculty Board, I did not take a position on the building name at its meeting, and I abstained from the vote on the building name resolution. (I should also note that Professors Gail Henderson and Jean Thomas decided that, given their membership on the Advisory Committee, it was best that they not participate in the Faculty Board vote.) I took a position of neutrality not just for the sake of the appearance of fairness, which is very important, but because I was genuinely committed to hearing competing views and reading the Advisory Committee's report and recommendation before reaching a conclusion. People care passionately about this issue—on both sides. It was important that I listened to them carefully, and that I considered the analysis of the Advisory Committee carefully, before deciding what recommendation to make to you.

Background context

Before turning to the analysis and conclusions of the Advisory Committee, I think it will be helpful to sketch certain facts that inform the debate about the name of Macdonald Hall.

Queen's University was founded in Kingston by royal charter in 1841. There were various iterations of a Queen's Faculty of Law from the 1860s until the early-twentieth century. However, the present-day Faculty of Law began its history in 1957, the year that the Law Society of Upper Canada, the regulatory body for lawyers in Ontario (now the Law Society of Ontario), agreed to accredit university law degrees. At this point, new university law schools were established across the province, with Queen's among the first.³ The present Law Faculty building was opened a few years later, with the Prime Minister of Canada, John Diefenbaker, cutting the ribbon on October 20, 1960. It was then named Sir John A. Macdonald Hall.

At that time, the country was approaching its first centenary, and honouring Macdonald in this way must have seemed obvious. Macdonald was the Kingston lawyer who played a central role, if not *the* central role, in the founding of modern Canada. At the conferences leading to confederation in 1867, Macdonald was instrumental in crafting a constitution that unified communities with distinctive English and French languages and cultures within a single federation. This was and remains a truly remarkable achievement, a *noble* achievement that generations of Canadians have struggled to honour and protect ever since. As the country's prime minister between 1867 and his death in 1891 (except from 1873-78), Macdonald's leadership was critical to the territorial consolidation of Canada as we now know it, bringing into the federation vast western and northern territories so that the new country stretched from sea to sea to sea. Were it not for Macdonald, it is entirely possible that much or all of this territory would now form part of the United States or Russia or some other country.⁴

In my opinion, we are indebted to Macdonald and his allies for the constitutional formation of modern Canada. We are the beneficiaries of their insight and their judgment—not just for what they wanted to accomplish, but, paradoxically, for setting up a constitutional framework that would, or could, later permit the peaceful and rational resolution of injustices arising from the limits of their own moral horizons. Macdonald and his allies established a constitutional order that was 'colonial' in its immediate features and ambitions; yet the seeds of 'de-colonization', to use a term he would not have used nor understood, were arguably planted within the very constitution he championed. Macdonald's constitution was one that, at its heart, embraced a spirit of multi-national co-existence, a partnership between French and English Canada, but also one that, if it was (or is) to be coherent, would (or should) honour the principle of reconciliation with other national groupings that he dismissed or denied, and I mean here, of course, Indigenous nations.

Had anyone at the opening of the Law building in 1960 been asked if they were concerned about Macdonald's policies on Indigenous peoples, and in particular his role in developing the residential school system, they would likely have been confused. Non-Indigenous people were not well aware of

³ On the occasion of its 50th anniversary, I wrote a history of the Law Faculty: "'Let Right Be Done': A History of the Faculty of Law at Queen's University" (2007) 32 *Queen's Law Journal* 314-388.

⁴ Richard Gywnn, "Afterword" in Patrice Dutil and Roger Hall (eds.), *Macdonald at 200: New Reflections and Legacies* (Toronto: Dundurn, 2014), at 437 ("For me, it is beyond doubt that Macdonald was the most important of all our prime ministers and a strong case can be made that had there been no Macdonald, there would be no Canada today.").

these issues at that time. But even those who were aware might have applauded Macdonald. After all, the “Indian” residential school policy and its objective, the separation of Indigenous children from the influence of their parents and communities so that they might be assimilated into Euro-Canadian society – the policy that Macdonald promoted in the late-nineteenth century – was still government policy in 1960. Just seven years before Macdonald Hall opened, the principal of a residential school in Kenora, Ontario, explained: “we must face realistically the fact that the only hope for the Canadian Indian is eventual assimilation into the white race.”⁵ Using language that was much more offensive, Macdonald stated more or less the same thing when explaining the essential features of the residential school policy to the House of Commons in 1883, when he was not only Prime Minister but also Superintendent General of the Indian Department⁶:

When the school is on the reserve the child lives with its parents, who are savages; he is surrounded by savages, and though he may learn to read and write his habits, and training and mode of thought are Indian. He is simply a savage who can read and write. It has been strongly pressed on myself, as the head of the Department, that Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men.⁷

In Macdonald’s view, governmental policy was to be aimed at assimilating Indigenous peoples into what he believed to be the superior “white” culture or race in linguistic, cultural, legal, and, it may be said, physiological senses (for he encouraged “Indian”/“white” intermarriage).⁸

Had those present at the opening of the law building in 1960 been asked about Macdonald’s position on non-Indigenous racial and ethnic minorities, the response might also have been one of confusion. Yet, again, Macdonald’s views can be found in statements made in the House of Commons. In arguing against giving people of Chinese ancestry the right to vote in 1885, Macdonald stated:

[I]f they came in great numbers and settled on the Pacific coast they might control the vote of that whole Province, and they would send Chinese representatives to sit here, who would represent Chinese eccentricities, Chinese immorality, Asiatic principles altogether opposite to our wishes; and, in the even balance of parties, they might enforce those Asiatic principles, those immoralities ... the eccentricities which are abhorrent to the Aryan race and Aryan principles, on this House.

...

The truth is, that all natural history, all ethnology, shows that, while the crosses of the Aryan races are successful—while a mixture of all those races which are known or believed to spring from a common origin is more or less successful—they will amalgamate. If you look around the world you will see that the Aryan races will not wholesomely amalgamate with the Africans or the Asiatics. It is not to be desired that they should come; that we should have a mongrel race, that

⁵ Truth and Reconciliation Commission of Canada, *Final Report* (2015), I: 5-6.

⁶ J.R. Miller, “Macdonald as Minister of Indian Affairs: The Shaping of Canadian Indian Policy” in Patrice Dutil and Roger Hall (eds.), *Macdonald at 200: New Reflections and Legacies* (Toronto: Dundurn, 2014), 311-340 at 311 (“For good or ill, Macdonald was an architect of Canadian Indian policy. The foundation that he and his government laid would last largely unaltered until the middle of the twentieth century.

⁷ Sir John A. Macdonald in the House of Commons, as quoted in TRC final report TRC, I: 2.

⁸ TRC, I: 654.

the Aryan character of the future of British America should be destroyed by a cross or crosses of that kind.⁹

I found it hard to type the words above that Macdonald spoke on Indigenous and Asian peoples, and I have found it hard to re-read them as I have struggled to develop this recommendation for you.

Wilfrid Laurier, Macdonald's political opponent, said upon Macdonald's death:

Sir John Macdonald now belongs to the ages, and it can be said with certainty, that the career which has just been closed is one of the most remarkable careers of this century ... As to his statesmanship, it is written in the history of Canada. It may be said without any exaggeration whatever, that the life of Sir John Macdonald, from the date he entered Parliament, is the history of Canada ... His actions always displayed great originality of views, unbounded fertility of resources, a high level of intellectual conceptions, and, above all, a far-reaching vision beyond the event of the day, and still higher, permeating the whole, a broad patriotism—a devotion to Canada's welfare, Canada's advancement, and Canada's glory.¹⁰

Laurier was perhaps right in saying that “the life of Sir John Macdonald...is the history of Canada”. If Macdonald's character and contributions were fraught with moral contradictions, so was the Canada that he was instrumental in forming—and so remains the Canada that we have inherited. As the Supreme Court of Canada said, there remain rifts in the national fabric that still require mending.

I appreciate that my conclusions in this respect involve judging Macdonald by a moral standard that he might not have recognized. In submissions to the Advisory Committee, many people said that we must judge Macdonald in his own context. Although, for reasons developed below, I do not think that the question of the building name today should turn on whether we think Macdonald was a good or bad person, it is important to pause and address this point.

First, I agree that context matters. Plucking a passage or statement from the historical record and reading it as if it was uttered yesterday may mislead more than it illuminates. Second, the virtue of humility matters. We can adopt the mantle of moral judge of historical figures if we like, but we should do so knowing that we are not the final arbiters of moral rectitude and that in time we too will be judged. This insight should inform how we judge historical figures.

It is in this spirit, then, that I mention the following historical points.

The facts about the residential school system are no longer in dispute. They are set forth in the TRC report. Indigenous parents were pressured, and later, after Macdonald's regime, forced, to give up their young children, who were sent to institutions to be stripped of their languages and cultures and assimilated into Euro-Canadian society. The evidence reveals that conditions at many of these institutions were horrific, with children suffering from neglect, disease, hunger, and physical, mental,

⁹ As quoted in Timothy J. Stanley, “John A. Macdonald, ‘the Chinese’ and Racist State Formation in Canada” (2016) 3 *Journal of Critical Race Inquiry* 6-34 at 23-24. See also Timothy J. Stanley, “The Aryan Character of the Future of British North America”: Macdonald, Chinese Exclusion, and the Invention of Canadian White Supremacy” in Patrice Dutil and Roger Hall (eds.), *Macdonald at 200: New Reflections and Legacies* (Toronto: Dundurn, 2014), 115-140.

¹⁰ Quoted in Sarah Gibson and Arthur Milnes (eds.), *Canada Transformed: The Speeches of Sir John A. Macdonald, A Bicentennial Celebration* (Toronto: McClelland and Stewart, 2015).

and sexual abuse. Young children died needlessly. Others were scarred for life. The intergenerational harm resulting has been devastating, the damage to cultures and languages incalculable. The hurtful legacy of the residential school policy is one Indigenous people and communities continue to struggle with every day.

Even if one were to accept the policy of separating young children from their families in order to assimilate them into a different culture, the execution of that policy involved shocking behaviour by officials and employees that fell below basic standards, not just of morality but of civil and criminal law, standards of morality and law that existed at the time the offences were committed. It is important to recall the genesis of the Truth and Reconciliation Commission of Canada: it was part of a court-approved agreement entered into by the Government of Canada and Indigenous organizations and communities in 2006 that settled legal proceedings against Canada, a legally-binding agreement in which the government of Canada accepted its responsibility for the fact that generations of Indigenous children had been harmed and abused.

The Macdonald building consultation process was *not* an opportunity to “re-litigate” these matters. We start from the basic facts about residential schools that are historically and legally incontrovertible. We start from certain established points of reference, namely: that the Indian residential school system was deeply hurtful for the most vulnerable amongst us, young children; that the hurt has been intergenerational, extending to entire communities, nations, and cultures; that this intergenerational hurt endures in tragic ways today; and, finally, that Macdonald, as not just the Prime Minister but also the Superintendent General of Indian Affairs, was a leading proponent of the system that produced these tragic results. These facts are not in dispute. They form an indisputable part of the factual basis upon which our analysis proceeds.

Whether Macdonald can be held fully responsible for the shocking failure to care for and protect children that occurred over the eighty or so years after his death in 1891 is a good question. Even if he was not directly responsible, there is an argument that the institutional culture in which such tragic levels of neglect and abuse became possible originated under his watch. Whatever his responsibility for the failures in executing the policy, however, Macdonald *was* responsible for playing a significant role in developing the policy of assimilation through residential schools. How do we judge that policy, as opposed to its execution, in moral terms today?

The origins of the residential school policy lay in the development of a “civilization” policy in the 1830s by the leading humanitarians of the day—the human rights activists of their time. Fresh from victory in their campaign against the slave trade in the British Empire, evangelical humanitarians turned their attention to the plight of “Aborigines” in British settlements.¹¹ Influenced by reports from, among other places in the Empire, Upper Canada, including those written by the Mississauga chief, Peter Jones, that described the desperate conditions of Indigenous communities reeling from the impact of colonization—from the loss of traditional hunting and fishing economies, the severe disruption to social, spiritual, and political norms and structures, the spread of disease and hunger, and the abuses of neighbouring settlers—these activists concluded that the well-being, indeed the very

¹¹ Ernest Marshall Howse, *Saints in Politics: The ‘Clapham Sect’ and the Growth of Freedom* (London: George Allen & Unwin Ltd., 1953), 7; Richard R. Follett, “After Emancipation: Thomas Fowell Buxton and Evangelical Politics in the 1830s” (2008) 27 *Parliamentary History* 119–129; Zoe Laidlaw, “Aunt Anna’s Report: The Buxton Women and the Aborigines Select Committee, 1835–37” (2004) 32:2 *Journal of Imperial and Commonwealth History* 1–28.

physical survival, of Indigenous peoples in colonies required assisting them to acquire the skills necessary for enjoying the benefits of British civilization on the basis of equality and respect for equal rights.¹²

Their motives were humanitarian, but the solutions they advanced were premised upon ideas of cultural superiority. An 1837 parliamentary committee, led by a leading anti-slavery campaigner, concluded that colonization had been a “calamity” for Aboriginal peoples producing “evil” and “misery” in their lives; yet the committee also said that the British Empire had been “blessed by Providence” with commercial, military, intellectual, moral, and religious advantages that were destined for the “higher purpose” of bringing “civilization and humanity, peace and good government, and, above all, the knowledge of the true God, to the uttermost ends of the earth”, and, in particular, to the “untutored and defenceless savage”.¹³ From these ideas emerged the basic objectives of the residential school policy.

I mention this point not to say anything about the motives of politicians forty or fifty years later during Macdonald’s regime. Rather, I want only to suggest that this history serves as a reminder of the complexities of the human condition. People, then and now, can intend to do good and still end up doing what later proves to be horribly wrong. Prevailing social or cultural forces limit the horizons of the human imagination. Macdonald was indeed, as many people said in their submissions, a product of his time.¹⁴ His imagination was determined by an interpretive horizon shaped by his society, no less than our imaginations are determined by the interpretive horizons shaped by our society.

The constitutional law scholar and poet F.R. Scott wrote: “If human rights and harmonious relations between cultures are forms of the beautiful, then the state is a work of art that is never finished.”¹⁵ Canada can be seen as a work of art in this sense. Canada is a project, a work-in-progress, an unfolding narrative stretching across time, telling the story of how distinct communities work together to find just forms of accommodation. If we believe Canada is a project worth pursuing, it is incumbent upon us to understand its flaws and mistakes and rework the narrative to make it better. To see our past in our present is troubling, for it reminds us of our failings; yet to disconnect our past from our present would deprive us of the insight and humility we need if we are to refine our sense of self-understanding so that it comes closer to the deeper set of values we have long embraced.

What question are we trying to answer? What principles should we apply?

Many people on both sides in this debate have assumed that the question of whether to keep or remove Macdonald’s name on the law school building is basically a question of whether we view Macdonald as a good or bad person, or whether we view Macdonald’s legacy as, on balance, positive

¹² Great Britain, Parliamentary Select Committee, “Report From the Select Committee on Aborigines (British Settlements)”, *U.K. Parliamentary Papers*, 1837, vol. 7, no. 425.

¹³ *Ibid.*, 74, 75, 76.

¹⁴ Donald B. Smith, “Macdonald’s Relationship with Aboriginal Peoples” in Patrice Dutil and Roger Hall (eds.), *Macdonald at 200: New Reflections and Legacies* (Toronto: Dundurn, 2014), 58-93 at 82 (“He wanted the Aboriginal peoples to assimilate into the non-Aboriginal Canadian society and did not understand that they wanted to retain their cultures and identities. His blind spot toward the Aboriginal peoples was one shared by almost all non-Aboriginal Canadians of his generation and can only be understood in the context of his time.”).

¹⁵ Frank R. Scott, *Essays on the Constitution: Aspects of Canadian Law and Politics* (Toronto: University of Toronto Press, 1977), ix.

or negative. By approaching the question in this way, the discussion quickly dissolves into a debate about whether we can judge historical actors by the moral standards of today, and whether we should erase or re-write history on the basis of moral sentiments that historical figures may not have understood or appreciated.

The Advisory Committee concluded that these are the wrong questions to ask. I agree. The question is not whether we think Macdonald was a good or bad person, but whether (a) Macdonald was responsible for policies that created harm for certain peoples, and (b) whether continuing to honour him through a building name produces harm for people today. The Committee's report offers a very powerful and very eloquent analysis in this respect. I have reproduced several key passages here, but I would recommend relying upon the Committee's report as a whole:

The recommendation to remove the name is not primarily or even secondarily based on an assessment of Macdonald's character. Our recommendation is based on the terrible harm John A. Macdonald's actions, from a position of the highest possible leadership, had on generations of people, and thus on the continued harm we do to those people who associate his name with their suffering by seeming to celebrate it with a name on a building in an institution of higher learning.

...

The decision regarding the name of the law school building must turn on whether keeping that name is consistent with actively taking steps to make Queen's a safer, more inclusive, and more welcoming space for people from diverse backgrounds, including Indigenous people, and for people from other marginalized groups.

...

On th[e] specific point...of how the name of the law school building contributes to the climate of the University for Indigenous, racialized and marginalized groups, there was broad consensus in the responses we heard: keeping the existing name of the law school building creates feelings ranging from exclusion to trauma for those the University is charged with and committed to welcoming and including.

...

The message we send if we remove the name is not primarily a condemnation of a single man's character, it is a message that we, in the present, take responsibility for our obligation not to continue the harm his policies created. As we heard from so many respondents: we cannot claim to intend reconciliation if *our* actions reflect an indifference to the harm to Indigenous peoples that reconciliation is meant to begin to repair.

These passages from the Advisory Committee's report are premised upon a set of principles that it developed as providing an analytical framework for considering the building name question. The Committee consulted de-naming and re-naming policy statements developed by other universities and institutions, and it drew from those statements a set of principles organized and explained through the "Indigenous lens" provided by the "sweetgrass braid"—a way of examining problems by focusing upon three strands in a braid that draw attention to the seven generations who have come before us, the seven Grandfather teachings (love, respect, courage, honesty, humility, wisdom, and truth) that we should follow today, and the seven generations who will come after us. The Committee's analysis reinforces commitments to which the University has pledged itself in relation to inclusivity and reconciliation.

I will not try to repeat or summarize the Committee's analysis. I will simply indicate that the approach offers a striking perspective on a complex issue that succeeds in identifying the questions and the

principles that should govern the decision. The full impact of the Committee's distinctive reasoning can only be appreciated by reading its report in full.

It may be appropriate, however, for me to add a few observations of my own in terms of how to frame the question and what principles to apply. Many people have argued, with considerable passion and force, that Macdonald was responsible, if not single-handedly then at least principally, for the creation of Canada, and that the project of Canada was and remains, despite Macdonald's moral flaws and failures, and despite the moral flaws and failures of the country he initiated, a *noble* one. I agree. Macdonald played a central role in initiating the project of Canada on the basis of values that we still strive to honour, including, as I have already mentioned, the values of justice and legality, and he is, despite his flaws and failures, someone deserving of a special place in the narratives that shape our common identity today.

However, the question of whether Macdonald is an important but complex figure in Canadian history to honour despite his failures, and the question of whether Macdonald's name should remain on the law school building, are two separate questions. It is possible to answer 'yes' to the first question and 'no' to the second one.

The question of the building name that we confront is whether, despite all of the remarkable things Macdonald did for this country, maintaining his name on the law building is consistent with the identity, character, and aspirations—in short the values—of the community of students, faculty, staff, and alumni that has made and continues to make this building its home. The name on the building helps to define who we are and who we want to be. It is a question about *us*, not *him*.

A question of identity

The idea that we should honour Macdonald in his historical context, and yet still remove his name from the building, will be confusing, even contradictory, for many people. However, it is important for us to keep firmly in mind that the primary purpose of the law school building, like any other university building, is *not* to provide a vehicle for debates about historical figures or even to celebrate historical figures. There are other, better ways to foster such debates and celebrations.

The primary purpose of the building is to serve as an academic home for members of the law school community—and a *home* is where people feel at home, where they feel that they belong, where they feel that others will respect them even if they do not agree with their opinions. In a letter submitted to me by the Indigenous Law Students' Alliance, an Indigenous law student is quoted as stating: "We cannot invite Indigenous students into our school and expect them to feel welcome while the building they are being welcomed into is named after a man who worked for years to destroy their communities and heritage." In the end, the decision about the building's name is not primarily about Macdonald at all; rather, it is about the character and values of the academic community that makes its home in the building. The question of the Macdonald name is about how *this* academic community wishes to make *its* stand on the values of justice, legality, and reconciliation to which we are all committed.

The Advisory Committee considered the views expressed by the Queen's community broadly defined, including members of the law school community. In my view, the name on the law school building has a direct impact on the law school community that is not shared in the same way by other parts of

the University. The name on our building sends a signal to the world about what kind of law school we are.

Indeed, it seems this was the original reason for naming the building in 1960. Sometimes university buildings are named after people who have made significant contributions, financially or through service, to the university. Although Macdonald was present at several meetings that were important for the early development of the University, his role in the founding of the University and its development thereafter was limited.¹⁶ Sometimes university buildings are named to bring to light important but neglected histories. The naming of a Queen's building after Robert Sutherland, a Queen's graduate in 1852 who went on to become the first Black lawyer in British North America, is an example. Bringing attention to Macdonald's place in Canadian history was, however, not the reason for naming the law building after him. A report in the *Kingston Whig-Standard* the day before the law building was opened was effusive: the University was paying tribute to "an outstanding personality in Canadian history".¹⁷ This may have been true. However, Canadians at the time did not need reminding of Macdonald's role in building Canada and his role was in no danger of being forgotten.

Towards the end of this *Kingston Whig-Standard* article, another reason for the naming decision is suggested: "Now, at Queen's University, Sir John A. Macdonald Hall stands as a memorial to this great Canadian, and as a spur to the imagination of law students in the years that lie ahead."¹⁸ In other words, by linking the aspirations of law students to an inspirational and respected figure, the decision to name the building after Macdonald was really about defining the *identity* of the new school. The decision to name the new law building after Macdonald was announced by Principal W.A. Mackintosh at the Convocation ceremonies on May 27, 1960, at which the first students of the revived law school graduated. In his remarks upon receiving an honorary degree at this time, J.J. Robinette, the famed barrister, stated: "It is a happy thought that your law school will forever be associated with the name and memory of that great lawyer John Macdonald."¹⁹ This, I think, captures the main objective of the naming decision: for a fledging law school it was important to identify itself, and for its students to identify with, a famous figure who commanded the deep respect and gratitude of Canadians as the lawyer who was central to the framing of the Canadian constitution. The name gave a sense of credibility, tradition, and identity to a law school community that was still struggling to get its footing after having been established a mere three years earlier.

So, in sum, the Macdonald name was selected for the law building to celebrate a famous lawyer and politician, and thereby to help shape the identity and character of the new academic community occupying the building. The relationship between the building name and the identity or character of the academic community within the building remains as important today as it was in 1960. Indeed, it is through developing a critical understanding of that relationship that we may develop an answer to the controversial question whether the name should remain on the building.

¹⁶ Ian Malcolm, "Of founding fathers and prime ministers: Sir John A. Macdonald" [on file in the Faculty of Law].

¹⁷ "Macdonald Hall Is Named After Canada's First PM", *Kingston Whig-Standard*, Wednesday, October 19, 1960, p. 22.

¹⁸ "Macdonald Hall Is Named After Canada's First PM", *Kingston Whig-Standard*, Wednesday, October 19, 1960, p. 22.

¹⁹ *Kingston Whig-Standard*, Saturday, May 28, 1960.

The core values of the Queen's law school community have not changed, but it is clear that for recent graduates of the law school and the present faculty, students, and staff in the law school, the Macdonald name stands in the way of their desire to articulate an identity that fits their aspirations. The Advisory Committee's analysis should be respected, in my view, because it offers a compelling line of reasoning on the building name question, premised on careful attention to the information it gathered from across the Queen's community. The resolution of the Law Faculty Board should also be respected, in my view, but for different reasons. The motion passed by the Faculty Board recommending de-naming the building is a clear representation of the will of the law school. The motion does not purport to be premised upon the information collected through the consultation process; indeed, members of Faculty Board did not have access to that information. Instead, it was an exercise of judgment about the kind of law school the members want to be.

Is this decision a repudiation of the law school that existed before? I have been the Dean of Law for just over one year, and the hardest aspect of my deanship so far has been reading and listening to law school alumni who feel genuinely hurt by the prospect of having the Macdonald name removed from the building. As I mentioned above, however, I am confident that the core values of the Queen's law school have not changed. One of those values is the idea of *community*. The sense of community has long been a source of strength for the law school. It is my hope that alumni will see the decision about the building name as a sincere effort to build upon the tradition of community that previous generations of law students have enjoyed.

The building formerly known as Macdonald Hall

If the recommendations of the Advisory Committee and the Law Faculty Board are adopted, the building will no longer be known as Macdonald Hall. However, even if one day it is given a new name, it will be in some sense forever known as the building *formerly known as Macdonald Hall*. It seems to me that the history behind this fact will be one worth preserving, for it will require telling the full story of how Macdonald's legacies are the cause of both regret and celebration. The suggestion has been made that a plaque could be erected that explains the reasons for the naming and de-naming of the building. The Advisory Committee decided that this suggestion was beyond its mandate, and it also indicated that its members were divided as to whether it was a sound idea.

Although further thought and discussion may be necessary on this point, I think there is merit in the idea that meaningful steps be taken within the law school building—perhaps in a series of display cases—to explain the legacies of Sir John A. Macdonald in an historically rich and balanced way, so that present and future students, staff, faculty, and visitors will know why the building was once named Macdonald Hall and why it is no longer.

Reconciliation

I will conclude by returning to the principle of reconciliation. The word is open to different meanings. One might think of reconciliation as a form of resignation. People may become reconciled to an unfortunate turn of events beyond their control. One might also think of reconciliation as meaning consistency in a rather technical sense—as when an accountant reconciles financial statements, for example. In struggling with the idea of reconciliation, Canadian courts have sometimes adopted a 'reconciliation as resignation' approach. Indigenous peoples must be reconciled to the assertion of Crown sovereignty and the Canadian state over their territories and lives. Sometimes judges have

adopted a ‘reconciliation as consistency’ approach. Indigenous peoples may own their territories but only if they occupied them consistently with European understandings of property. These are thin conceptions of reconciliation. In its better moments, however, Canadian law reveals another vision for reconciliation—which may be called ‘reconciliation as relationship’—an approach that I noted at the outset of this report. This larger and deeper sense of reconciliation is also, I am told, central to Indigenous legal traditions and to Indigenous understandings of the treaty relationships central to our constitutional order.

In the context of societies overcoming past injustice, reconciliation has a deep moral content that involves establishing or restoring a just relationship between peoples who have been divided. Reconciliation as relationship usually means that wrongdoing and the consequent harms must be acknowledged by the wrongdoer, and that meaningful steps must be taken to restore harmony or balance to the relationship. Reconciliation in this sense is redemptive: it redeems people according to the values they embrace. Reconciliation in this sense will be empty unless the steps taken respond in a genuine way to the experiences of those harmed, and this may mean adopting measures that are difficult or hard to adopt. Reconciliation as relationship will always mean listening to what others say, and caring about what they say. I believe that if Queen’s University is truly committed to reconciliation, it must listen to what Indigenous and minority students, faculty, and staff are saying about the name on the law school building.

One of my predecessors as Dean of Law at Queen’s, John Whyte, wrote to me about the building name question, and stated:

We should...recognize that the moral callousness of Canada’s historic dealings with Indigenous peoples came from an ingrained social attitude that is not yet expunged. Regret and repentance for wrongs can so easily stand in hypocritical relationship with current realities and practices. But there is a practice that can, and should, be followed even while we acknowledge the limits of the nation’s attempts at redress and even when we recognize the unevenness of our moral judgment. It is this. When our practices of honouring our past are experienced as reiteration of, and approval for, policies and practices that harmed minority communities, and when our celebration of past achievements expresses to those communities that their experiences and remembrances matter less than our remembered history and our formed ideas about what has been noble and good, then we inflict the same marginalization that led to Canada’s sorry history with Indigenous peoples.

These words may seem harsh, but I think they draw our attention to important truths underlying the project of reconciliation.

I did not begin this process thinking that the name on the law school building necessarily had to come down. Indeed, I remembered a conversation I had with Murray Sinclair, who was Chair of the Truth and Reconciliation Commission, when he came to Queen’s a year ago to receive an honorary doctorate, in which he expressed some hesitation about removing references to Sir John A. Macdonald from public spaces. The conversation occurred in my car after I picked Senator Sinclair up at the train station and we were driving down Sir John A. Macdonald Boulevard on our way to Sir John A. Macdonald Hall. Senator Sinclair suggested that perhaps other methods might be adopted to bring a sense of balance to the public understanding of Macdonald. Indeed, as the Advisory Committee observes, with good reason, in its report, it may well be possible to contextualize rather than remove a statue of Macdonald from a park.

Senator Sinclair kindly offered to discuss the law school building name further with me, and when you asked me to launch the consultation process in June, he was the first person I called. We talked about how the shift in the public discourse about race and racism that accompanied the Black Lives Matter movement represented a significant change in the context—perhaps a paradigm shift—affecting these questions. His advice to me—which he said I could share with you and anyone else interested—was that, in the end, the decision about the law school building name should be one that is made after a fair consultation with the people interested and affected by the decision, that the voices of marginalized peoples should be heard and respected, and that the decision should reflect the community’s aspirations about what it wants to be.

Principal Deane, I think we have done our very best at seeking to honour this sage advice. It is with a tremendous sense of loyalty to the University and the values it embraces that I present to you the report of the Advisory Committee on the Building Name and recommend to you that the name of the law school building be removed. I conclude with these words of Murray Sinclair, which, thanks to a generous gift from the law school graduates of 2018, are displayed on the wall of the atrium of Macdonald Hall:

The road we travel is equal in importance to the destination we seek. There are no shortcuts. When it comes to truth and reconciliation we are forced to go the distance.²⁰

Yours sincerely,



Mark D. Walters
Dean of Law

Encl. *Final Report of the Building Name Advisory Committee* (29 September 2020)

²⁰ Justice (later Senator) Murray Sinclair, Chair of the Truth and Reconciliation Commission of Canada, to the Canadian Senate Standing Committee on Aboriginal Peoples, September 28, 2010, quoted in Truth and Reconciliation Commission of Canada, *Interim Report* (2012), 1.