

Chapter 9, “Wellness and Healing,” takes a closer look at the National Inquiry’s own health and wellness approach for family members and survivors, and what we have learned from families and survivors who participated in the National Inquiry who discussed their own healing journeys.

In Chapter 10, “Commemoration and Calling Forth,” we turn to the National Inquiry’s efforts to raise awareness and engage in public education through our Legacy Archive, art outreach, and youth engagement guide. Altogether, we assert, these actions, engagements, and interactions will help reclaim the role of women, girls, and 2SLGBTQQIA people as powerful cultural carriers and sacred knowledge holders who are capable of shaping a safer future for the next generation of Indigenous women, girls, and 2SLGBTQQIA people.

In Chapter 11, “On the Front Lines: Valuing the Insight of Front-line Workers,” we provide a summary of four Guided Dialogue sessions, held in the fall of 2018. These dialogues brought together people of diverse perspectives to discuss best practices and solutions for change. These were not aimed at gathering individual testimony, but instead aimed to bring together front-line service providers, organizers, people with lived experience, Elders, academics, and outreach support to fill in gaps and discuss best practices related to their own backgrounds within specific Inuit, Métis, 2SLGBTQQIA, and Quebec contexts. Over the course of three days, participants identified barriers and discussed what best practices and solutions look like through the lenses of culture, health, security, and justice.

Calls for Justice

We end with our Calls for Justice. These Calls are anchored in human and Indigenous rights instruments, Indigenous laws, and principles shared through the testimonies of family members, survivors, Knowledge Keepers, and Expert Witnesses, along with the National Inquiry’s advisory groups, both internal and external. These Calls for Justice, as their name implies, demand action that reflects, respects, and actively works to create relationships where Indigenous women, girls, and 2SLGBTQQIA people are recognized as rights bearers and have those rights upheld – working to address where justice, seen in the larger context of dispossession and marginalization, has failed.

These Calls for Justice are based on the findings of fact found at the end of each chapter and in the Deeper Dives, where applicable, as well as the overarching findings we lay out at the beginning of Section 4. In addition, they are undergirded by important Principles for Justice – lenses through which all Calls for Justice must be interpreted, applied and implemented, for change to materialize.

Restoring safety for Indigenous women, girls, and 2SLGBTQQIA people is an urgent responsibility for us all. These Calls are not simply moral principles; they are legal imperatives.

Summary of the Forensic Document Review Project

In this annex, we summarize the important work of the Forensic Document Review Project, which examined 174 police files consisting of 136,834 documents and 593,921 pages. While the Project's important work has been limited by the time frame of the National Inquiry's mandate, our examination demonstrates the important reasons that this kind of work and re-examination must continue, to find justice for those families and survivors still desperately searching for answers.

Conclusion: An Invitation

One of the things that makes this National Inquiry unique is that we are not investigating a past wrong, but one that is still ongoing and that is getting worse. Acts of violence stemming from the structures of colonization and coupled with racism, sexism, homophobia, and transphobia are not few and far between, but pervasive, immediate, and urgent.

However, this violence is also *preventable* – if Canadians are willing to change. The National Inquiry into Missing and Murdered Indigenous Women and Girls gave Indigenous women, girls, and 2SLGBTQQIA people a national platform to speak their truths, but the real work is only getting started. Ending violence against Indigenous women and girls will require fundamental realignment and transformation of systems and society as they currently exist. The investment into solving this crisis must be equal to or better than the over five hundred years of deficit that have preceded it.

The rights of Indigenous women, girls, and 2SLGBTQQIA people are violated or upheld every day, in small ways and large. The National Inquiry believes that the restoration of these rights is a pressing priority, as a way of transforming harmful encounters Indigenous Peoples have with systems that impact their lives. In particular, governments have a responsibility to protect and promote rights grounded in concepts of culture and identity, of health, of safety, and of justice, which are key to ensuring overall progress in addressing the crisis of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people. They are also key to ending violence and finding holistic solutions to help build the foundation that will restore Indigenous women, girls, and 2SLGBTQQIA people to their power and place.

Documenting these encounters is one way we insist on accountability and a realistic assessment of the ongoing reality of violence in the lives of Indigenous women, girls, and 2SLGBTQQIA people. This is critical to understanding how our society can be transformed from its very roots.

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There is a role in this transformation for government, for industry, for communities, for allies, and for individuals – we all have a part to play. By focusing on specific moments of encounter – moments that form relationships – we offer one path through all of these stories. We have chosen this path because we believe it achieves the mission of the National Inquiry to document in precise and exacting ways the root causes of violence and the ongoing human rights violations against Indigenous women, girls, and 2SLGBTQQIA people. We also hope, however, that the path this report leads to for you, the reader, is one that shows you that change is possible right now.

As you follow this journey through the testimony, you might find you have other questions or that there are other routes you are interested in exploring in more detail yourself. You might find that when you hear about a particular encounter, you want to know more about that family’s entire story, or about how certain issues play out in the health care system, the justice system, or other institutions. We encourage you to follow that path and incorporate what you learn into relationship within your own lives, communities, and societies. Your relationship with the stories included in this report and available online is an encounter – a transformational moment of relationship – of the utmost importance in itself.

Notes

- 1 Lemkin, *Axis Rule in Occupied Europe*, 79; 82-89; 89.
- 2 *Ibid.*, 79.
- 3 *Ibid.*
- 4 Feierstein, “Defining the Concept of Genocide,” 15.
- 5 *Ibid.*
- 6 United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide*, Article II.
- 7 Schabas, *Genocide in International Law*, 46.
- 8 Bjørnland, Markuson, and Mennecke, “What Is Genocide?” as cited in Feierstein, “Defining the Concept of Genocide,” 12.
- 9 Semelin, “Around the ‘G’ Word,” 27.
- 10 Feierstein, “Defining the Concept of Genocide,” 14.
- 11 *Ibid.*
- 12 Krotz, “A Canadian genocide?”
- 13 Woolford and Benvenuto, “Canada and Colonial Genocide,” 375.
- 14 *Ibid.*
- 15 Krotz, “A Canadian genocide?”
- 16 Palmater, “Sexualized Genocide.”
- 17 Palmater, “The Ongoing Legacies.”
- 18 Fontaine and Farber, “What Canada committed against First Nations.”
- 19 Woolford and Benvenuto, “Canada and Colonial Genocide,” 380.
- 20 Danny P. (Membertou First Nation), Part 1, Statement Volume 69, Membertou, NS, pp. 2, 4.
- 21 Native Women’s Association of Canada, “What Their Stories Tell Us.”
- 22 Pearce, “An Awkward Silence.”
- 23 Royal Canadian Mounted Police, “Missing and Murdered Aboriginal Women.”
- 24 *Ibid.*
- 25 Mahony, Jacob, and Hobson, “Women and the Criminal Justice System.”
- 26 TAKEN, “About the series.”
- 27 TAKEN, “Infographic.”
- 28 Boyce, “Victimization of Aboriginal People in Canada, 2014.”
- 29 Bruser et al., “Nearly half of murdered Indigenous women.”
- 30 Blaze and McClearn, “Prime target.”
- 31 Anaya, “Statement upon Conclusion of the Visit to Canada.”
- 32 Boyce, “Victimization of Aboriginal People in Canada, 2014.”
- 33 Conroy and Cotter, “Self-reported Sexual Assault in Canada, 2014.”
- 34 Canada, Public Safety Canada, *National Action Plan to Combat Human Trafficking*.
- 35 National Aboriginal Consultation Project, *Sacred Lives*.
- 36 Native Women’s Association of Canada, “Boyfriend or Not.”
- 37 Bucik, “Canada: Discrimination and Violence,” 4.
- 38 Pyne et al., “Barriers to Well-Being.”
- 39 Boyce, “Victimization of Aboriginal People in Canada, 2014.”
- 40 Kohkom (Piapot First Nation), Part 1, Statement Volume 122, Saskatoon, SK, p. 30.
- 41 Bernice C. (Sagkeeng First Nation), Part 1, Public Volume 15, Winnipeg, MB, p. 51.
- 42 Tamara S., Part 1, Public Volume 15, Winnipeg, MB, pp. 51-52.
- 43 Danielle E. (Kawacatoose First Nation), Part 1, Public Volume 31, Saskatoon, SK, p. 117.
- 44 Canada, Crown-Indigenous Relations and Northern Affairs Canada, “Terms of Reference for the National Inquiry.” See also, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Legal Path, Rules of Respectful Practice*, available at www.nmiwg-ffada.ca/files/legal-path-rules-of-respectful-practice.pdf.

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- 45 While the term “First Nations” is relatively new, the original Nations of this land existed before colonial contact and continue to exist today, despite the Canadian government’s intentional assimilation policies (particularly through the *Indian Act*) that fractured and displaced them. This was an intentional effort to assimilate and therefore annihilate Indigenous Nations as Nations.
- 46 The Inuit are an Indigenous circumpolar people found across the North. Most Inuit live in Inuit Nunangat – the land, water, and ice that make up the Canadian Inuit homeland. This homeland is made up of four regions: Inuvialuit, in the western Arctic; the territory of Nunavut; Nunavik, in northern Quebec; and Nunatsiavut, in northern Labrador. Many Inuit also live in urban centres such as Edmonton, Winnipeg, and Montreal. The word “Inuit” means “people” in Inuktitut, which is the umbrella name for many related dialects spoken by Inuit, and is used to refer to three or more people. The word “Inuk” refers to an individual person and Inuuk refers to two.
- 47 The Métis emerged as a distinct people or Nation from the unions of European men and First Nations women during the course of the 18th and 19th centuries. Métis people now live throughout Canada. The traditional Métis language is Michif, although many Métis are also fluent in, or grew up speaking, other European or First Nations languages.
- 48 For more information on public inquiries, see the Frequently Asked Questions Resource created by the Legal Strategy Coalition on Violence Against Indigenous Women (LSC) at <https://www.leaf.ca/lsc-resource-on-public-inquiries/>.
- 49 <http://www.mmiwg-ffada.ca/submissions/>.
- 50 Wilson, *Research Is Ceremony*, 20.
- 51 Greg M. (Frog Clan, Fort St. James), Part 1, Public Volume 8, Smithers, BC, p. 16.
- 52 Melanie D. (Mikisew Cree First Nation), Part 1, Public Volume 21, Edmonton, AB, pp. 56-57.
- 53 Canada, Crown-Indigenous Relations and Northern Affairs Canada, “Addressing the Interim Report.”
- 54 Terry L. (Kaska Dena, Crow Clan), Part 1, Public Volume 3, Whitehorse, YT, p. 13.
- 55 As of March 7, 2019.
- 56 The First Nations Child and Family Caring Society of Canada, “I Am a Witness.”
- 57 Dr. Cindy Blackstock (Gitksan), Part 3, Volume 10, Toronto, ON, pp. 233–234.
- 58 Canada, Crown-Indigenous Relations and Northern Affairs Canada, “Addressing the Interim Report.”
- 59 Ibid.
- 60 Canada, Status of Women Canada, “About Missing and Murdered Indigenous Women Commemoration Fund.”
- 61 Canada, Crown-Indigenous Relations and Northern Affairs Canada, “Addressing the Interim Report.”
- 62 Ibid.
- 63 Ibid.
- 64 Voices-Voix, “Sisters in Spirit – What Happened.”
- 65 For the National Inquiry’s full written submission to the Supreme Court of Canada, called a “factum of intervenor,” see https://www.scc-csc.ca/WebDocuments-DocumentsWeb/37769/FM110_Intervener_National-Inquiry.pdf.
- 66 Canada, Crown-Indigenous Relations and Northern Affairs Canada, “About the Independent Inquiry.”
- 67 Nahanni Fontaine (Ojibway, Sagkeeng First Nation), Part 1, Public Volume 15, Winnipeg, MB, p. 76.
- 68 World Health Organization, “World Report on Health and Violence.”
- 69 Newfoundland and Labrador, “Types of Violence and Abuse.”
- 70 Tuhiwai Smith, *Decolonizing Methodologies*, 25.
- 71 Galtung, “Cultural Violence,” 1.
- 72 Kroeker, “Structural Violence in Canada.”
- 73 Curtin and Litke, *Institutional Violence*, xiv.
- 74 Kuokkanen, “Globalization as Racialized, Sexualized Violence,” 221–22.
- 75 Galtung, “Violence, Peace, and Peace Research,” 17.
- 76 Dr. Robyn Bourgeois (Cree), Mixed Parts 2 & 3, Public Volume 17, St. John’s, NL, p. 42.
- 77 Kovach, *Indigenous Methodologies*.
- 78 Bernice C. (Sagkeeng First Nation), Part 1, Public Volume 15, Winnipeg, MB, p. 67.
- 79 Gwenda Y. (Dakota, Standing Buffalo Dakota Nation), Part 1, Public Volume 27, Saskatoon, SK, p. 5.
- 80 Sarah N. (Inuit, Inukjuak), Part 1, Public Volume 64, Montreal, QC, pp. 4–5. In Inuktitut, a single person is referred to as Inuk, not Inuit. However, we have chosen to use “Inuit” in the end notes to designate family members’ and survivors’ identities to be as clear as possible.
- 81 Sarah N. (Inuit, Inukjuak), Part 1, Public Volume 64, Montreal, QC, pp. 13–14.
- 82 Lizzie C. (Inuit, Kuujuaq Rapid), Part 1, Public Volume 64, Montreal, QC, p. 19.
- 83 Nicole B. (Métis), Part 1, Public Volume 100, Vancouver, BC, p. 40.



Establishing a New Framework

This section of the *Final Report* establishes a framework for the experiences we heard about from family members, survivors, and other witnesses as part of the National Inquiry’s Community, Institutional, and Expert and Knowledge Keeper Hearings. We acknowledge that, as others have stated, “the social context of racism, colonialism, and sexism produce conditions of systemic and targeted forms of violence and abuse against Indigenous women.”¹ For these reasons, we maintain it is necessary, first, to establish a framework that highlights how most witnesses discussed their experiences, or the experiences of their loved ones, in the context of failures to obtain basic human rights, and failures of systems, institutions, and individual service providers to offer support based on the principles of respect and of good relationships. These relationship-forming moments, or “encounters,” as we sometimes refer to them, provide an important window into understanding how Indigenous women, girls, and 2SLGBTQQIA² people are targeted for violence.

But to understand where we find ourselves today, we also need to take a step back to examine how this crisis was created within the specific realities of colonialism, racism, and misogyny in a historical context. This historical context negated the important roles, responsibilities, and rights held by Indigenous women and gender-diverse people in their own com-



munities and Nations, and actively sought to disempower women through the application of state-sanctioned violence on a number of different levels. In addition, laying down these important roots helps to convey how the structures and processes of colonization, which are often relegated to the past, are very much factors today.



This wooden star blanket is a collaborative community art piece. It is a mosaic made up of 128 individual tiles, each one hand-painted by survivors of violence and families of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people during a statement-gathering event in British Columbia. It is a symbol of the importance of centring the voices of survivors and of families who shared their truths with the National Inquiry.

This framework also provides insight into how Indigenous women, girls, and 2SLGBTQQIA people experience discrimination and violence in

a way that is intersectional. In other words, this means that the structure of oppression, for those who are targets of violence, includes many factors that influence the outcome of their lives and those of their families.

We look to the past, and to these intersectional systems of oppression as they were developed, as a way to look toward how to transform the present and the future, engaging with tools that promote basic human rights in key areas such as culture, health, security, and justice, within Indigenous understandings. These understandings are not uniform, and neither are they static. Instead, they develop in relationship to those rights-bearers – Indigenous women, girls, and 2SLGBTQQIA people – to whom this report is devoted. The themes we address through a rights lens are those most represented in the various systems and institutions people reported dealing with, as well as those systems, institutions, and people perceived to have most contributed to harm.



Commissioner Audette hugs a participant during hearings in Regina, Saskatchewan.



Regardless of the context or particularities of these understandings, Section 1 of the *Final Report* makes clear that solutions that up to now have been imposed by outsiders, or by the state, must in fact rest with Indigenous women, as defined by themselves, as bearers of Indigenous and human rights. They must also begin with a recognition of how the past translates into the present to generate harm for future generations.

In this way, Section 1 of the *Final Report* is a platform and a starting point for developing a more comprehensive, person- and community-centred understanding of the crisis of violence we explore in its contemporary form in Section 2. It represents a new and unique framework for approaching lived experience, as described in the testimonies we heard, as a starting point for change and transformation.



Centring Relationships to End Violence

Introduction: Building a Solid Foundation

Throughout the National Inquiry, we heard stories of loss and grief. We listened to what happens when an Indigenous woman, girl, or 2SLGBTQQIA person goes missing or is murdered, and heard about the impact of that loss on those who surrounded them. These people mattered. They were mothers, daughters, sisters, aunties, grandmothers, nieces, cousins, and families of the heart – and their absence has left scars that no amount of time can ever heal.

We honour the brave families and loved ones and those who survived to tell their stories, just as we honour those who no longer walk among us, by sharing the truths they have gifted to the National Inquiry in the following pages. These truths offer powerful teachings from those who know best the steps that must be taken to end violence in the lives of Indigenous women, girls, and 2SLGBTQQIA people: the Indigenous families, survivors, Knowledge Keepers, Elders, grandmothers, and activists who have learned these teachings through experience.

In her presentation to the National Inquiry, Knowledge Keeper Mavis Windsor, a member of the Heiltsuk First Nation of Bella Bella, British Columbia, and the social development director of her community, made clear a message delivered many times over the course of the Truth-Gathering Process: “We are the legacy. Despite the trauma our communities continue to live through, we are capable of addressing the violence against women in our communities. The solution is within us – within our communities.”³

Over the course of our work, the National Inquiry learned much about the distinct ways violence shapes the lives of First Nations, Métis, and Inuit women, girls and 2SLGBTQQIA people across the country, and the creative and courageous strategies these same people are using



to fight for change. While their stories demonstrate the importance of understanding the ways that geography, culture, tradition, and many other factors must be accounted for in devising meaningful recommendations and community-led change, the stories of those who shared their truths also gave voice to one shared teaching over and over again: in order to understand the causes of violence and to make the changes necessary to ending violence, we must recognize the power and responsibility of *relationships*.

In the words of Expert Witness Sandra Montour, a Mohawk woman and executive director of Ganohkwasra Family Assault Support Services, where she has worked for over 30 years in providing support to Indigenous women and their families experiencing violence:

[We] hav[e] to build relationships, and we have to because our livelihood depends on it. Our livelihood depends on it and the lives of our women in our community depend on it, so we have to be incredible fighters, we have to be incredibly diplomatic, we have to be able to problem solve and develop relationships.⁴

“WE ARE THE LEGACY. DESPITE THE TRAUMA OUR COMMUNITIES CONTINUE TO LIVE THROUGH, WE ARE CAPABLE OF ADDRESSING THE VIOLENCE AGAINST WOMEN IN OUR COMMUNITIES. THE SOLUTION IS WITHIN US – WITHIN OUR COMMUNITIES.”

Mavis Windsor

In the following pages, we follow these two important teachings. We centre the voices of First Nations, Métis, and Inuit families, survivors, and others whose truths contain wisdom and guidance on ending violence that has been ignored or actively silenced for far too long; and, as we listen to this wisdom and guidance, we focus specifically on those teachings about how, through relationships, we can come to understand the underlying causes of violence and identify and implement the steps that must be taken to end violence.

We all have an opportunity to transform relationships that continue to harm Indigenous women, girls, and 2SLGBTQIA people, but this work is not easy, and it is especially difficult for those like Mavis, Sandra, and the many other strong Indigenous people we will hear from in the following pages who work to create change within relationships that continually deny their agency and rights.

As Marilyn W., a First Nations woman who shared her story about losing her sister to violence, observed:

Each and every one of us as individual people, every morning we wake up, we have a choice that we could bring light into this world or we can feed that – that darkness that we have to live with every day. And I’m trying, and it’s real hard not to sit here and be angry. It’s really hard not to have hate in my heart because my culture is about equality and love. This is about the genocide of our people. This just isn’t about Indigenous women. This is a spiritual battle.⁵



To emphasize the seriousness of this battle, and the importance of the solutions and recommendations offered by the families, we look to the protections afforded to Indigenous women, girls, and 2SLGBTQQIA people as bearers of inherent Indigenous and human rights. Framing the teachings about relationships offered to the National Inquiry in terms of Indigenous and human rights in the recommendations at the end of this report reminds us that change can no longer rest on the political or moral good will of governments. Implementing the changes demanded throughout this report is the legal responsibility of Canadian governments, their institutions, and their representatives in ensuring that the rights of Indigenous women, girls, and 2SLGBTQQIA people are no longer abused and ignored. These changes also require the full engagement of Indigenous communities and service providers, working in partnership to achieve better outcomes.

Why Start with Relationships?

Guiding our approach to analyzing the many truths collected by the National Inquiry is a teaching that was shared over and over again during the Truth-Gathering Process: relationships are key to both understanding the causes of violence and to making changes to end violence in the lives of Indigenous girls, women, and 2SLGBTQQIA people. Shawn Wilson, an Opaskwayak Cree researcher from northern Manitoba, explains that relationships are central to Indigenous ways of knowing. In this world view, we are each our own person, but we are also defined by our relationships to others. We are one person's mother, another person's daughter, and a third person's family of the heart. We are connected to our ancestors, to the land where we come from, and to future generations. In short, Wilson argues, we are not just one person; we are the sum of all the relationships that shape our lives.⁶

The importance of relationships to the families and survivors who shared their truths with the National Inquiry is evident in the way many chose to begin their story about a missing or murdered loved one by naming the many relationships they shared with others, as in the case of Percy P., who began his story about his 37-year-old daughter, Misty P., who has been missing since 2015, with the following words:

[Misty] was raised around the drum, songs, ceremony, traditional living off the land... And so, Misty walked that road. She was a pipe holder, Sundance pipe holder. She danced Pow-Wow. She was a good daughter, sister. She was a decent human being... Wherever she was at, she found people... She had a lot of promise. She brought us to the Canadian Aboriginal Music Awards, and we won the top hand drum for the year, and it was quite an honour for us. And, she was the one that was orchestrating all of that. Nothing like that has happened since she's been gone. Our organizer is gone; taken away.⁷

In an Inuit context, as well, Inuit telling their truths spoke of their loved ones with loving memories, usually beginning with "My sister, beautiful sister..." or "My daughter, my beautiful



daughter...” and loving memories of their personalities and of their lives. The death of loved ones and the experience of violence and tragedy brought out a great sense of loss, for which the consequences meant ongoing struggles for personal health and well-being. The experiences that missing and murdered Inuit women and their families had, and the encounters they had in their attempts to regain control of their lives, to become healthy and well, to gain justice and safety, determined the outcome of their lives.



Elder Rebecca Veevee lights the qulliq at a hearing in Quebec City, Quebec.

Like Percy P. and the many others who shared their truths with the National Inquiry, family members insisted that to begin to understand and honour those whose lives were cut short because of violence requires a careful accounting of all the relationships that shaped a person’s life and that they, in turn, played a part in shaping. Talking about the love, care, wisdom, and happiness Misty brought to her relationships with her family and friends helps others

see what was lost when she went missing; it also, however, puts in stark contrast those other relationships where, instead of being cherished and loved, Misty and others like her were controlled, ignored, and abused by those who chose to act violently toward her or those who responded to her calls for help with indifference and judgment rooted in racist and sexist beliefs about her worth as an Indigenous woman.

The truths that family members and survivors shared also pointed to the relationships that shaped the lives of their missing and murdered loved ones as opportunities for learning, understanding, and transformation. They emphasized the importance of strengthening bonds and developing strong ties with one another to be better able to protect each other. In his writing about Indigenous-settler relations, Cree researcher Willie Ermine talks about relationships as “spaces of engagement” to emphasize the opportunities that exist within relationships to work out the similarities and differences between the various ways of knowing that may be held by those involved.



When we consider relationships as spaces of engagement, Ermine explains, we pay attention to the words, actions, and behaviours that exist on the surface. These words, actions, and behaviours, however, also tell us something about the attitudes, beliefs, and contexts that run below the surface and that function as a “deeper level force” in shaping the ways of knowing and being that may be present in relationships. To make lasting change to relationships so that they reflect a particular set of values – for instance, those that respect the rights of Indigenous women, girls, and 2SLGBTQQIA people – requires doing the more difficult work of confronting and changing the “deeper level force” so that the underlying context also reflects these values.⁸

In their testimonies, family members and survivors talked about the need to change the underlying beliefs and contexts that are the systemic or root causes of violence and that allow that violence to happen.

Another reason we centre relationships in the following pages is that they reveal to us how these underlying or systemic beliefs translate into the day-to-day realities of the lives of Indigenous women, girls, and 2SLGBTQQIA people in troubling ways. As many of the relationships described by families and survivors illustrate, Indigenous women, girls, and 2SLGBTQQIA people are denied the power to participate as equals in defining the terms upon which the relationships that shape their lives are built.

In her testimony, Cheryl M. talked about how, after months of activism and effort to secure a review of the investigation by the Office of Police Complaints Commissioner into the death of Victoria P., it was only when she was accompanied by a well-respected and connected university professor that government officials responded to her concerns, despite her own position as then-president of the Nova Scotia Native Women’s Association.⁹

In her testimony, Jamie L. H.’s description of the violent, racist, and transphobic treatment she was confronted with from the police demonstrates how, for Indigenous women and 2SLGBTQQIA people, inequality in relationships is often reasserted and expressed not only by dismissive attitudes but also by threats of violence and harm.

It was right near Halloween. . . . And they [the police] began throwing off firecrackers, and I was sort of jumping around; I didn’t know what was going around. I imagine they were trying to frighten me, and they were making disparaging jokes about me; they did a strip search, including, you know, me taking off my brassiere. And of course, I had falsies on, and they were making horrible jokes about that, and tossing them around. And it was just a very humiliating experience.¹⁰

To challenge the terms of this encounter would be to put oneself at considerable additional risk.

These examples offered by strong and resilient women who have gone on to be powerful advocates for the rights of Indigenous women, girls, and 2SLGBTQQIA people demonstrate how their ability to shape relationships and to engage in relationships on their own terms is limited



by an undercurrent of colonial, patriarchal, racist, and heteronormative beliefs and institutional practices that deems them as unworthy partners in that relationship. For Indigenous women and 2SLGBTQIA people, inequality in these contexts does not simply mean being ignored or being prevented from participating in a debate; it often means becoming targets for violence within relationships that are forced upon them.

Encounters That Make a Difference

In describing those relationships that were important to understanding the violence experienced in their own life or the life of their missing or murdered loved one, families and survivors drew attention to specific moments in those relationships that they felt were especially important for understanding the circumstances, causes, impacts, or details of their loved one's disappearance or death or of the violence they themselves had experienced – what we have characterized as “encounters.”

We use the concept of “encounter” to reference a broad range of moments where relationships are formed. These encounters represent a time and space through which the vision, values, and principles that shape families, communities, and individual lives are created. We see these as transformational moments, too; in other words, these encounters can lead the way to harm or to healing, depending on the context. To engage in encounters like these represents an important responsibility and an opportunity to shape the terms of a relationship in a good way.

In sharing her experience as a survivor of violence, Anni P. pointed to a “pivotal moment” when her partner's actions stopped Anni from harming herself, and in doing so also fundamentally shifted Anni's belief about the possibility of relationships being loving rather than violent.

There was a pivotal moment when I wanted to do myself in. She [Anni's partner, Kim] stayed with me, she would not let me leave the house, because if I got out of the house, I would – that was it. Because she's bigger and stronger than me, thank God, she didn't let me out. When I woke up in the morning, Kim was laying in front of the door because she didn't want to let me out of the bedroom. She was protecting me like a sentinel, waiting, like you're not getting out of here. And, in that moment, it was pivotal for me. Someone loved me with everything they had.¹¹

For Darlene G. – a First Nations woman and survivor of childhood abuse and sexual violence who shared her truth at the Community Hearing in Membertou, Nova Scotia – a conversation with her uncle in which she learned about her mother's history of abuse within the residential school system is the point at which her “life really alters,” because it is in this conversation with her uncle that she is given a new way to understand both her own and her mother's struggles with addiction – an understanding that helps her down a path of healing. She explained:



My life really alters at [Uncle V.]. He’s been my rock, you know. He sat at a table one day. At my Auntie [R.]’s funeral, we were all sitting out in the back of my Uncle [L.]’s house and we’re around the table and I was clean and sober. I was five years. And he looked at me, and he says, “Do you want to know why your mother was the way she was with you? Do you want to know why your mother was the way your mother was, no feeling, cold? Because she was raped by the priests.” I couldn’t understand that, but I could understand why she was the way she was, why she drank, she – the way she drank. Why I used and drank the way I used, it’s because of systemic abuse, generational abuse, the government trying to change who we are.¹²

In sharing these significant moments in relationships important to them, Anni and Darlene offered teachings on ways of engaging in relationships that had a profound impact on their own healing journey from violence. In the following pages, we include similar accounts of specific moments within relationships that families and survivors pointed to as important teachings about what healing relationships can look like, and how a single conversation or action may be a powerful opportunity to shape the terms of a relationship in a good way. These teachings provide models upon which many of our Calls for Justice are based.



Commissioner Eyolfson shares a hug with Charlotte Wolfrey in Regina, Saskatchewan.

Unfortunately, the encounters that many family members described during the National Inquiry show that the responsibility to shape a relationship has been used to harm, rather than to honour, Indigenous women, girls, and 2SLGBTQQIA people. Most often, when families, supporters, and survivors drew attention to specific interactions within relationships that they saw as holding distinct significance for understanding violence in their own or their loved ones’ lives, they pointed to moments that, in their view, made violence more likely to happen. In many cases, these moments took place during a first encounter with someone to whom they or their loved one had turned for support.



Not surprisingly, it is these examples that families stressed because – as we will see throughout the report – they provide compelling information about what led to the violence or other harm they or their loved ones endured, as in the case of the truth shared by Barbara H., regarding the death of her 17-year-old daughter, Cherisse H. In her testimony, Barbara drew attention to an encounter she had with Cherisse’s child welfare worker a few weeks before Cherisse’s death.

She [Cherisse] was – on the street and she was addicted to drugs. And, there was one time there when she said to me, “Mommy, I need help.” This was after she had her son. She was still doing drugs, and then she finally realized that she wanted to get the help she needs so she could be a good mom.

So, she said to me that she needed help, if I could phone her CFS [Child and Family Services] worker so they could place her in a locked facility so she doesn’t have to run to the streets to do drugs. I guess she used drugs, too, to cope because they took her son right at birth.

So, I phoned her worker, and her worker said to call back. So, I called back and she said there’s no facilities that could take Cherisse, and I guess that she – I guess she felt let down or – you know?

So, she went back to the street, and a week after that, that’s when – couple weeks after that, that’s when they found her body.¹³

After being missing for a few weeks, Cherisse’s body was discovered in July 2009 by a construction crew. Barbara is still looking for answers to understand what happened to her daughter.

For Barbara, an important part of understanding the violence that later took her daughter’s life rests in knowing why she was not able to access the services she needed to address her drug and alcohol addiction at the crucial moment when Cherisse reached out and was ready for help. Barbara reflects on a much different fate for her daughter, had such services been available. “I know if she would have got the help she needed, she would have been a really, really good mom to her son because she loved that little boy so much.”¹⁴

As you will see in the following pages, many families are keenly aware of similar moments such as that shared between Barbara and the CFS worker, where a single encounter that holds the potential of preventing or at least decreasing the likelihood of violence is squandered or lost – often with significant consequences.



In her testimony, Carol W., a First Nations woman who is deaf, talked about the harm caused by her first encounter with the police when she reported her 20-year-old daughter, Karina W., missing.

July 20th, 2010, is the day I went to the police station by myself without an interpreter. I knew I needed help to locate my daughter. When I arrived, I took a picture and a note to give to the police. I handed my note to the officer. He just looked and acted like it was not important. He ignored me. I was so angry as he was not helping me. I banged my hand hard on the counter. This is when he looked at me and handed me a witness statement.

I had no idea what I was to do with that paper. No one explained what I needed to write on that green paper. I looked for the officer to help me, but he was back on his computer, acting like I was not important or what I needed was not important. Once again, I slammed my hand hard on the desk. Finally a big man in a white shirt came and tried to help me. Once I was done with the paper, I gave it to the big man in the white shirt and I left.

I left the police station very angry and upset. The next day, I went back to the police station with an interpreter and filled out and completed my statement. Without an interpreter, communication was difficult.¹⁵

In failing to provide Carol with an interpreter, deliberately ignoring her as she stood at the counter in the police station, and handing her unfamiliar paperwork to complete without providing instruction, the officer used this initial meeting with her to establish a relationship in which, as Carol put it, “I was not important or what I needed was not important.”

Rather than recognizing the significance of this moment to respond to Carol in the ways most helpful to a woman desperate to find her missing daughter and to establish a relationship that could help facilitate an effective investigation, the officer asserted his position of authority and power over Carol as if to remind her that, ultimately, Indigenous women do not matter to the police and are not worthy of the police’s time and effort. As Carol says, “I felt unheard and dismissed simply because they chose not to hear me [or] help me to locate my daughter.”¹⁶

“I WAS NOT IMPORTANT OR WHAT I NEEDED WAS NOT IMPORTANT.... I FELT UNHEARD AND DISMISSED SIMPLY BECAUSE THEY CHOSE NOT TO HEAR ME [OR] HELP ME TO LOCATE MY DAUGHTER.”

Carol W.



Initial encounters that establish a relationship wherein Indigenous women, girls, and 2SLGBTQQIA people, family members, survivors, and others are met with derision, racism, and dismissal by those to whom they reach out for support permeate the stories shared with the National Inquiry. In many cases, these encounters occur at moments when Indigenous people are most vulnerable, as in Cherisse’s case. Almost always, these encounters demonstrate the ways those involved take advantage of that vulnerability to further their own ends or to reassert a system that devalues the lives of Indigenous women, girls, and 2SLGBTQQIA people. They occur when Indigenous women, like Barbara or Carol, engage with someone in a position of authority, such as a police officer or a social worker; and they occur in situations in which, like Cherisse, they are targets of violence. They also occur implicitly when an Indigenous woman is confronted for the first time with a policy, a rule, or a belief built into a particular institution she must navigate that punishes rather than helps her.

Again, in all these situations, the consequences of the actions of those involved are nearly always the catalyst for further violence and harm.

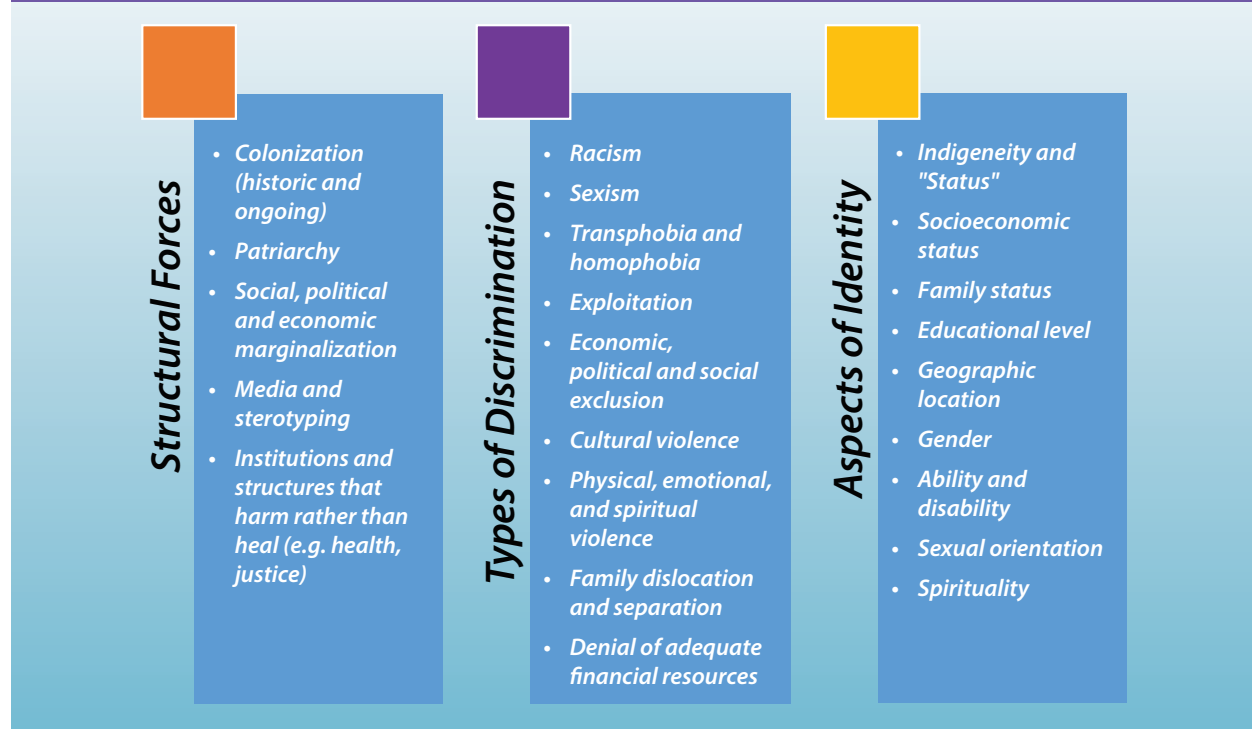
In the following chapters, we follow the lead of families and similarly highlight these important teachings. We often use the word “encounter” to describe these moments in order to signal their importance as a pivotal or distinct moment, which family members or survivors have detailed as the precise conversation, meeting, or event that took place at the beginning of a relationship and that went on to shape that relationship in ways that hold significant consequences for how violence continues within their own or their loved ones’ lives. In her testimony, Dr. Robyn Bourgeois, a Cree professor at Brock University and a survivor of sexual violence and trafficking, offered another way of asking this same question in even clearer terms: “What is the source of the ideas that [make] i[t] okay to murder Indigenous women and girls?”¹⁷

An Intersectional Approach to Encounters

All of the stories of encounter we heard took place within relationships that created a particular context or situation. As a result, these relationships must also be conceived broadly, to go beyond the interpersonal and to engage the different systems, institutions, laws, and policies that structure these interactions. To understand how these situations are different for different people, and the potential solutions to issues created within these situations, we draw on the importance of an intersectional approach.



INTERSECTIONALITY: A SUMMARY OF OVERLAPPING OPPRESSIONS AND IDENTITY MARKERS



Centring the lived experience of those who shared their stories with us represents the core of our analysis. As scholars Olena Hankivsky, Renée Cormier, and Diego de Merich argue, “Centering stories is consistent with any intersectional approach that prioritizes lived experience as a necessary theoretical foundation for the pursuit of social justice.”¹⁸

American civil rights advocate and leading scholar of critical race theory Kimberlé Crenshaw first coined the concept of “intersectionality” in the late 1980s, and it has gained an important following since. Crenshaw suggested that comparing the lived experiences of Black women in the United States with those of Black men or of white women minimized the level of discrimination that they faced. When people failed to understand how multiple systems, both visible and invisible, oppressed Black women, they also failed to address the ongoing mistreatment of Black women. She recommended a more integrated approach, which she called “intersectionality,” to expose the reality of sexism and racism pervasive in Black women’s encounters with the people, systems, and institutions supposedly developed to help them.¹⁹

Definitions of “intersectionality” vary, and have evolved to reflect the unique learnings and experiences of Indigenous Peoples. In its broadest terms, however, intersectionality examines more than a single identity marker and includes a broader understanding of simultaneous interactions between different aspects of a person’s social location. For example, rather than using a single-strand analysis of sexual orientation, gender, race, or class, intersectionality challenges



policy makers and program developers to consider the interplay of race, ethnicity, Indigeneity, gender, class, sexuality, geography, age, and ability, as well as how these intersections encourage systems of oppression and, ultimately, target Indigenous women, girls, and 2SLGBTQQIA people.²⁰ Intersectional understandings reflect a recognition that oppression at the personal and structural levels creates a societal hierarchy, and that this requires policy tailored to the needs of those who experience discrimination.²¹

In other words, in an intersectional analysis, researchers are interested in what the intersections of systems can tell us about power: who holds it, how it is used, and how it impacts various groups.²² The combination of different systems of oppression against Indigenous women and girls, and including the particular issues faced by 2SLGBTQQIA people in some Indigenous communities, can show us how systems, institutions, and individual actions further target individuals in other areas, including homelessness, poverty, and other circumstances that increase the dangers they may face.

An intersectional approach can also speak to the creation of identities and to oppression historically. As scholars Marika Morris and Benita Bunjun explain, “In order to understand how anybody has come to their current situation, we need to understand the past (history/colonization).”²³ In Canada, this is especially important for both non-Indigenous and Indigenous people when considering colonization and how the lives of Indigenous people continue to be affected by generations of oppressive government policy, which has systematically stripped away the identities of Indigenous women and children through the imposition of the *Indian Act*, residential schools, the Sixties Scoop, and modern child welfare systems, to name a few causes. The systematic racism that Indigenous people in Canada have experienced and continue to experience has had major consequences on outcomes of poverty, substance use, violence, and mental health.²⁴

In their testimonies, Indigenous women, girls, and 2SLGBTQQIA people argued that oppression against them is primarily based on colonialism, racism, and gender, but that other factors also come into play. Families, speaking for loved ones, reported many encounters with service providers in the aftermath of a death or disappearance that also reveal assumptions about families based on factors such as education, income, and ability, in addition to Indigeneity.

Within these testimonies, there are also distinctive bases of discrimination, depending on which Indigenous Nation or group’s experience is in play. In other words, Inuit, Métis, and First Nations women do not always face the same kind of discrimination or threat, even though all are Indigenous. In addition, non-binary people, including those who identify as 2SLGBTQQIA, may encounter individual, institutional, and systemic violence differently.



Deidre M.

“A beautiful person, inside and out.”

Deidre's daughter, Becky, and mother, Charlotte, both came to share about Deidre as part of the National Inquiry's Truth-Gathering Process. Here are some of the ways they described this young Inuk woman, who was only 21 when she died.

“Deidre had an amazing sense of humour, an amazing smile. She was feisty, full of energy. She had beautiful, long hair that she would give a little flick.... She was a super good cook, especially baking. She made the best cream puffs and doughnuts, and she made real good onion rings. We all probably got weight on still from her making those things. She was always experimenting and trying new things.

She let her kids help her make bread and cookies. And when she was younger, her room was always spic and span. Everything was tidy. But after she had kids, the most important thing to her was her children's happiness, and her house was lots of times messy. And she was really too busy living ... to worry about what her house looked like.

And Deidre made crafts. She was learning to sew grass, which is a traditional craft of Rigolet, and we are well-known for our grass work.... And she loved to play broomball, and she was into other sports. She lived on the land. Fishing, berry picking, gathering eggs, getting wood. You name it, she loved doing it. She lived a complete Inuit lifestyle.”^I

– Charlotte W., mother of Deidre M.
From the National Inquiry's Community Hearing
in Happy Valley-Goose Bay,
March 7, 2018.

“My mother was a beautiful person inside and out. She was a mother, a daughter, a friend, a family member to many. I know she was loved. I hear people speak so fondly of her. She was easygoing and loved the outdoors. I remember going to the cabin with her when I was a child and my fondest memory was just being loved.

Her friends all told me that she had a great sense of humour and her smile would brighten a room. I know she had great love for those around her....

I've always said my mother is more than what happened to her. She was a beautiful person. She was a beautiful person we were blessed with to call Mom if even for a short period. I miss her every day.”^{II}

– Becky M., daughter of Deidre M. From the
National Inquiry's Community Hearing in Membertou,
October 31, 2017.

I Charlotte W. (Inuit, Rigolet), Part 1, Public Volume 52, Happy Valley-Goose Bay, NFLD, pp. 3-4.

II Becky M. (Inuit, Rigolet), Part 1, Public Volume 18, pp. 97, 103.



For instance, let us look to the story of Inuk woman Deidre M., born in 1971. Deidre and her siblings were raised in Rigolet, Nunatsiavut. Deidre’s stepfather sexually abused her when she was a young child, and then later on Deidre experienced physical and emotional abuse from her partner and father of her children. In 1993, Deidre’s partner shot and killed her, then killed himself, while their four children hid in the bedroom.

In the aftermath of Deidre’s death, her mother, Charlotte W., began advocating about the harsh realities of inadequate services in the North. In their small village of 300-plus people, there were no shelters, counselling, or women’s services to help Deidre leave her husband safely. Policing was also a serious concern. Deidre had called the police repeatedly on the day she died, but the police told her they couldn’t intervene until her partner actually did something. However, the police officer was not in Rigolet. The nearest police officer was in Happy Valley-Goose Bay and it would take at least one to three hours by plane to come to her aid, or six hours by snowmobile.

After a long struggle by people in the community, Rigolet now has a Royal Canadian Mounted Police (RCMP) detachment and a women’s shelter. However, Inuit women and 2SLGBTQQIA people continue to face unique challenges related to violence because of the isolation, economic marginalization, and poor relationship with the RCMP in these remote areas. In addition, Deidre’s childhood abuse as a form of intergenerational trauma and as rooted in the colonization of Inuit by the Government of Newfoundland and Labrador makes clear that her life had been the subject of intersectional oppression, as lived through these encounters and experiences.

“I’VE ALWAYS SAID MY MOTHER IS MORE THAN WHAT HAPPENED TO HER. SHE WAS A BEAUTIFUL PERSON. SHE WAS A BEAUTIFUL PERSON WE WERE BLESSED WITH TO CALL MOM IF EVEN FOR A SHORT PERIOD. I MISS HER EVERY DAY.”

Becky M.



Jennifer H. and Julia H.

Sisters much missed

Cindy H. came to the National Inquiry to share the story of her two sisters, Jennifer and Julia.

While she told the Inquiry the difficult details of their deaths, she also shared what made them special and loved.

Cindy was close with both of her sisters. She remembers when Jennifer turned 18, and started to spend more time with Cindy and her mother, sitting outside in their backyard.

We had a great time, you know? She used to always make us laugh all the time.... She used to always curl her hair like my mom, eh, back in the day. They had these big roll curling irons, big curls like this, and she'd be way more hair, you know. She used to always like to look nice with her hair. That's all I remember her as, just having a good old time with her all the time, and I used to always stick up for her all the time, or she'd stick up for me!

Cindy's sister Julia, who passed away six years ago, had been trying to escape a violent relationship and stayed for a while at a housing unit for abused women. Despite her own struggles, she took Cindy in when Cindy needed it most.

When I got thrown out of my apartment with a couple of my kids, she kept me in that — in that apartment block, what the shelter gave her. She gave us a bed on her floor for a couple months and then I found my own place with my kids. She was a good woman. She would have been a good grandma. I wish she was still alive.^{II}

Most of all, Cindy told the Inquiry how much she missed them, and how things need to change.

They were good; they were good women at heart when they were alive.... Julia used to always listen to me and Jennifer used to always hang around with me all the time.... I wanted to be here for my two sisters, and for myself, and for my sisters' kids, you know? I'm happy I came, and my daughter is here. I just hope people will listen to my story and maybe, maybe they make a change.^{III}

— Cindy H., sister of Jennifer H. and Julia H.
From the statement gathered in Winnipeg,
October 20, 2017.

- I Cindy H. (Métis), Part 1, Statement Volume 53, Winnipeg, MB, p. 12.
- II Cindy H. (Métis), Part 1, Statement Volume 53, Winnipeg, MB, p. 21.
- III Cindy H. (Métis), Part 1, Statement Volume 53, Winnipeg, MB, pp. 21, 22.



In a second example, Métis witness Cindy H. shared how entrenched poverty and marginalization made her sisters Julia and Jennifer into targets.

Julia H. was just shy of 21 when she was found naked and unresponsive on Maryland Street in Winnipeg, Manitoba. Someone had mixed diabetic pills into her drink the night before, and she was brain dead by the time her sister Cindy and her mother arrived at the hospital the following day.

Twelve years later, Cindy’s other sister Julia was also found on Maryland Street in the middle of winter. She was outside her abusive partner’s apartment, frozen to death. She had been dragged outside in the night, and her body was covered in bruises. Despite this, in both situations, police said there wasn’t much they could do. No one was charged in either case.

As we will discuss later in this report, both federal and provincial governments have historically refused responsibility for the Métis. This has entrenched many Métis families in poverty. Many Métis women and girls have been forced into some of the most dangerous parts of cities, with almost no resources for support—and in this case, no justice for their families left behind.



Métis Moccasins, Lorraine Richard, AF A2019-0007.1
These moccasins were made by the late Irene Richard, who was taken from her family too soon. Lorraine remembers the time she spent learning this master craft with her mother and grandmother: “The connection made with these two strong women came with stories and using our language.... [These] are times I remember with love and calmness.”



Michelle S.

“The one I looked up to”

When Michelle first went missing, the newspapers didn't even use her name. Her family came to the National Inquiry to tell us about the strong, loving, driven person Michelle really was.

“My daughter, Michelle, she was 24 when she went missing and she was a beautiful child. Like, from when she was a baby, she was just always smiling. And then when she got used to being a big sister, she just – she loved Dani to pieces and same with Tony. She was like the second mom when I wasn't there, you know....

She deserved better, you know. And you can't question fate. I know that. I guess I'm just – I'm here also just to remind [you] my daughter wasn't just a working girl.... She was loved, you know. She has a lot of people that still cry for her, you know.”^I

– Mona S., mother to Michelle S.
From the National Inquiry's
Community Hearing in Metro Vancouver,
April 6, 2018.

“My oldest sister, Michelle, it's hard to put into words what she was and what she meant to my family and I. She was intelligent, caring, persistent, resilient, beautiful, kind, and extremely soft-hearted. She was also so much more than that.

She was my second mother. She was the one who gave me haircuts, the one who made me dinner when I was hungry, the one who I looked up to, the one who made my birthday special, the one who loved and looked after me when no one else was around to. She loved butterflies and the Little Mermaid. She wanted to be a stylist. She wanted to be somebody.

Around my 10th birthday my mother succumbed to the pull of addiction once more. She was not around much during this time and it was up to Michelle to take care of me. She did the best she could. She did a fantastic job.... Michelle [S.] was my sister. I miss her every day.”^{II}

– Anthony S., brother to Michelle S.
From the National Inquiry's Community
Hearing in Metro Vancouver,
April 6, 2018.

I Mona S. (Wuikinuxv Nation), Part 1, Public Volume 98, Metro Vancouver, BC, pp. 7-8.

II Anthony S. (Wuikinuxv Nation), Part 1, Public Volume 98, Metro Vancouver, BC, pp. 38 and 40.



In a third case, a First Nations woman named Michelle S., living in Burnaby, British Columbia, had different obstacles to accessing the services she needed. For example, when her mother divorced her abusive father, her father had a legal obligation to provide child support. However, the worker assigned to her family refused to help them collect this child support. Michelle's mother, a residential school survivor, developed significant addictions, and left an 18-year-old Michelle to try to support the family. Child Protection Services became involved, and the younger children were separated into different homes. Michelle, however, since she was too old for the child welfare system, did not receive any support.

One of the biggest challenges for Michelle was in getting support from her band, the Wuikinuxv Nation, to join an esthetician program. While the band funded education for her siblings, they rejected her requests because they didn't consider it a career worth funding. Having been denied the funding, and with few options, Michelle eventually ended up working in the sex trade with her mother. In 2007, Michelle was found murdered. The perpetrator has never been tried for her death.

Unlike in Deidre's case, services existed that were supposed to help support and protect Michelle's family, both provincially and from her own band. However, the many barriers to actually receiving these services ultimately put her into a very difficult position, where she was targeted for violence.

Looking at the truths shared by survivors and family members through an intersectional lens allows us to take into account how their identities interact with different systems. It also means we can better address how those systems need to be transformed, so that governments and institutions can turn dangerous encounters into safe ones.

Using an intersectional approach also puts a person's individual lived experience in context, revealing systemic or underlying causes of discrimination. Survivor Alaya M. recognizes these intersections, and this motivates her to speak out for others in the same situation:

This story is going to ... hopefully empower those victims whom are being victimized across Canada to – to see a light and to – to understand ... that they're a victim, but [also] help them identify their roles and responsibilities moving in from that victimization into the survivor role, into the warrior role that they should be in.²⁵

Beverly Jacobs, former president of the Native Women's Association of Canada, explains, "Just understand and care what happens to Indigenous women and communities. By considering the intersections between racism and sexism, we can hope to change the systemic barriers to equality for our country."²⁶ As Jacobs makes clear, much of the testimony we heard that concerned systems and institutions underscored the importance of understanding the lived experiences of Indigenous Peoples, and the gendered experiences of Indigenous women, girls, and 2SLGBTQIA people in particular.



Seeing how different systems work to oppress Indigenous women, girls, and 2SLGBTQQIA people is part of an intersectional approach to studying encounters. As scholar Nicole Clark suggests, this means drawing “theory and understandings from the everyday lives of young indigenous women in context.”²⁷

An intersectional approach puts a person’s individual lived experience in context, to reveal systemic or underlying causes of discrimination. Understanding the connections among systems, institutions, and people, and how they can create further harm or help keep people safe, is vitally important to finding a way forward through concrete solutions to address violence.

Four Pathways That Maintain Colonial Violence

As we will explore further in Chapter 4, colonial violence is not a simple construction. Psychiatrist, philosopher, and anti-colonial theorist Frantz Fanon observed that violence within the context of colonization goes beyond simple administrative policies or structures oriented toward physical control. It is also inclusive of attempts to erase or eliminate Indigenous Peoples, along with economic restrictions.²⁸ The structure of colonial violence, which looks to the complete destruction and assimilation of Indigenous Peoples, also includes structures of what sociologist Pierre Bourdieu terms “symbolic violence,”²⁹ including practices of exclusion and the idea that Indigenous cultures and peoples are inferior, as is promulgated by educational systems, religious systems, and, in a more modern sense, by media.

In their descriptions of encounters, families and survivors who spoke at the National Inquiry consistently referred to four general ways in which their experiences were rooted in colonialism – both historic and modern forms. These four pathways continue to enforce the historic and contemporary manifestations of colonialism that lead to additional violence. They are:

- historical, multigenerational, and intergenerational trauma;
- social and economic marginalization;
- maintaining the status quo and institutional lack of will; and
- ignoring the agency and expertise of Indigenous women, girls, and 2SLGBTQQIA people.

As we will examine closely in the upcoming chapters, violence is more likely to occur when these four forms of colonial violence intersect in the lives of Indigenous women, girls, and 2SLGBTQQIA people.



Historical, Multigenerational, and Intergenerational Trauma

Throughout the testimony, family members, survivors, Knowledge Keepers, experts, and other witnesses often used the word “trauma” as a way to describe the deep emotional, spiritual, and psychological pain or “soul wounds”³⁰ they and their loved ones endure as a result of losing a loved one or surviving violence. Many Indigenous people hold a collective trauma as a result of these and many other losses inflicted through various forms of colonial violence. Family members and survivors told us that this context was significant to understanding the underlying causes of violence against Indigenous women, girls, and 2SLGBTQQIA people.

The idea of “trauma” is often characterized by medical and psychological ways of thinking that diagnose and individualize pain, suffering, or any of the ways a person responds to a traumatic experience. This perspective does not necessarily align with Indigenous ways of understanding harm, healing, grieving, and wellness. It also does not properly acknowledge the source of people’s suffering within the systems that have provoked it. As we will explore in upcoming chapters, many of the encounters that witnesses described showed moments in which their missing or murdered loved one is blamed for the violence they experienced, or for the choices they made afterwards to cope with that violence.

Indigenous practitioners and researchers have adapted the concept of “trauma” to recognize the distinct experience of colonialism as a source of trauma. For example, in her testimony as an Expert Witness during the Inquiry’s hearing on child and family welfare, Dr. Amy Bombay talked about the importance of Lakota social worker Maria Yellow Horse Brave Heart’s development of the concept of “historical trauma” to refer to the “cumulative emotional and psychological wounding over the lifespan and across generations, emanating from massive group trauma.”³¹

Brave Heart also introduced the concept of “historical trauma response.” This idea reframes challenges such as substance use, addiction, or suicidal thoughts, which are often seen as personal failings, as understandable responses to the trauma of colonial violence.³² Other trauma theorists refer to “multigenerational” and “intergenerational” trauma to emphasize the fact that colonial violence creates traumatic experiences that are passed on through generations within a family, community, or people.³³

Again, as Amy Bombay explained, these concepts “emphasize the cumulative effects that were transferred across generations, and that it [trauma] interacts with contemporary stressors and aspects of colonization like racism.”³⁴ For Bombay, these concepts are foundational to creating meaningful support and change “because without that understanding, people have a tendency to blame Aboriginal peoples for their social and health inequities and resist policies addressing them.”³⁵



In describing encounters that led to violence, almost all of the witnesses described a surrounding context marked by the multigenerational and intergenerational trauma of colonial violence. This trauma was inflicted through the loss of land, forced relocations, residential schools, and the Sixties Scoop, and ultimately set the stage for further violence, including the ongoing crises of over-incarceration and of child apprehension, along with systemic poverty and other critical factors.

Witness Carol B. shared her perspective about the impact of intergenerational trauma on her relationship with herself and others: “The intergenerational trauma brought on by the residential schools has really impacted our families in a negative way. How can you possibly learn to love and value yourself when you’re told consistently — daily, that you’re of no value. And that we need to take the Indian out of you. How could you value or love yourself?”³⁶

As Bombay pointed out,

After generations of children ... experienced ... this residential school context, children went back to their community with neither traditional skills nor access to dominant group resources. Victims and perpetrators were sent back to the same communities, and the effects of trauma and altered social norms also contributed to these ongoing cycles that were catalyzed in residential schools.³⁷

As the National Inquiry listened to the voices of the sons, daughters, nieces, nephews, sisters, brothers, parents, and grandparents who have lost loved ones, it became clear that the crisis of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people is yet another way in which the historic and collective trauma of Indigenous Peoples continues. In her testimony, Eva P. described the trauma she carries following the disappearance of her older sister:

You know, I’ve been going to counselling for the past two years. I’ve been seeing two different therapists. I go through my ups and downs. I isolated myself for six months after Misty went missing. I almost – I almost died. It’s tough. And, I can’t even imagine, like, this is a ... Canada-wide issue, and there’s more people. Like, there’s a lot of people in my situation.³⁸

“THE INTERGENERATIONAL TRAUMA BROUGHT ON BY THE RESIDENTIAL SCHOOLS HAS REALLY IMPACTED OUR FAMILIES IN A NEGATIVE WAY. HOW CAN YOU POSSIBLY LEARN TO LOVE AND VALUE YOURSELF WHEN YOU’RE TOLD CONSISTENTLY — DAILY, THAT YOU’RE OF NO VALUE. AND THAT WE NEED TO TAKE THE INDIAN OUT OF YOU. HOW COULD YOU VALUE OR LOVE YOURSELF?”

Carol B.



Social and Economic Marginalization

Another root cause of the disappearances and deaths of Indigenous women, girls, and 2SLGBTQQIA people is the social and economic conditions in which they live. It is compounded by the lack of political power that systems and institutions have afforded them to speak out. These conditions are a direct result of colonial governments, institutions, systems, and policies that actively work to ensure their social, economic, and related political marginalization. They are rooted in historic dispossession from the land as well as current policies, as many witnesses shared and as will be explored in subsequent chapters.

Indigenous Peoples experience poverty, homelessness, food insecurity, unemployment, and barriers to education and employment at much higher rates than non-Indigenous people. Indigenous women, girls, and 2SLGBTQQIA people experience social and economic marginalization at even higher rates. Again, it is essential to recognize that the high rates of poverty and these other factors are a result of colonial systems within which Indigenous Peoples are trying to survive.

Many reports have documented that people experiencing poverty, lack of housing, food insecurity, unemployment, and other conditions that make it difficult to meet one's basic needs are at a much higher risk of being targeted for violence. Witnesses who shared their stories with the National Inquiry echoed these well-known facts.

In her sharing, Marlene J. connected her inability to find safe housing to multiple experiences of sexual violence: "I would say I was raped three, sometimes four times a week.... I don't know. You'd have to ask the men that did the raping. I was just trying to survive.... Because I was homeless they decided that they would take advantage of the situation."³⁹

Other encounters involving women's attempts to access shelters, counselling, education, or other supports in their own communities also demonstrated how social and economic marginalization occurs at the level of community in ways that increase the risk for further violence. For example, front-line worker Connie Greyeyes described the distinct challenges Indigenous women face when they live in northern communities that have become part of the resource development economy. She explained that because of the lack of shelters or transition houses and the high cost of living in the North, "It's near impossible for a woman to actually leave a relationship and not live in deep poverty."⁴⁰ She went on to describe how this economic vulnerability makes staying physically safe even harder for women living in violent relationships: "Many women are just one argument with their spouse away from being on the streets."⁴¹

As the National Inquiry listened to stories describing the context surrounding the disappearance or death of loved ones, it became clear that relationships were used to deny the basic needs of Indigenous women, girls, and 2SLGBTQQIA people, and that it was this denial of social and economic security that led to violence.



Maintaining the Status Quo and Institutional Lack of Will

In describing the factors and contexts that led to violence in their own or their loved ones' lives, families and survivors clearly pointed to the role institutions and systems play in creating conditions that make violence possible.

In describing their encounters with the child welfare system, the justice system, the health care system, and with police, schools, and universities, and even with some advocacy and anti-violence agencies, witnesses commonly spoke of an institutional culture that individualized the challenges they faced, rather than recognized that these challenges were a reflection of the ways the institutions contribute to Indigenous stereotypes. As Delores S. explained:

The systems involved all respond that Nadine was at fault, and communicated it via body language, word usage and demeanor in speaking to the family. Their insensitivity to the family and uncompassionate [response to] Nadine's serious injuries exemplifies deeply ingrained attitudes and prejudices they hold.⁴²

When institutions see the challenges Indigenous Peoples face as individual issues or personal failings, they fail to protect the very people they're meant to serve. Again, following negative encounters with police, many witnesses said that they no longer felt safe to reach out to the police when they were in danger, fearing that the police themselves might also inflict further violence. These experiences of violence – predation with impunity – were a chief contributor in the reluctance of Indigenous women, girls, and 2SLGBTQQIA people to trust institutions.



Commissioner Lucki of the Royal Canadian Mounted Police testifies in Regina, Saskatchewan.

Indigenous women, girls, and 2SLGBTQQIA people commonly confront racist, sexist, and other discriminatory attitudes in their encounters with institutions, along with discrimination in the wider world, which is manifested in day-to-day interactions with people as well as in media representation of Indigenous women, girls, and 2SLGBTQQIA people. Through the National Inquiry process, many family members and survivors also described examples where the institutions and those who worked for them are the source of further physical, sexual, and psychological violence, due to stereotypical views about Indigenous Peoples.



In speaking of the role institutions play in contributing to the violence, in all of its forms, that persists today, many witnesses pointed to a blatant lack of moral and political will for real change. Witnesses widely acknowledged that governments' and institutions' failure to implement the many well-known and well-documented recommendations that advocates, community organizations, and government commissions have already made demonstrated a lack of real concern for the violence endured by Indigenous women, girls, and 2SLGBTQQIA people, including the inconsistent use of gender-based and culturally relevant analysis of government programs and policies.⁴³ This lack of concern blocks the formation of positive relationships and limits the process for transforming harmful encounters into positive ones.

Ignoring the Expertise and Agency of Indigenous Women, Girls, and 2SLGBTQQIA People

In describing the context around the violence they experienced, as well as the reasons why that violence has gone on for so long, witnesses regularly pointed to encounters that denied the knowledge, expertise, and agency held by Indigenous women, girls, and 2SLGBTQQIA people. The failure to value these understandings also points to the need to rebuild relationships.

Indigenous women, girls, and 2SLGBTQQIA people have gifted the National Inquiry with countless truths that make clear that they are powerful, caring, and resourceful leaders, teachers, healers, providers, protectors and more – including those whose lives have been shaped by violence. They demonstrated both an understanding of the factors that can help to improve safety, and a high level of commitment, action, and agency that can help reduce violence. We were reminded over and over again that the National Inquiry itself is the result of the tireless and creative work of Indigenous women, girls, and 2SLGBTQQIA people who have been fighting for years to have their voices and stories heard and to have their answers to the crisis of violence in their lives put in place.

Indigenous women, girls, and 2SLGBTQQIA people have solutions to ending violence in their lives. Despite this, as witnesses described in their encounters with colonial governments, institutions, and agencies, as well as within individual relationships and communities, more often than not other people or institutions actively deny them the opportunity to bring these solutions forward and create meaningful change.

As we will explore in this report, this denial of the wisdom, knowledge, and expertise of Indigenous women, girls, and 2SLGBTQQIA people happens in many different ways. This may be through the media's depiction of a survivor in ways that erase her many accomplishments to focus on her "risky lifestyle," or through bureaucratic policies that deny funding to Indigenous women's grassroots agencies. It may also happen through a general belief that an Indigenous woman living in poverty cannot be the most powerful and insightful voice on any committee or initiative working for change. In all of these scenarios, witnesses emphasized, encounters such as these that even momentarily deny the strength, wisdom, and agency of Indigenous women, girls, and 2SLGBTQQIA people are ones that rest at the heart of ongoing violence.



In Calgary, Alberta, the Union of British Columbia Indian Chiefs makes its closing submission, as a Party with Standing (PWS).

Indigenous Women, Girls, and 2SLGBTQQIA People as Rights Holders

It is clear that we need to insist on solutions for ending violence against Indigenous women, girls, and 2SLGBTQQIA people that focus on addressing the underlying systemic causes of violence, such as the ones we outlined above. Nonetheless, recommendations that focus on root causes such as these have been made many times before, and little has changed.

Tired of a lack of action on previous recommendations, and a lack of meaningful action to address the underlying conditions that perpetuate violence, many Indigenous women and 2SLGBTQQIA people, organizations, and others were clear that the National Inquiry needed to talk about the disappearances and deaths of Indigenous women, girls, and 2SLGBTQQIA people as a violation of their Indigenous and human rights through a gendered lens. As our *Interim Report* pointed out,

Colonization had devastating impacts on all Indigenous Peoples, but the experiences of First Nations, Inuit, and Métis women and girls, as well as Indigenous peoples who don't identify just as male or female, are distinct in some respects from those of men and boys. Building on these reports and centring female perspectives allows us to reframe the way we look at Indigenous women and girls. They are not only “victims” or survivors of colonial violence, but holders of inherent, constitutional, Treaty, and human rights that are still being violated.⁴⁴



This message is woven within our approach to analyzing the encounters and relationships that are significant to understanding violence: encounters not only teach us about the causes of violence, they also show us how Indigenous women's, girls', and 2SLGBTQQIA people's Indigenous and human rights are either protected or denied.

As we will develop throughout the *Final Report*, positioning our discussion of these encounters and their root causes in relation to the inherent Indigenous and human rights we will explore reveals significant historical and ongoing rights violations in four areas: the right to culture, the right to health, the right to security, and the right to justice. These themes are prominent ones within both human and Indigenous rights contexts, and affirm the importance of addressing the crisis of violence. They are not presented in order of priority or of importance: in fact, what our testimony demonstrates is the interconnectedness of all of these ideas and priorities, and the need to look at these as interdependent and indivisible.

For each of these four areas of rights violations, we consider both international human rights-based and Indigenous-based understandings of the rights of women, girls, and 2SLGBTQQIA people. These rights encompass the full range of socio-economic and political rights that significant and meaningful change requires. When we talk about culture, we are also talking about all of the necessary tools, supports, and resources required to enable the full realization of these rights – including social, economic, and political rights. These rights areas are also necessarily broad because of the great diversity of Indigenous Peoples who shared their truths concerning the need for basic rights in addition to specific supports in key areas like education, housing, standard of living, and health services. Indigenous Peoples have their own understandings of rights based on their own laws, traditional knowledge systems, and world views, which are often expressed through stories. These rights are not determined by international agreements, Canadian legislation, or Supreme Court rulings. These are expressions of Indigenous women's, girls' and 2SLGBTQQIA people's proper power and place.

At the same time, a variety of human rights instruments dealing with these themes can offer a tool for accountability and decolonization, if the solutions are placed within the context of the four root causes of violence: intergenerational trauma through colonization, marginalization, lack of institutional will, and the failure to recognize the expertise and capacity of Indigenous women themselves.

While we will look in depth at what family members' and survivors' testimonies reveal about each of these rights in later chapters, here we will provide a brief overview of how looking at encounters and the relationships they engender, in relation to human rights, Indigenous rights, and Indigenous laws and ways of knowing as expressed through stories, offers a new and powerful way to address the historic, ongoing, and current root causes that lead to violence against Indigenous women, girls, and 2SLGBTQQIA people today.



Right to Culture

Cultural rights are inseparable from human rights, as recognized in the 2001 UNESCO *United Nations Educational, Scientific and Cultural Organization's Declaration on Cultural Diversity*, as well as from Indigenous rights, as articulated in various instruments including, most recently, the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*. They are also inseparable from the social and political rights necessary to their full enjoyment.



A young jingle dress dancer dances for those in attendance in Winnipeg, Manitoba. She is the cousin of Nicole Ashley Daniels, an MMIW family member. Used with permission from the family.

Generally, the right to culture and identity can be defined as the right to access, participate in, and enjoy one's culture. This includes the right of individuals and communities to know, understand, visit, make use of, maintain, exchange, and develop cultural heritage and cultural expressions, as well as to benefit from the cultural heritage and cultural expressions of others. It also includes the right to participate in the identification, interpretation, and devel-

opment of cultural heritage, as well as in the design and implementation of policies and programs that keep that culture and identity safe. Other human rights, such as the right to freedom of expression, the right to information, and the right to education, are also key to fully realizing cultural rights. As the testimonies reveal, the right to culture and identity relates directly to the crisis of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people through the separation of families, the historical and contemporary realities of assimilationist and genocidal colonial policies, and the lack of culturally appropriate services in healing, justice, and other areas that continues to put Indigenous women, girls, and 2SLGBTQQIA people at risk. Racism, along with the attempted disruption of culture, promotes violence against Indigenous women, girls, and 2SLGBTQQIA people.



As we will examine more closely in the next chapter, most Indigenous societies place cultural knowledge at the heart of Indigenous world views. Within our framework, women, girls, and 2SLGBTQQIA people's right to culture and identity connects to their roles and responsibilities as leaders and teachers within communities. Traditional stories from Nations across Canada show us that women and 2SLGBTQQIA people have leadership and teaching roles as those who pass on culture and identity to their people. They help strengthen and maintain collective identity. This role is placed in jeopardy in many instances, as we heard much about how contemporary child welfare practices, for example, directly work against this important task, whereas understanding one's culture can directly contribute to safety.

Indigenous women, girls, and 2SLGBTQQIA people have the inherent right to their own culture and identity, and to foster culture and identity within their families and communities through the full implementation of economic, social, and political rights that can help protect these practices and this knowledge.

Right to Health

When rights to culture and identity are in jeopardy, the right to health is also under threat. We define "health" as a holistic state of well-being, which includes mental, emotional, physical, and spiritual well-being, particularly within Indigenous world views. In this way, health is not simply an absence of illness or disability.

The right to health is linked to other fundamental human rights, such as access to clean water and adequate infrastructure in communities. On a more general level, however, the right to health speaks to preventing harm to others, to protecting the health of children and families, and to fostering mental health. We recognize that an absence of services, or a lack of culturally appropriate services in communities, as well as other factors linked to health place women, girls, and 2SLGBTQQIA people in vulnerable situations where they become targeted for violence.

For many groups, Indigenous understandings of women's, girls', and 2SLGBTQQIA people's right to health are based on their roles, responsibilities, and related rights as healers. Stories show us that women and gender-diverse people have critical responsibilities in creating healthier communities. As healers and medicine people, they have specific expertise in addressing physical, mental, emotional, and spiritual needs. This includes addressing their own unique needs as women, girls, and 2SLGBTQQIA people, and bringing much-needed perspectives to keep communities healthy and whole.

Indigenous women, girls, and 2SLGBTQQIA people have the inherent right to their own health and well-being, and the right to use their expertise, and the tools necessary for health, to contribute to the health and well-being of their families and communities, within the full spectrum of human rights in the areas of health.



Right to Security

Many encounters we heard about concerned the basic right to security. We understand the right to security as a physical right, as well as a social right.

Physically, the right to security includes the right to life, liberty, and personal safety. This includes control over one's own physical and mental health, as well the protection of one's own psychological integrity. In Canada, the *Canadian Charter of Rights and Freedoms* protects individuals from grave psychological harm perpetrated by the state. On an international level, in the area of social security, the right to security means that the state must ensure protective services or social service assistance and guarantee the protection of the entire population through essential services such as health, housing, and access to water, food, employment, livelihood, and education. Because of its redistributive nature, the right to social security is an important factor in community health and harmony and in reducing poverty.

Indigenous women's, girls', and 2SLGBTQQIA people's right to security connects to their roles, responsibilities, and rights as providers and defenders. Traditional stories show us that Indigenous women, girls, and gender-diverse people have critical responsibilities in fostering a safe, secure community. They do this by providing for themselves and their communities, by protecting the vulnerable, by managing and redistributing resources as necessary, and by being the keepers and defenders of the water, land, plants, and animals on which we depend.

Indigenous women, girls, and 2SLGBTQQIA people have the inherent right to security in their own lives as well as the right to directly participate in maintaining that security for themselves and others, within their own understandings and within the full spectrum of economic, social, and political rights that can contribute to increasing security.

Right to Justice

As many of the testimonies demonstrate, the problematic relationships between Indigenous women, girls, and 2SLGBTQQIA people and the judicial system are also very significant. Barriers to justice take many forms, including the isolation of victims through inadequate victim services, the failure to accommodate language barriers, and the way Indigenous victims are either portrayed or ignored in the media. Indigenous women, girls, and 2SLGBTQQIA people are also overpoliced and overincarcerated as potential offenders, yet under-protected as victims of crime.

All of these barriers demonstrate important moments of disconnection between Indigenous Peoples and the Canadian justice system, between the promises of blind justice that the system is meant to deliver and the actual functioning of this system. In the upcoming chapters, we will bring forward transformational encounters Indigenous people have had with the justice system, as well as ongoing issues with access and institutional constraints that present barriers to justice for Indigenous Peoples and that threaten the legitimacy of the process for Indigenous communities.

Indigenous women's, girls', and gender-diverse people's right to justice also connects to their roles in protecting their communities. Stories show us that they fought to keep themselves and



others safe from violence. Many women, girls, and gender-diverse people in stories are also survivors and heroes – those who put themselves in danger to save others.

Indigenous women, girls, and 2SLGBTQQIA people have the inherent right to live free from violence or injustice. If this does not happen, they have the right to have this violence stopped and condemned, with others' support as they confront it as needed. These rights exist both in Indigenous Peoples' own terms, as well as within the basic human rights framework that exists to eliminate violence against women in general and Indigenous women, girls, and 2SLGBTQQIA people in particular.

Promoting and Maintaining Healthy Encounters

All of these themes – along with the encounters that Indigenous women, girls, and 2SLGBTQQIA people have in the areas of culture, health, safety, and justice – show how imposed solutions created by governments or agencies that don't prioritize the knowledge of Indigenous Peoples don't work. Rights to culture, health, security, and justice are based on another foundational right: the right to self-determination. We understand the right to self-determination in Indigenous terms, in terms specific to Nations, communities, and, most importantly, to women themselves.

That's why this report will also address how, embedded within these stories of the encounters that families and survivors see as significant, are also the strong voices and acts of resilience and strength – the encounters and relationships leading to healing. In sharing their stories of these encounters, as well as the broader relationships that are an important part of their identity, witnesses also reminded the Commissioners of, or provided teachings that assert, the strength, resistance, creativity, and power of Indigenous women, girls, and 2SLGBTQQIA people even within a system of relationships that makes every effort to deny them those qualities.

We can return to Carol's description of her initial encounter with the police to witness this resistance. When faced with the officer's indifference, Carol, in fact, did not simply walk away, as the officer may have hoped. Instead, as she stated, "I banged my hand hard on the counter," demanding attention. When he continued to ignore her, Carol said, "Once again, I slammed my hand hard on the desk." The next day, she returned to the police station with an interpreter, and went on over the next five years to become a powerful and vocal advocate for the families of missing and murdered Indigenous women and girls.

Her resistance and strength do not diminish the pain of losing her daughter to violence, or the anger she expresses at the officer's refusal to act during that crucial first meeting. However, her story shared with the National Inquiry does send a powerful message to those who may choose to act in a similarly dismissive way: relationships in which those in authority or power abuse that power to silence Indigenous women or prevent them from protecting themselves and their loved ones from violence will no longer be tolerated. Transforming these relationships will no longer be left in the hands of those who have for too long done nothing to create change.



As Fay Blaney, a Xwémalhkwu (Homalco) Knowledge Keeper, asserts, “I fully believe in the power of Indigenous women working together and being able to come up with solutions.”⁴⁵

She continues:

Whenever ... we talk about women’s issues, they bring up, “Well, what about balance?” And I think that we really need to look at the fact that there is zero balance in our community. Somebody’s got to open their mouth and say that, but there is no balance right now.

It’s – men control the private sphere and the public sphere, and the private sphere is the family unit where, you know, we have our Indian Status because of the men in our lives. I have Status because of my husband, and before that, I had Status because of my father. And so, in our world, men hold all the cards and we hold none.

So I think it’s really important to look at what are we talking about when we say balance, and let’s bring balance back, I say. Let’s decolonize by bringing our matriarchal traditions back.⁴⁶

As Fay’s testimony reveals, part of understanding the right to self-determination is understanding how patriarchal institutions have worked, over the course of colonization and today, to keep women and 2SLGBTQQA people out of the decision-making process.

In the sphere of rights, the right to self-determination can take several forms. It includes, among many other things, the authority to keep hold of one’s culture in the face of threatened assimilation, and right of children to be raised in their own language and culture. The right to self-determination also includes the ability to make choices in the interest of one’s own group and within one’s own group, and includes socio-economic and political rights. For women, self-determination also means that women themselves should be able to actively construct solutions that work for them and are according to their own experiences. This doesn’t mean that men aren’t a part of this conversation – to the contrary – but it does mean, as Fay Blaney shared, that solutions must come from the women themselves.

Within our framework for building better encounters, self-determination also means that we must fundamentally reconsider how to frame relationships that embrace the full enjoyment of rights in ways that go beyond simple state structures and a simple “us–them” approach, and that can extend to all aspects of community and individual life. In many of the testimonies, witnesses talked about work that needs to happen in communities and within Indigenous governments, as well as within settler governments.

Because of this, finding self-determined solutions for addressing the crisis of missing and murdered Indigenous women, girls, and 2SLGBTQQA people means conceptualizing rights as founded in all relationships, rather than in contracts, and understanding that at the centre of it all, we begin with our relationships to each other.

Understanding the crisis of violence against Indigenous women, girls, and 2SLGBTQQA people as one based in key relationships provides a new way to look at how systems, structures, policies, and people work to target Indigenous women, girls, and 2SLGBTQQA people. The frame-



work of encounter and of relationship also emphasizes the potential for change at all levels, not just at the state or government level. At the same time, it also provides a powerful lens – a call for justice – through which we can imagine a new and brighter future, with safety, health, and healing for Indigenous women, girls, and 2SLGBTQQIA people and the families who have lost those most important to them.

Encounters and relationships, within the right to self-determination, present potential for change at all levels. While state-supported human rights can be helpful in keeping governments accountable, a full understanding of both Indigenous and human rights concepts is important to also understanding how solutions must be based in new relationships that are reciprocal and renewing, and that acknowledge how we are all connected. This is where we find power and place.

“I FULLY BELIEVE IN THE POWER OF INDIGENOUS WOMEN WORKING TOGETHER AND BEING ABLE TO COME UP WITH SOLUTIONS.”

Fay Blaney

Conclusion: Bringing It All Together

This chapter has outlined the National Inquiry’s framework and approach for understanding the truths we heard throughout this process. This includes understanding that Indigenous women, girls, and 2SLGBTQQIA people are holders of rights, as human beings and as Indigenous Peoples, in key areas that relate to their safety and to justice and that also link to Indigenous ways of knowing, understanding, and engaging in relationship. This framework has identified four root causes of violence, including intergenerational trauma; social and economic marginalization; a lack of institutional and political will; and the failure to recognize the expertise and capacity of Indigenous women themselves in creating self-determined solutions.

But understanding all of these causes in relation to only one aspect of government or service delivery won’t fully address the targeting of Indigenous women, girls, and 2SLGBTQQIA people. Of all of the threads that run through the truths the National Inquiry heard, one that remains extremely powerful in understanding every story is that relationships matter.

Relationships matter because they can contribute to health or to harm – relationships can be the difference between life and death. And when they are formed – in the moments of encounter that so many people identified as harmful or damaging – there is also a new opportunity to create something better, and to improve outcomes for Indigenous women, girls, and 2SLGBTQQIA people.

Indigenous girls, women, and 2SLGBTQQIA people are targeted by colonial violence embedded within institutions, structures, and systems, as well as interpersonal violence, where these encounters occur. In many cases, this violence was forced on people in unexpected ways. In other cases, a combination of oppressive systems and actions created circumstances that ultimately targeted women, girls, and 2SLGBTQQIA people. As a family physician specializing in



Indigenous health and northern practice, and a leader in the field of educating physicians in training, Dr. Barry Lavallee explained:

Indigenous women are not vulnerable, Indigenous women are targeted in secular society for violence. There's a very big difference to [being] vulnerable. To be vulnerable in medicine means that if I irradiate your body and you have no cells, you are vulnerable to an infection. But, to be vulnerable to murder because of your colour, and your positionality and just being Indigenous is targeting. It is an active form of oppression of Indigenous women.⁴⁷

As witnesses demonstrated in their evidence and as we will demonstrate throughout this report, listening deeply to what happens within a relationship reveals important information about the contexts, institutions, beliefs, values, and people who come together in some way to form relationships that are at the root of violence against Indigenous women, girls, and 2SLGBTQIA people. By focusing on relationship and encounter, this report points to specific moments where violence and the accompanying violation of human and Indigenous rights take place, as well as the moments where alternatives exist. By documenting these encounters, this report insists on accountability for all levels of government and a realistic assessment of the ongoing reality of violence in the lives of Indigenous women, girls, and 2SLGBTQIA people.

Change begins by recognizing the importance of these interactions. Understanding that, we also understand that the way forward means nothing less than transforming these encounters within our own relationships and at every level of society.

In its focus on the teachings about relationship, offered through moments of encounter, this report aims to go beyond simply documenting the scope and nature of the crisis of missing and murdered Indigenous women and girls. Instead, we aim to step outside of frameworks and narratives that are rooted in colonial and bureaucratic structures. We look to reflect the strength and resilience that can be found in the values, cultures, and identities of Indigenous women, girls, and 2SLGBTQIA people themselves, and in relationships that begin every single day.

“INDIGENOUS WOMEN ARE NOT VULNERABLE, INDIGENOUS WOMEN ARE TARGETED IN SECULAR SOCIETY FOR VIOLENCE.”

Dr. Barry Lavallee



Notes

- 1 Institute for the Advancement of Aboriginal Women (IAAW) and the Women's Legal Education and Action Fund (LEAF), "Submission: Independent Review of Circumstances Surrounding the Treatment of 'Angela Cardinal' in R. v. Blanchard," 15 October 2017, 1. Accessed September 8, 2018. <https://www.leaf.ca/wp-content/uploads/2017/11/Cardinal-Inquiry-IAAW-and-LEAF-Final-Submission-Oct-15.pdf>
- 2 First Nations, Métis and Inuit societies have their own understandings of gender and sexual diversity that are different from Western ones. Because there is such a wide range of understandings within Indigenous Peoples, the National Inquiry uses the umbrella term "gender-diverse people" for examples of gender diversity across different time periods, contexts, and Peoples. The term "Two-Spirit" comes out of a Native American/First Nations gay and lesbian conference in 1990, and was chosen to be a culturally appropriate umbrella term for First Nations that could replace the more derogatory term of "berdache." The National Inquiry uses the acronym of 2SLGBTQIA (Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual) to refer to a modern-day community of gender diverse people across all Indigenous people groups, including gender-diverse Inuit, while recognizing the limitations of any acronym.
- 3 Mavis Windsor (Heiltsuk Nation), Part 1, Public Volume 90, Vancouver, BC, p. 21.
- 4 Sandra Montour (Turtle Clan, Mohawk), Part 2, Public Volume 4, Calgary, AB, p. 211.
- 5 Marilyn W. (Cree), Part 1, Public Volume 30, Saskatoon, SK, p. 18.
- 6 Wilson, *Research Is Ceremony*.
- 7 Percy P. (Alexis Nakota Sioux Nation), Part 1, Public Volume 31, Saskatoon, SK, pp. 15-16.
- 8 Ermine, "Ethical Space," p. 195.
- 9 Cheryl M. (Mi'kmaq), Part 1, Public Volume 18, Membertou, NS, p. 17.
- 10 Jamie L. H. (Indigenous/Irish), Part 1, Public Volume 78, Vancouver, BC, pp. 12-13.
- 11 Anni P. (Cree), Part 1, Public Volume 80, Vancouver, BC, pp. 16-17.
- 12 Darlene G. (Annapolis Valley First Nation), Part 1, Public Volume 18, Part 1, Membertou, NS, pp. 54-55.
- 13 Barbara H. (Ebb and Flow First Nation), Part 1, Public Volume 10, Winnipeg, MB, p. 114.
- 14 Barbara H. (Ebb and Flow First Nation), Part 1, Public Volume 10, Winnipeg, MB, p. 114.
- 15 Carol W. (Muskeg Lake Cree Nation), Part 1, Public Volume 31, Saskatoon, SK, pp. 55-56.
- 16 Carol W. (Muskeg Lake Cree Nation), Part 1, Public Volume 31, Saskatoon, SK, p. 56.
- 17 Dr. Robyn Bourgeois (Cree), Part 3, Public Volume 17, St. John's, NFLD, p. 37. During her testimony, Dr. Bourgeois explained that this question is one she has adapted from an article by Sharene Razack called "Race, Space, and Prostitution: The Making of the Bourgeois Subject" in which Razack asks: "What is the source of the ideas that make it okay to abuse people involved in the sex trade?" (See Razack, "Race, Space, and Prostitution.")
- 18 Hankivsky, Cormier and de Merich, "Intersectionality," 3.
- 19 Crenshaw, "Demarginalizing the Intersection."
- 20 Hankivsky, Cormier and de Merich, "Intersectionality," 3.
- 21 Hancock, "When Multiplication," as cited in Hankivsky, Cormier, and de Merich, "Intersectionality," 3.
- 22 Dhamoon, "Considerations," as cited in Hankivsky, Cormier, and de Merich, "Intersectionality," p. 6.
- 23 Morris and Bunjun, "Using Intersectional Feminist Frameworks," 1.
- 24 See, for example, Browne and Fiske, "First Nations Women's Encounters" and Smye and Browne, "'Cultural Safety'."
- 25 Alaya M. (Sandy Bay Ojibway First Nation), Part 1, Public Volume 13, Winnipeg, MB, pp. 8-9.
- 26 Beverly Jacobs, quoted in University of Alberta Faculty of Law Blog, "Intersectional Marginalization."
- 27 Clark, "Perseverance, Determination and Resistance," 135-36.
- 28 Fanon, *Les Damnés de la terre*, 9-12.
- 29 Bourdieu, *Masculine Domination*, 23, 34-35, 83; Bourdieu and Thompson, *Language and Symbolic Power*, 239-43.



- 30 Duran, *Transforming the Soul Wound*.
- 31 Dr. Amy Bombay (Ojibway, Rainy River First Nations), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, p. 148.
- 32 Linklater, *Decolonizing Trauma Work*, 34.
- 33 “Multigenerational” trauma “points to the multiple types of trauma understood as current, ancestral, historical, individual or collective experiences” (Ibid., 23). “Intergenerational” trauma looks more to the way trauma is “passed from one generation to the next, behaviourally and observationally and through memory” (Ibid., p. 23).
- 34 Dr. Amy Bombay (Ojibway, Rainy River First Nations), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, p. 147.
- 35 Dr. Amy Bombay (Ojibway, Rainy River First Nations), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, p. 141.
- 36 Carol B. (Ermineskin Cree Nation), Part 1, Public Volume 20, Edmonton, AB, p. 75.
- 37 Dr. Amy Bombay (Ojibway, Rainy River First Nations), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, p. 158.
- 38 Eva P. (Alexis Nakota Sioux Nation), Part 1, Public Volume 31, Saskatoon, SK, p. 27.
- 39 Marlene J., Part 1, Public Volume 6, Smithers, BC, pp. 42-43.
- 40 Connie Greyeyes (Bigstone Cree Nation), Mixed Parts 2 & 3, Public Volume 6, Quebec City, QC. p. 50.
- 41 Connie Greyeyes (Bigstone Cree Nation), Mixed Parts 2 & 3, Public Volume 6, Quebec City, QC, p. 60.
- 42 Delores S. (Saulteaux, Yellow Quill First Nation), Part 1, Public Volume 26, Saskatoon, SK, p. 28.
- 43 For a thematic list of all previous recommendations made on this issue, see the “Master List of Previous Recommendations” at <http://www.mmiwg-ffada.ca/publications/>. For an overview of culturally relevant gender-based analysis, see Native Women’s Association of Canada, “Culturally Relevant.”
- 44 National Inquiry into Missing and Murdered Indigenous Women and Girls, *Interim Report*, p.13.
- 45 Fay Blaney (Xwémalhkwu of the Coast Salish), Part 3, Public Volume 4, Quebec City, QC, p. 110.
- 46 Fay Blaney (Xwémalhkwu of the Coast Salish), Part 3, Public Volume 4, Quebec City, QC, p. 135.
- 47 Dr. Barry Lavallee (First Nations/Métis), Part 3, Public Volume 9, Toronto, ON, pp. 62-63.



Indigenous Recognitions of Power and Place

Introduction: Women Are the Heart of Their Communities

In the beginning, there was nothing but water, nothing but a wide, wide sea. The only people in the world were the animals that lived in and on water.

Then down from the sky world a woman fell, a divine person. Two loons flying over the water happened to look up and see her falling. Quickly they placed themselves beneath her and joined their bodies to make a cushion for her to rest upon. Thus they saved her from drowning.

While they held her, they cried with a loud voice to the other animals, asking their help. Now the cry of the loon can be heard at a great distance over water, and so the other creatures gathered quickly.

As soon as Great Turtle learned the reason for the call, he stepped forth from the council.

“Give her to me,” he said to the loons. “Put her on my back. My back is broad.”¹

Women are the heart of their Nations and communities.

Through countless testimonies to the National Inquiry, we heard how the absence of women, girls, and 2SLGBTQQIA people has a profound and ongoing impact on communities, and how their gifts, as shared in distinctive roles and responsibilities, are crucial to community wellness, to help communities thrive. As a whole, these roles and responsibilities are linked to various systems of Indigenous laws and rights that flow from them.



First Nations woman at the annual Sun Dance ceremony at the Káinawa First Nation Reserve near Cardston, Alberta, 1953. Source: Library and Archives Canada/ National Film Board of Canada fonds/e010949128.

These Indigenous laws and the roles, responsibilities, and rights they teach are distinct from the concept of Indigenous rights as they have been defined by the courts, particularly since 1982. As Tuma Young, Professor of Mi'kmaq Studies at Unama'ki College, explained in his testimony before the Inquiry, "Aboriginal law, as taught in law school, is really Canadian law as it applies to Indigenous people. It is not Indigenous law."² In this section, we first consider how the testimonies offered to the National Inquiry serve as indicators of different visions of roles and responsibilities, and how the rights stemming from them can inform our priorities and our path forward.

Families, survivors, and other witnesses have gifted us their stories and truths throughout the Inquiry's Truth-Gathering Process. They echoed over and over again what the National Inquiry Grandmothers said at the very beginning: stay grounded in culture, which represents the strength of Indigenous women and of their communities, however defined. Dr. Janet Smylie, a Cree/Métis physician and Knowledge Keeper who spoke about strength-based approaches at the Inquiry's hearing in Iqaluit, quoted former National Chief Phil Fontaine when he said, "We have the answers. The answers lie in our communities." She continued in her own words: "[The answers are] in our communities, in our stories, in our lived environments and in our blood memory. So we all know, as First Nations, Inuit, Métis, urban Indigenous people, what we need. We have it still."³

Indigenous Peoples have always had their own concepts of roles and responsibilities, linked to the rights that women, girls, and 2SLGBTQQIA people hold within their communities or Nations. Dawnis Kennedy, whose traditional name is Minnawaanigogiizhigok, explained about all members of the community:



You know, every stage of life has a gift, has a purpose, has a role. You know, little babies, they bring joy to the world. Little kids, they have curiosity. They teach us about safety. You know, every single age group has a gift.... If we recognize all of those gifts and all of those responsibilities and all of those roles in every age group, then every child will have the kind of life that will allow them to share their gift of joy and to keep that, because it's meant for the world.⁴



Inuk mother gives her child a kunik, or kiss, n.d. Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/e006609837.

Because these responsibilities are relational and reciprocal, they tell us what people should be able to expect from others. They are also rooted in certain underlying values or principles within Indigenous laws and value systems that are shared across Indigenous communities, such as respect, reciprocity, and interconnectedness. Understanding how these values shape the roles and responsibilities of Indigenous women and 2SLGBTQQIA people is particularly important because we can use these values to create healing encounters today. In addition, understanding the distinctions among Nations and communities in key areas is important in understanding that there is no one solution to implementing measures to promote safety and justice.

Each testimony we heard provided unique perspectives of roles and responsibilities in various Nations and communities, and, in doing so, demonstrated how women, girls, and 2SLGBTQQIA people hold rights, within diverse Indigenous laws, related to culture, health, safety, and justice. These rights come from the knowledge and wisdom of distinct Nations and Peoples. In predominantly oral Indigenous traditions, this wisdom is most often shared through stories like the one that begins this chapter.



Just as the loons support Sky Woman as she falls from the sky, so, too, do the teachings offered within traditional stories support our work in transforming relationships that harm Indigenous women and girls into ones that recognize their power and place. As Law Foundation Chair of Aboriginal Justice and Governance at the University of Victoria Dr. Val Napoleon explained before the Inquiry:

We know that across Canada there are diverse legal orders and that people are adaptable.... Our ancestors, our relatives, were pragmatic in terms of ensuring that their children were able to survive in the world. And as Dr. Hadley Friedland has already said, all law is meaningful, it's messy, and it has to be in practice as well as in theory.⁵

This chapter will, first, articulate how Indigenous laws can serve as a foundation for a decolonizing strategy based in Indigenous ways of knowing and understanding relationships and social order. It will then outline how the values of respect, reciprocity, and interconnectedness can help connect principles across a diversity of Indigenous communities, as demonstrated in a variety of stories that are still used in teaching today. With the understanding of the contemporary importance of these principles, this chapter then examines the historical roles, responsibilities, and rights of women and gender-diverse people in their own terms, prior to colonization, as a way to argue for a new foundation to understanding the rights of Indigenous women, girls, and 2SLGBTQIA people: as rooted in relationships.

“[THE ANSWERS ARE] IN OUR COMMUNITIES, IN OUR STORIES, IN OUR LIVED ENVIRONMENTS AND IN OUR BLOOD MEMORY. SO WE ALL KNOW, AS FIRST NATIONS, INUIT, MÉTIS, URBAN INDIGENOUS PEOPLE, WHAT WE NEED. WE HAVE IT STILL.”

Dr. Janet Smylie

Two-Eyed Seeing: Diverse Legal Orders and Inherent Indigenous Laws

In testimony before the National Inquiry, Tuma Young explained that, within his L'nu (Mi'kmaq) world view, the concept of two-eyed seeing is very important: “An issue has to be looked at from two different perspectives: the Western perspective and the Indigenous perspective, so that this provides the whole picture for whoever is trying to understand the particular issue.”⁶

In the context of our work at the Inquiry, this means grounding our analysis in Indigenous ways of knowing and of understanding, as shared with the Commissioners and with Canadians.



An important component of this work is understanding that there exist other legal orders in Canada, beyond those that most people know. Indigenous laws include principles that come from Indigenous ways of understanding the world. They come from relationships and understandings about how societies can function that include rights and responsibilities among people and between people and the world around us.

Relationships are the foundation of Indigenous law. As Val Napoleon explained, “It’s tools for social ordering; it’s problem-solving; and it’s the way that we resolve conflicts and we manage conflicts. And when our legal orders failed or we didn’t properly adhere to our own legal orders, we can look at our oral histories and see what happened in our societies during those times.”⁷ In other words, as legal scholars Emily Snyder, Val Napoleon, and John Borrows explain, Indigenous law and Indigenous societies are linked, as a “specific set of ideas and practices aimed at generating the conditions for greater peace and order.”⁸

As they relate to the expression of rights, Indigenous laws and the ideas upon which they are based are also linked to the idea of inherent rights. They are inherent because they are not Western-based or state-centric. This means they can’t be taken away by provinces and territories, by the government of Canada, or by the United Nations.⁹

Inherent Indigenous law belongs to all Indigenous communities and Nations. As Dawnis Kennedy notes, a fundamental principle of Indigenous law is the idea that: “All peoples were given a language, all peoples were given a law, all peoples were given songs. All peoples were given gifts to live into the world, and those are gifts from spirit and they are necessary in the world and they are necessary in building good relationships with each other.”¹⁰ Individually, too, “a fundamental precept of our law is that everyone has a place. We might not know that but everyone belongs. Everyone is here for a purpose. Everyone is here for a reason. Everyone matters as much as the next, a fundamental law.”¹¹

“AN ISSUE HAS TO BE LOOKED AT FROM TWO DIFFERENT PERSPECTIVES: THE WESTERN PERSPECTIVE AND THE INDIGENOUS PERSPECTIVE, SO THAT THIS PROVIDES THE WHOLE PICTURE FOR WHOEVER IS TRYING TO UNDERSTAND THE PARTICULAR ISSUE.”

Tuma Young



Indigenous Rights: Inherent and Inalienable

The idea that people have rights that are inherent and inalienable has a long history in Western political thought. European Enlightenment philosophers such as John Locke^I and Jean-Jacques Rousseau^{II} argued that human beings possess natural rights. These rights could not be granted or taken away by governments because they are intrinsic.

References to inherent and inalienable rights were included in important political manifestos in the 18th and 19th centuries. For example, the American *Declaration of Independence* (1776) asserted that it is “self-evident” that “all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.” The *Declaration of the Rights of Man and of the Citizen* (1789), issued during the French Revolution, likewise recognized that citizens held “natural, unalienable, and sacred rights” that governments must respect.

Today, the legal discourse of human rights is the most prominent expression of inherent and inalienable rights. The United Nations *Universal Declaration of Human Rights*, issued in 1948, is one of the most important human rights covenants in the world today. In its preamble, it asserts that “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.”^{III}

However, despite the bold rhetoric in these proclamations, the rights referred to were denied to many people. Until relatively recently, most people living in Western society did not have access to basic civil liberties, especially women and racialized peoples.

There is also a long history of recognition that Indigenous Peoples possess unique rights. For example, the *Royal Proclamation of 1763* recognized that Indigenous Peoples in what is now Canada have rights to their lands and resources. However, governments have frequently failed to treat Indigenous rights as inherent and inalienable.

For example, the landmark decision of the Judicial Committee of the Privy Council in *St. Catharine's Milling and Lumber Co. v. The Queen* (1888) argued that Indigenous Peoples' land rights are not inherent but “dependent on the goodwill” of the Crown. This idea that Indigenous rights are contingent remained law in Canada until the precedent was overturned in the Supreme Court's ruling in *Calder v British Columbia* (1973). In *Calder*, the courts ruled that Aboriginal land rights exist independent of their recognition in British Canadian law. In other words, the court recognized that these rights are inherent.^{IV}

Despite this ruling, there have been ongoing debates over whether all Indigenous rights should be understood as inherent. The 1982 *Constitution Act* recognized and affirmed Aboriginal rights. However, the Constitution did not define these rights and, instead, left definitions to a series of meetings among the prime minister, the premiers, and Indigenous leaders. These meetings resulted in a stalemate as Indigenous and Canadian leaders were unable to



agree on several important issues. One of the most contentious issues was the question as to whether Indigenous Peoples possess an inherent right to self-government.^v

Canada has also failed to recognize that Indigenous rights are *inalienable*. From the very first recognition of Indigenous Peoples' rights in the 16th century, British and Canadian governments have sought to alienate (or "extinguish") Indigenous Peoples' inherent rights through Treaty and legislation. Most historic Treaties negotiated in Ontario and western Canada claim that the Indigenous signatories agreed to "cede" or "surrender" their rights (although the legitimacy of these clauses is highly dubious). Modern Treaties (also called "comprehensive land claim agreements") negotiated between 1975 and 1993 also contained a variant of the "surrender" clause. More recent land claim agreements do not contain language that explicitly surrenders rights.

Instead, these agreements have a "certainty" clause that states that the Treaty "exhaustively" lists the rights of the Indigenous signatories.^{vi} Many Indigenous Peoples have argued that this "certainty" clause has the same legal effect as the old "surrender" clause, because it extinguishes all rights that are not included in the agreement.^{vii}

Some Indigenous leaders have argued that taking a human rights approach to Indigenous rights may help resolve this problem.^{viii} Because human rights are widely accepted to be inalienable, treating Indigenous rights as a subset of human rights may mean that the extinguishment of Indigenous rights is legally impossible. The full implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (2007) – which takes a human rights approach – would be an important step in this direction.

I Locke, *Second Treatise of Government*.

II Rousseau, *On the Social Contract*.

III United Nations, *Universal Declaration of Human Rights*.

IV Asch and Macklem, "Aboriginal Rights and Canadian Sovereignty."

V Ibid.

VI Kulchyski, "Trail to Tears."

VII Manuel and Derrickson, *Unsettling Canada*.

VIII Nunavut Tunngavik Incorporated, "A Submission to the Royal Commission on Aboriginal Peoples."



The Grandmother Earth Dress is a traditional red jingle dress, created by the Ontario Native Women's Association (ONWA), and inspired by Jaime Black's REDress Project. The dress honours and acknowledges missing and murdered Indigenous women, girls, and 2SLGBTQQIA people, and serves as an item of healing for families. According to ONWA, the dress is meant for families to visualize their loved one in beautiful traditional regalia. See the blog at <http://mmiwontario.ca/index.php/blog/earth-dress>.

These laws and principles respecting roles, responsibilities, and rights are drawn from various sources, including language. As Tuma Young explained, the L'nu language is verb-based; it is an action language in which pronouns are optional. For Young, the purpose of the language is to establish and maintain relationships among people, and between people and the world. Young said, "Well, here from the Mi'kmaw world view ... our principles come from our stories, our ceremonies, our songs, our languages, and our dances, you know, and ... most of our legal principles are there."¹²

Other Indigenous languages also contain embedded teachings about roles, responsibilities, and principles of law that are difficult to translate, due to the lack of reference concepts in non-Indigenous languages, as well as the differences in how ideas are constructed. For instance, the Anishinaabe language doesn't denote feminine or masculine pronouns; rather, things are characterized as animate or inanimate, as well as through the use of verbs, or action words. There are similarly complicated issues of translation regarding Cree teachings.

A key feature of the roles and responsibilities expressed during the course of the testimonies, both from Community Hearings and from Knowledge Keeper and Expert Hearings, was the idea that important principles about women's roles, traditionally and in a modern sense, are based on respect, reciprocity, and interconnectedness. These values may also be conceived as based in independence and interdependency.

Respect means honouring and respecting other living beings. Respect extends beyond humans to animals and other living elements in the world, and means acknowledging the contributions that each living thing makes to sustain life or to contribute to a good life, both individually and collectively.



Reciprocity is about give and take. When a relationship is reciprocal, both sides actively participate in giving what is needed and taking what is needed. Within many Indigenous world views, the principle of reciprocity isn't time-bound, because it exists not on a timeline but in a circle; everything is linked and connected. This means that in everything, there is an exchange of ideas, and one idea or gift leads to another. Social reciprocity is about obligations to other members of the group, and is connected to reciprocity with the environment and the land. It creates rights and obligations for people toward each other.

Interconnectedness is the idea that the rights of individuals and of the collective are connected to rights of the land, water, animals, spirits, and all living things, including other communities or Nations. Interconnectedness recognizes that everything and everyone has purpose and that each is worthy of respect and holds a place within the circle of life. These roles and responsibilities, as well as the principles of law within them, can be expressed in language, use of land, ceremony, and in relationships.

Understanding How Laws Are Lived, in Community

Professor Jean Leclair, from the Faculty of Law at the University of Montréal, testified in Quebec City, pointing out, “For thousands of years, Aboriginal people had legal orders that worked very well, thank you. So how is it that for 150 years they would not be able to do it anymore?”¹³ A key feature of understanding Indigenous laws is also understanding that these were important in a very practical way within the lives of community members.

Speaking of *Onaakonigewin*, or Anishinaabe law, Dawnis Kennedy noted:

Our law we carry in our hearts and we live into the world through the decisions that we make. That's how we live our law. But our law is not human-made. I'm glad it wasn't left up to us. Our law is a law of life and how life flows, and it's up to us as humankind to look at all of our relations to figure out that law, to know that law, to connect that law, to live that law.¹⁴

Examples of living the law can be found in many different places, including the natural world. Some family members and survivors told the National Inquiry about drawing legal principles from the animal world, from the rain, from the movement of river water, and from the cycles of the moon. In her presentation to the National Inquiry, Val Napoleon said: “Natural law is also a source of law and John Borrows gives examples of his mother watching butterflies and milkweed. And she would observe that there would be fewer butterflies if the ... land wasn't being taken care of. So she was drawing lessons about that.”¹⁵

Drawing from the lessons of the natural world, as well as from necessary rules about social order and organization, Indigenous laws served to promote safety and justice. Val Napoleon continued:



Indigenous law has to be accessible, it has to be understandable, and it has to be applicable. It can't just exist in people's talk. It has to be a part of how we manage our behaviour with one another... And when we look at oral histories or we look at stories, the different kinds of oral histories that people had, those formed a public memory. They formed legal precedent from which we can draw on to solve present-day problems.¹⁶

In many cases, obeying Indigenous laws was a matter of life and death. These laws were not crucial just in terms of cultural knowledge, but at a basic level of survival. This is especially evident within stories shared by Inuit, whose environment strongly dictated the importance of the laws. As Sandra Omik, legal counsel at Nunavut Tunngavik Inc., explained:

The people, the community, there were couples, children, and grandparents, a sister, brother, an Elder, grandfather, grandmother; they would help each other elaborately so that they survive. So it's the same thing. Every day, daily they would help each other and it's part of their society in the North to survive the day so they work together. They live in harmony... If something happens or if a terrible thing happens or if there is a problem they would – they would get closer and resolve it and just to try to survive, for survival if somebody is stingy or if somebody is hungry. And the same with their minds. With their minds there is also peace and that was very collaborative.¹⁷

Collaboration, planning for the future, and being prepared were not necessarily laws, according to Sandra Omik, but were principles that were always followed, because “if the plan was not followed, we could have famine. We could freeze to death. We could not have seal to heat our lamps and therefore freeze.”¹⁸

Laws were also important when dealing with behaviour that wasn't accepted by the community, including violence. Communities' and Nations' own stories, both traditional and oral histories, feature key moments of violence, as the next section of this chapter will show, where members were banished, punished, or otherwise held to account for violence inflicted on other members of the community.

As Snyder, Napoleon, and Borrows argue, the failure to acknowledge that violence did exist within Indigenous communities in the past, and that sexism also existed, is dangerous. It disempowers Indigenous societies' ability to deal with these issues by insisting they are all new and all flow from colonization. While a great deal of the violence has links within the history of colonization, the tendency to sanitize the past makes the existing resources in the area of Indigenous laws seem invisible and irrelevant. Snyder, Napoleon, and Borrows explain, “It is possible to work with the idea that colonialism has negatively impacted gender norms and is reliant on gendered violence, without necessarily having also to claim that gender relations prior to contact were perfect.”¹⁹



Indigenous laws recognize that society is dynamic, and that every person is an individual whose role is also to contribute to the community. As Elder Kunuk Muckpalook explained, “Not everyone was perfect but in the old days we had ... sayings that we had to live by that were the beliefs. We had customs to live by. We were asked to help our people. Those who were in need, our job was to help them.”²⁰ Despite the changing circumstances of life in the North, as Sandra Omik points out, these principles are still important today.²¹ Dr. Hadley Friedland explains, “Rebuilding Indigenous laws is about rebuilding and strengthening conditions of peace, safety, dignity, and justice.”²²



Carolyn Kaye, Dene, carrying her son Selwyn, in a beaded baby belt, 1947. Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/a185627.

This is why, in part, the conditions for peace, safety, dignity, and justice can be found in understanding some of these principles. Dawnis Kennedy states:

We need to know ourselves and who we are as Anishinaabe so that we can show *mino-bimaadiziwin* to all of our relatives in creation and the other sacred colours of humankind that life is about life. It is about life. And honouring one life is about honouring all life. Protecting one life is about protecting every life and all life.²³

Indigenous laws, and the rights articulated within them, can also provide concrete paths forward for communities and for Nations. Val Napoleon argues, “The issue of missing and murdered Indigenous women and girls is not only a legal issue within Canadian law. It’s an issue within our different Indigenous legal orders. And the work of Indigenous law includes that of rebuilding



citizenries and rebuilding our lawfulness.”²⁴ This work includes understanding how Indigenous laws can serve to promote safety and justice, or, in other words, “ways that aren’t oppressive, ways that are inclusive, and ways that are anti-colonial.”²⁵

The basis of Indigenous laws, and the roles, responsibilities, and rights that animate them, rest in these principles of respect, reciprocity, and interconnectedness, as lived in relationships. As Jean Leclair explains, “In Aboriginal law, the law is considered in a relational perspective that excludes the all or nothing, that recognizes that things change over time, that admits that the law is not an end point but a milestone on a path, [and] whether we know it or not, we are never alone.”²⁶

In her evaluation of Indigenous law, Dawnis Kennedy noted:

Money is not necessary for life. Degrees are not necessary for life. Power is not necessary for life. Water is necessary for life. Our relatives are necessary for life. The spirit is necessary for life. Love is necessary for life. Respect is necessary for life. Honesty is necessary for life. Humility is necessary for life.... Courage is necessary for life.... Wisdom is necessary for life.²⁷

Stories as Rights, Stories as Medicine

Finding the wisdom and the teachings within Indigenous laws is a task beyond the scope of this report, and for which work is already underway.²⁸ At the same time, we believe that it is important to understand how Indigenous principles, as drawn from a small sample of stories from diverse communities and Nations, may provide a path for further research into how to promote safety in a decolonizing way. As some witnesses pointed out, the loss of these stories and teachings contributes to the loss of respect that women, girls, and 2SLGBTQQIA people face within their own communities, as well as in the non-Indigenous world.

“REBUILDING INDIGENOUS LAWS IS ABOUT REBUILDING AND STRENGTHENING CONDITIONS OF PEACE, SAFETY, DIGNITY, AND JUSTICE.”

Dr. Hadley Friedland

This examination is not about highlighting traditional gender roles, but about identifying the qualities that are absent from the lives of families and communities when Indigenous women, girls, and 2SLGBTQQIA people go missing. What are some of the important principles that their stories illustrate, and how can understanding characters through a gendered lens help to address the barriers facing Indigenous women, girls, and 2SLGBTQQIA people, particularly in their access to services that may help to enhance security and safety?



As many testimonies demonstrated, accessing adequate housing, food, employment, and opportunities within both community and urban settings can be complicated by assumptions that are made about Indigenous Peoples generally and women in particular. Stories can help ground the perceptions of Indigenous rights as historical and contemporary understandings about the relationships upon which traditional and contemporary roles and responsibilities of women depend. They help anchor the testimony that we have analyzed in a context that is relevant to witnesses, and that can help us understand how very far we have departed, as a society, in our understandings about women and girls.

For Dawnis Kennedy, regardless of their origin, stories also animate an understanding of power and place. As she explains, “Our stories are – oral history tells us, you know, there was other times that we almost lost all of who we were, some of it just all by ourselves. And the spirit loves us so much that they will always find a way to answer our request to find our way back to life.”²⁹

In this next section, we will look at key stories from a diversity of First Nations, Inuit, and Métis Peoples as a way to demonstrate some general principles, articulated within the testimonies as well as within some stories, that can help to promote safety and justice in Indigenous terms. For Indigenous societies, the point is not whether or not the events in a story actually happened. First Nations, Métis, and Inuit societies rely on stories to illustrate lessons, values, and laws in a way everyone can understand. Indigenous stories teach local history and land-based science,³⁰ provide examples of how to live out traditional values in real life,³¹ and act as case studies for law.³² As Val Napoleon explains, “We have to make sure that our laws are accessible in this so that all of our members – women, children, people from different sexual orientations, and trans and so on – that all of us can see ourselves as mattering within that legal order.”³³

Stories aren’t made this way without hard work and careful thought – both for the storyteller and the person listening. They may have a lesson, but they don’t come with a rule book. Val Napoleon and Hadley Friedland, who are using stories to explore Indigenous law, point out that stories are not “passively passed on by infallible elders in some immaculate ... form. Rather, stories are part of a serious public intellectual and interactive dialogue involving listeners and learners, elders and other storytellers – as they have been for generations.”³⁴



“Yamozha and His Beaver Wife” through a Dene Woman’s Perspective

Cindy A. originally came to the National Inquiry to speak about her grandmother, Mary Adele D., a strong Dene woman who was killed in a violent attack. However, Cindy also came to share the importance of reviving Dene laws to help address the crisis of missing and murdered women and girls: “We have our Indigenous laws, and we need to revive those, talk about them, teach them to our children and our families. Through colonization we have lost a lot of those teachings. People don’t understand what they mean, our Dene laws. And I think that needs to happen.”¹

Cindy is Weledeh, a Yellowknives Dene Tlicho woman originally from Yellowknife, Northwest Territories. She is also a lawyer with a degree in Indigenous Law from the University of British Columbia. She advocates that as part of reviving Dene laws, we need to pay particular attention to Indigenous women’s stories. She offers a Dene woman’s perspective on the well-known story of “Yamozha and His Beaver Wife” as an example.

Yamozha (also known as Yamoria, the Lawmaker) is one of the most important figures in ancient Dene stories. He travelled widely when the world was new, killing giant monsters, making the land safe, and teaching the Dene their sacred laws.

At one time, everyone would have known these laws, which include sharing what you have, and helping and loving one another. Now, mostly due to assimilative policies like residential schools, many Dene people are missing these critical tools. “Some Dene people, they just implicitly practice our Indigenous laws, our Dene laws,” Cindy said.

They do share, they do care for other peoples, they do help, and they are respectful. But then, as we know, this Inquiry is here to tell the story of Indigenous women and girls. There’s a break in the laws. There’s a break in the traditions. Things are unbalanced, because if people followed these laws from Yamozha, then we’d not

need to be here speaking about it, because we’d all be around the campfire. We would be in the circle. You’d have men and women together, standing together.²

In the story Cindy shares, Yamozha asks a beaver woman to be his wife. She agrees, on the condition that he never let her feet get wet. He agrees as well, and for many years, they live happily together.

Then, one day, he breaks his promise. She leaves him and returns to her beaver form. This enrages Yamozha so much that he chases her across the land, kills and eats their beaver child, and eventually turns her into an island when she makes one last escape into the ocean.

Cindy points out that this story, and most other stories recorded by anthropologists and published in the Northwest Territories, are “men’s stories” that focus on the male perspective. She emphasizes the need to “widen our gaze”³ and uncover more stories showing Indigenous women’s perspectives:

Because if you look at it with a critical eye, an Indigenous woman perspective, a Dene woman perspective, you’ll see that the stories condone violence, death, murder.... I would really like for our Indigenous women’s stories, our Indigenous laws as women come forward and be taught. And that those teachings, those teachings will help us live in the future.⁴



Cindy then offers her interpretation of “Yamozha and His Beaver Wife”:

If you look critically at it, Yamoria had a marriage contract, a marriage promise to his beaver wife. He broke that. He did not put the branches down for her. One of the roles that I understand Dene men have actually is for breaking trail. And to take care and protect your wife. He did not do that. He broke his marriage contract with her. So she had a right to leave. But when she stood up and said, no, you broke my promise, he became violent. He stalked her, chased her all over the country, all over Denendeh [Dene land]....

What is missing is the Indigenous and Dene teachings that go along with this, that would give context to the story and would inform about the teachings ... and the importance of the Dene laws. My view on this in part about this story is that Yamozha, besides being our law-maker for Dene people, he also was a man, a human man with failings.^V

Cindy argues that looking at these stories with a critical eye does not mean we can't use Dene law to address violence against Indigenous women and girls. She uses the example of talking circles with Elders to address family violence. “The parties would be given traditional teachings to bring them back into harmony and balance,” she explains. “It's maybe by talking to an Elder and grandmothers and grandfathers that you learn the teachings that you're supposed to know, and then you'll realize the error of your ways and go on a right path.”^{VI} Looking at stories, traditional teachings, and other sources of Indigenous law with a

critical eye to gender can actually lift up women and 2SLGBTQIA people facing violence today.

Cindy's example shows us what the ongoing work of law-making can look like for different Indigenous Peoples. This work is underway in many communities, but federal, provincial, and territorial governments rarely recognize that Indigenous Peoples have distinct legal systems. As Cindy said:

We should embrace our Indigenous laws, as we are Nations, and we have our own laws as Indigenous people. We were here first. This is our country, this is my land, and we should have that recognition. As we move towards self-government in land claims, Indigenous governments will have the right to pass their own laws. I'd like those laws to be informed by Indigenous teachings, our Dene laws. Because that will help guide us in a good way in the future.^{VII}

Cindy closed her testimony on this subject by underscoring her call to uncover, revive, and share widely the stories of Indigenous women. “I would strongly encourage that we start telling our stories as women and girls,” Cindy said.

I'm very grateful to be here, and the Inquiry starting that process. We are telling our stories of trauma, but we have to move beyond the stories of trauma into stories that give us guidance and hope into the future. And it's by including not only the men in the circle, but the women and the girls, that that will happen. Then you'll have the community behind you, if you include everybody around the fire, and I encourage that.^{VIII}

I Cindy A. (Dene), Part 1, Public Volume 43, Yellowknife, NWT, p. 54.

II Cindy A. (Dene), Part 1, Public Volume 43, Yellowknife, NWT, p. 58.

III Cindy A. (Dene), Part 1, Public Volume 43, Yellowknife, NWT, p. 64.

IV Cindy A. (Dene), Part 1, Public Volume 43, Yellowknife, NWT, pp.56, 66.

V Cindy A. (Dene), Part 1, Public Volume 43, Yellowknife, NWT, pp. 65, 66.

VI Cindy A. (Dene), Part 1, Public Volume 43, Yellowknife, NWT, pp. 70-71.

VII Cindy A. (Dene), Part 1, Public Volume 43, Yellowknife, NWT, p. 71.

VIII Cindy A. (Dene), Part 1, Public Volume 43, Yellowknife, NWT, p. 67.



This central idea – the notion that appeals to the past must be contextualized within the context of ongoing violence against Indigenous women and girls – is key, as well as the need for measures and teachings that affirm, rather than deny, rights. As Indigenous Studies scholar Emma LaRocque argues:

Culture is not immutable, and tradition cannot be expected to be always of value or relevant even in our times. As Native women, we are faced with very difficult and painful choices, but, nonetheless, we are challenged to change, create, and embrace “traditions” consistent with contemporary and international human rights standards.³⁵

In some cases, appeals to what is “traditional” are still used to question women’s demands for a place in modern discussions about their own lives. As Canada Research Chair in Indigenous Relationships Kim Anderson asserts, any call to the concept of “tradition” must recognize that traditions are created within and adapted to a particular place and time, and do not exist in a vacuum: “As we begin to reclaim our ways, we must question how these traditions are framed, and whether they are empowering to us.”³⁶

This is why, in our selection of stories, we include those that demonstrate harmful encounters and those that demonstrate healing ones, drawing on the strength and resilience of Indigenous women themselves.

A few comments on our interpretation of the stories is in order. We do not claim that these stories contain traditional teachings that are common to all Indigenous societies, and neither do we view tradition as static or unchanging. Our interpretation isn’t focused on identifying the lessons or morals intended by the storytellers. Instead, we use stories as illustrative metaphors to help explain the roles, responsibilities, and rights of Indigenous women, girls, and 2SLGBTQQIA people in their communities in a dynamic sense. Within this work, we have included stories featuring violence, understanding that these stories can show us how Indigenous Peoples resist violence and find important solutions to problems within their own communities and Nations.³⁷

Like the languages and Peoples they reflect, these stories represent dynamic encounters between storyteller and listener, and offer important insights into respecting the rights of Indigenous women, girls, and 2SLGBTQQIA people as sacred.



Indigenous Expressions of the Right to Culture, Health, Safety, and Justice

As the previous chapter outlines, the National Inquiry has heard testimony that connects to four broad categories of rights, and to women, girls, and 2SLGBTQQIA people as rights holders. In our analysis of Indigenous stories from across Canada, we identified several key areas in which rights are manifest for Indigenous women and 2SLGBTQQIA people: as teachers, leaders, healers, providers, and protectors. These labels aren't intended to trap people in static ideas about culture; they aren't labels at all. Instead, we acknowledge, as Snyder, Napoleon, and Borrows have pointed out, that "Indigenous women deserve the right to safety and bodily integrity simply because they are human."³⁸ We don't offer these stories to burden women, girls, and 2SLGBTQQIA people, either; we look to highlight ways in which their own strengths are brought forward in stories, and within the spectrum of Indigenous law, as ways to imagine decolonizing the path forward.

In addition, we believe that understanding some of these ideas can help in moving beyond the idea of missing and murdered Indigenous women and girls as being simple "victims," and beyond other labels that many people have rejected. As Eva P. shared about her loved one: "I don't like how they always talk about that substance abuse. She was much more than that. Misty was an amazing person. She was the organizer of our family, but she was also a leader back home in Alberta. She did a lot of great things."³⁹

Rather, these roles – teachers, leaders, healers, providers, protectors, and so many others – are therefore brought forward as sites of power and of healing that were shared with the National Inquiry and that carry across diverse Indigenous groups, including First Nations, Métis, and Inuit. Toni C., survivor and family member, told us that what really helped her was "starting to know who I really am ... as a woman, as a First Nations woman – that I am a gift. And I do have gifts to offer."⁴⁰ It is for these reasons that we embrace the importance of stories in defining Indigenous rights and understanding what meaning they might hold in the context of addressing violence against Indigenous women, girls, and 2SLGBTQQIA people. In this case, stories offer both instruction and medicine, helping us to see the inherent Indigenous rights women hold and how we might ultimately achieve safety and justice for families.

We apply these ideas in nuanced ways that bring forward many of the elements that those who testified shared in relation to their loved ones. As Ann M. R. said:

Our people, our community want to heal, they want to learn their culture. They want to go on the land. That's where they want to be. That's where they want to heal.... Culture has to be lived. There is nothing that makes us happier than seeing our children dance. Nothing makes us happier than seeing our children sing. Nothing makes us happier than seeing our children speak and hearing them speak our language. Our parents are so proud. It brings us to life. And that's what we need is life and culture does that. Culture, culture, culture. I cannot emphasize that enough is culture.⁴¹



As Fay Blaney explained, “Our rights and responsibilities are really important to us as Indigenous Peoples. It’s not just about individual rights. It is about our responsibility to community.”⁴² These stories illustrate rights as manifest in roles and responsibilities, to self and to community, that come together to create safety, or can offer solutions to enhance safety.

Women’s, girls’, and 2SLGBTQQIA people’s place in culture connects to stories about women and gender-diverse people as teachers and as leaders. Ann M. R. shared:

My mom lived on land and she would live at Simpson Creek, dry fish. Every summer when we came out of that prison camp [residential school], she was drying fish, making dry meat, making moose hide. I would sit in the little mosquito tent and read my True Confessions and my mom would be working very hard to feed me. And people would come on the highway and she taught us how to be generous. She gave. She gave fish. She gave dry meat.... They stopped for coffee, they stopped for tea. She’d feed them, she’d cook them bannock. That’s who we are as Dene. You don’t teach these things, you live these things.⁴³

Within families and within communities, women and 2SLGBTQQIA people have held roles as mothers, grandmothers, and caregivers who work to educate future generations, and to preserve knowledge and traditions, alongside but distinctive of men. In many societies, women’s roles in governance roles as chiefs, Elders, clan mothers, and advisors help strengthen and maintain collective identity.

“OUR PEOPLE, OUR COMMUNITY WANT TO HEAL, THEY WANT TO LEARN THEIR CULTURE. THEY WANT TO GO ON THE LAND. THAT’S WHERE THEY WANT TO BE. THAT’S WHERE THEY WANT TO HEAL ... CULTURE HAS TO BE LIVED. THERE IS NOTHING THAT MAKES US HAPPIER THAN SEEING OUR CHILDREN DANCE. NOTHING MAKES US HAPPIER THAN SEEING OUR CHILDREN SING. NOTHING MAKES US HAPPIER THAN SEEING OUR CHILDREN SPEAK AND HEARING THEM SPEAK OUR LANGUAGE. OUR PARENTS ARE SO PROUD. IT BRINGS US TO LIFE. AND THAT’S WHAT WE NEED IS LIFE AND CULTURE DOES THAT. CULTURE, CULTURE, CULTURE. I CANNOT EMPHASIZE THAT ENOUGH IS CULTURE.”

Ann M. R.

For many of our witnesses, this connection to identity also offers protection and strength. It relates to some of the various roles that women, girls, and 2SLGBTQQIA people have with respect to security, within stories and in life, and also relates to their roles as providers and protectors. Women, girls, and 2SLGBTQQIA people contribute to a safe, secure community in many ways, including by providing physical necessities, by protecting those in need through the management of resources or their redistribution, and as defenders of the water, land, plants, and animals.

The National Inquiry’s Audrey Siegl shared the following about her work in Vancouver’s Downtown Eastside: “When we walk down through the Downtown Eastside just with the sage, just with the cedar, with a drum.... You see they’re dying for it, they’re starving for it, they don’t



know where to get it. There are a few people who go out and bring it, but it's not enough. Our connections to our ways, our teachings, our medicines ... we see time and time again ... those connections save *lives*."⁴⁴

Evidenced by so much of our testimony, and through themes like culture, health, and security, women's, girls', and 2SLGBTQQIA people's right to justice connects to the key theme of protection, as illustrated in a number of stories and testimonies. Stories show us how women, girls, and 2SLGBTQQIA people fight to protect themselves and others from violence, either in a literal, physical sense, or from other forms of violence. Many women, girls, and 2SLGBTQQIA people in stories are also survivors who, in overcoming the trauma inflicted upon them, can condemn the violence they experienced and give strength to others who need it. In other stories, women, girls and 2SLGBTQQIA people take on the role of heroes – those who put themselves in danger to save others. In addition, the various roles of women in traditional justice systems in their communities, including in restorative justice work, are an important theme related to justice as a basic human right.



Member of the National Inquiry's Grandmothers Circle and traditional medicine keeper Audrey Siegl speaks before those in attendance in Ottawa, Ontario.

The importance that Indigenous women, girls, and 2SLGBTQQIA people place on upholding justice came forward in many of the testimonies. As medicine carrier Audrey Siegl shared, regarding her role in the National Inquiry, it is important to speak out and to articulate why this crisis matters:

Take it to The Hague, take it to the world courts. Push it. Don't stop with Canada. Stand and rise for every woman out there who is still marginalized, beaten, raped, murdered. For all the little girls who grow up witnessing the violence. For the girls the violence is normalized for the way it was normalized for us. You know ... what's normal for me should never be normal for another human being.⁴⁵



National Inquiry Grandmother Pénélope Guay speaks to those in attendance in Quebec City, Quebec.

National Inquiry Grandmother Pénélope Guay explained, “It’s really important for Indigenous women to speak up. I tell myself the more they speak, the more they regain their strength. The more of us women who speak up, it’s strength. It also shows our place. We have to take it, this place.”⁴⁶

These roles in teaching, in leadership, in health, in provision, and in protection are not mutually exclusive. They are fluid, interdependent, and interconnected. Women and 2SLGBTQQIA people may be leaders *and* healers, providers *and* protectors. They may take up different roles and responsibilities at different stages of life, and end up taking on them all.

What is most important, though, is that, like the human rights to which they are connected, these roles and responsibilities are indivisible. For example, Indigenous women’s right to health cannot be upheld without their culture and identity. Similarly, access to justice may be compromised in the absence of culturally appropriate victim services to support mental health or because of the lack of ability to file a complaint safely.

As a National Inquiry, our vision has always been to help build a foundation for Indigenous women, girls, and 2SLGBTQQIA people to reclaim their rights as Indigenous Peoples – to reclaim their “power and place.” This is based on a common principle we take to heart: “our women and girls are sacred.” This is not a place beyond human understanding, but a reflection of what every single life we heard about meant to those who testified. We use these stories to bring together some of these ideas, and some of why, to those families who shared their truths, these lives are sacred, and why there is such a void in the absence of loved ones.

These stories and some of the principles therein show us how the underlying principles of Indigenous laws across many communities – respect, reciprocity, and interconnectedness – shape the roles, responsibilities, and manifest rights of Indigenous women, girls, and 2SLGBTQQIA



people as humans, and as Indigenous people. This is important because we can use these values to create healing encounters, today.

Inuit, Métis, and First Nations Elders and Grandmothers have been teaching this truth for generations, but it has become more and more difficult to hear through the deafening noise of colonization. Instead, much more harmful stories of Indigenous women, girls, and 2SLGBTQQIA people have taken over. These stories devalue women and girls and reduce them to stereotypes, contributing directly to the violence they face.

Understanding why women and girls are sacred through various Indigenous perspectives is an important part of seeing Indigenous women, girls, and 2SLGBTQQIA people as rights holders. It is also a starting point to addressing some of the historical and contemporary negative encounters that incite violence or create harmful spaces for those who are so important. What roles and responsibilities do women, girls, and 2SLGBTQQIA people have? What happens to their communities when they're taken away? And how can understanding why women and girls are sacred help us understand how to create new, healing encounters, founded upon stories handed down over generations?

Women and girls are sacred; they carry their Peoples and their communities with them. Without them, whole communities suffer.

The First Teachers

As we've discussed, stories show that Indigenous women's rights to culture and identity are rooted not only in basic human rights, but in the ways they lead their people forward. Rhonda M. explained:

When I think about all the grandmothers who have come ahead of me and those grandmothers that stand behind me and the grandmothers that stand in all the directions, I think that they're leaders and that, as leaders, as water carriers, as women that give birth to the next generations, that they all have those leadership qualities in them.⁴⁷



Cree woman on Charlton Island, James Bay, Northwest Territories, 1926. Source: Library and Archives Canada/National Photography collection/a096660.



In some testimonies, many family members discussed the lessons they learned from their female family members, or the gap that was left when they were taken. As Grace T. shared about her mother: “She was so proud. She – she created me, and this is the person that I am because of her – articulate, beautiful, smart, educated, fearless – is because of her.”⁴⁸

First Nations and Inuit stories of how the world began, or how people came to be, often show mothers and grandmothers in leadership roles.⁴⁹ These are powerful stories that show how women are instrumental in shaping the actions, beliefs, and values of their people’s culture, including their earliest relationship with water or land.

One of the most widely known Indigenous Creation stories is that of Sky Woman, or Awe(n)ha’i’ (“mature blossoms”). This is the Haudenosaunee (Iroquois) story of the pregnant woman who fell from the sky.⁵⁰ In this story, many animals of the world help cushion her fall, with the great Turtle giving her a place to land on his back. After she turns a tiny bit of mud into vast land all along the Turtle’s back, Sky Woman takes seeds from her hair and dances, sings, and drums the first plants and medicines into creation. She does this as an act of reciprocity, to show thanks to the animals who treated her with kindness and respect.

The fact that Sky Woman is pregnant can symbolize the critical role life-givers continue to play in shaping Nations. But Sky Woman also sets in motion, as Kim Anderson explains, “a creative process that results in the completion of our first mother, the earth,”⁵¹ which creates a mother–child bond between people and the land. Sky Woman’s daughter, She Who Always Leads, then gifts the Haudenosaunee with their three staple foods: corn, beans, and squash.⁵² These are critical formative encounters that tie the Haudenosaunee cultural identity firmly to the leadership of their women, beyond a simple “giver of life” biology, but within the context of complete provision for the world the people face.

Another origin story, this time from the Inuit world, is that of Nuliajuq, the Mother of the Sea Mammals. She is also known as Sedna, Unigumissuitung, and Avilayoq.⁵³ This story takes place when the world was very new, and people lived by eating rocks and dirt because there were no animals to eat.

In one version of the story, she is a young woman trapped in a bad marriage to a bird. When her father attempts to rescue her and bring her home, her bird husband causes large waves that threaten to capsize their boat. Fearing for his life, he throws his daughter into the sea. She tries to climb back into the boat, but her father, still fearful for his life, chops off her fingers.

In another version, she is an orphan girl who gets pushed into the sea. Her limbs are transformed into the sea mammals, and she becomes their keeper.



That wickedness turned her into a great spirit, the greatest of all spirits. She became Nuliajuq and made the animals that we hunt. Now everything comes from her – everything that people love or fear – food and clothes, hunger and bad hunting, abundance or lack of caribou, seals, meat, and blubber. Because of her, people have to forever think out all the taboos [prohibitions] that make life difficult. For now people can no longer live eating rocks and dirt. Now we depend on timid and cunning animals.⁵⁴

Across different versions, Nuliajuq subsequently becomes the mother of the sea animals that form the basis of the Inuit diet. She lives under the sea, and, when angered, will withhold game from Inuit, causing hardship. As a result, Inuit went to great lengths to honour and show their respect for Nuliajuq and the animals that belong to her, lest they starve.⁵⁵



Naulaq Ledrew performs a traditional drum dance in Toronto, Ontario.

The story of Nuliajuq is a challenging one, in that Nuliajuq survives many forms of violence or neglect before finding her place of leadership. Similarly, her gifts to the Inuit are mixed: the sea mammals provide food, clothing, and tools, but with these gifts come responsibilities – rules Inuit would traditionally follow to show Nuliajuq respect.

In this way, we can see this story as a powerful metaphor for the position many Indigenous women are in today: survivors of violence, but in the process of re-establishing themselves as respected leaders who have their own solutions to share, with the many rights and responsibilities that entails.



Women in Leadership

Dawnis Kennedy shared:

I think one of the first things that I could share is that women are life-givers and from that flows so much. It is women who carry life, women who give life. Women are – it is upon women that all life depends. And for Anishinaabe Onaakonigewin, that carries many different consequences. You know, because women are the life-givers in our Nation it is the women who carry the water. It's our grandmother, the moon, who governs the water, but it's the women who carry the water and who work with the water, who work for the water. And so any decision that impacts the water or impacts life is a decision that requires women. And that's a huge consequence and that's a huge thing because that means that any decision that we make that will affect life, we must ask women.⁵⁶

In many stories, women are also the bringers or keepers of sacred ceremonies.⁵⁷ Ceremonies are meant to strengthen people's relationship to the Creator, to each other, and to the natural world around them. They also help guide people through important transition points in their lives, and provide a way for communities to recognize each other's accomplishments. In these stories, such as the one of White Buffalo Calf Women, who brings the Sacred Pipe and the Sundance, women as leaders and as teachers are essential to an Indigenous People's identity as a people.⁵⁸

Women in stories can also be seen to have important roles in negotiating rights for their communities through cross-cultural marriages between a human and a non-human being (such as an animal, plant, star, or other being from the natural world). Many women in First Nations, Inuit, and Métis stories become diplomats or ambassadors for their communities by marrying one of these non-human beings. In these roles, they either bring their people's knowledge to other cultures, or bring new skills back home – sometimes with great difficulty.

“INUIT WOMEN LEADERS ARE ALL AROUND US. THEIR LEADERSHIP STARTS IN THE HOME, WITH THE MOTHERS AND GRANDMOTHERS, AND OF COURSE MANY INUIT WOMEN AND GIRLS VOLUNTEER THEIR TIME IN THE COMMUNITY.”

Okalik Egeesiak

The Métis story “The Fiddle I Give” emphasizes the enduring power of the skills and knowledge of Indigenous mothers, while also recognizing the new gifts cultural exchanges can bring. In this story, a young man from the Red River Colony (also known as the Selkirk Settlement) sets out on a journey to find a cow with glowing horns (i.e., cattle). Along the way, he runs into three grandmothers, found in traditional tipis. The first grandmother offers him a tiny thimble with a kernel of corn and a pinch of pemmican, which, at first, he thinks will never fill him up.



His grandma gave him the thimble and said, “My grandson,” she said, “You eat. Eat this until you get full.” By gosh, he took that thimble and he emptied it in his mouth, chewed. By gosh, again that thing refilled, keep on refilling, all the time. When he got full, “Ah, grandma,” he said. “I’m full,” he said. “You’re full,” she said. “Yeah, I’m full.” He gave it to his grandma. Grandma took that little thimble and dumped it in her mouth. “It’s empty, empty.” Didn’t refill no more.⁵⁹

The next morning, the first grandma gives him a flint to help him on his journey. The second grandmother gives him a rope, and the third, a fiddle. With all three items and the wisdom of the grandmothers, the hero succeeds in his quest.

In this story, the kernel of corn and pinch of pemmican offered represent the “unending and ever sustaining ... substance of Indigenous culture.”⁶⁰ It’s this nourishment, as well as the grandmothers’ knowledge, that ultimately saves his life. But this story also includes the fiddle, something that was originally a piece of European technology, but has now become associated with the Métis. The gifts that come from those connections, grounded in Indigenous matrilineal lines, are at the heart of the Métis identity.



Mrs. Oman, a Métis cook with the Hudson’s Bay Company, pictures in the Northwest Territories, 1926. Source: Library and Archives Canada/ Department of Indian Affairs and Northern Development fonds/a099520.



As these brief examples demonstrate, and as our testimony highlights, these and many other stories emphasize women's Indigenous rights and roles as cultural carriers of their communities and as the centre of their families. This provides the foundation for individual and group leadership across many Indigenous cultures. As Inuk leader Okalik Eegeesiak explains, "Inuit women leaders are all around us. Their leadership starts in the home, with the mothers and grandmothers, and of course many Inuit women and girls volunteer their time in the community."⁶¹

Métis women Audreen Hourie and Anne Carrière-Acco assert similar leadership roles: "Métis women, together with their spouses, always considered the well-being of the whole community.... A strong and healthy Métis community will always have women in decision-making roles."⁶²

The inclusion of women in the direct or indirect leadership of their people is an important key-stone in the protection and promotion of safety and justice for Indigenous women and girls.

Women as Healers

In many testimonies we heard, the inability to access adequate or culturally appropriate health services was a key cause of violence against women, girls and 2SLGBTQQIA people, particularly in more remote communities where women were transported to receive treatment into locations unfamiliar to them and, as a result, unsafe.

In many understandings within Indigenous storytelling, however, First Nations, Métis, and Inuit women are the healers themselves; without them, healing is placed in jeopardy in families, in communities, and in Nations. As Trudy S. shared,

My mother was a very beautiful lady.... She fought the system to bring back all the First Nation children that were adopted, and she reunited a lot of families together and brought their kids back to their biological family, and she had taken a lot of – she had 12 of us kids, but she took a lot of other kids in the house that didn't have family. So, she always had different kids that we called brother and sister, because she didn't want to see them put into foster homes, you know? She's a great lady, my late mom.⁶³

One of the important roles that Indigenous women and gender-diverse people have most consistently played across Indigenous societies is in healing and medicine. This includes as "Indian doctors," midwives, medicine people, counsellors, and shamans. In these roles, healers generally care for all aspects of a person's health: physical, mental, spiritual, and emotional. Physical ailments are often understood as an outward symptom of a problem with any of these four aspects of self. This means that healers are not limited to addressing aches and pains, but also provide teachings and support to address what they understand to be the root of the disease itself.⁶⁴



As we heard from Heiltsuk leader Joann Green:

Medicine gathering is such an important part of who we are.... We open our back door and we have our pharmacy. That's where we get all of our medicine, you can walk up in the bush and you can pick ... salal berry leaves, those are medicine. You can go up into the forest and you can get cedar bark, you go in there and you get the hemlock branches ... we're very rich. We're very rich.⁶⁵

Stories like the Seneca story “How the Real People Got Medicine” show that Indigenous women have long been regarded as experts in this field.⁶⁶ In this story, Ha-wen-nee-yoh (the Great Spirit) takes pity on the Ongweh-onh-weh (Real People), who did not know how to heal sickness. He sends one of his messengers to take the form of a sick old man. He goes door to door, looking for someone who will take him in, but everyone refuses except one old woman of the Bear Clan, who “was kind to everyone, and always helped those who came to her in trouble.”⁶⁷ When she takes him in, he begins to instruct her on what kind of roots and bark to gather.

The woman did as he asked and she remembered what he had told her to gather for him. When she returned to her house, the old man told her how to prepare the things which she had brought, which she did. He said, “This is On-noh-qua-se (medicine)” and told her what illness it would cure.

The woman asked him to remain with her until he was well enough to travel again, and he agreed. The old man stayed many moons with the woman and during this time became ill many times. Each time, the illness was different, and each time the old man told the woman what to get that would cure the illness and how to prepare it. All these things the woman remembered.⁶⁸

At the end of the story, the old man declares that the Bear Clan People will become the healers of the people in her honour, since she was the only person who would help.

This story is an example of Indigenous women's historical and contemporary attachment to the land. Women in most First Nations and Métis societies worked most closely with plants, berries, and roots. For example, Naskapi men had some plant knowledge, but would acknowledge that “that knowledge belonged to women, and it was their authority to dispense and apply it.”⁶⁹

“MÉTIS WOMEN, TOGETHER WITH THEIR SPOUSES, ALWAYS CONSIDERED THE WELL-BEING OF THE WHOLE COMMUNITY.... A STRONG AND HEALTHY MÉTIS COMMUNITY WILL ALWAYS HAVE WOMEN IN DECISION-MAKING ROLES.”

Audreen Hourie and Anne Carrière-Acco



In a modern context, women continue to work with medicines, and have important teachings to share with respect to how to recognize them, pick them, and use them – knowledge that is handed down from one generation to another, through the Elders. In the same way, the old woman learned to heal by working through each sickness one at a time, listening closely to her teacher. The answer to “What does this person need to be well?” isn’t always straightforward, and medicine sometimes requires careful problem solving through trial and error.

In societies where gender diversity was acknowledged or accepted, some Two-Spirit people had roles as medicine people or shamans, or had particular roles in ceremony. For example, Jeffrey McNeil-Seymour is a Two-Spirit Tk’emlupsemc man who shared as part of our hearing on colonial violence in Iqaluit. One matriarch told him, at the conclusion of a ceremony he held, that it was “people like him” who would take care of ceremony when women had their restrictions, or if someone else couldn’t take care of a calling. He said:

That was the first time that I heard anyone suggest to me that we had specific training or specific responsibilities in our communities, and particularly in Secwepemcul’ecw. So, we carried particular knowledge bases, and I think that that’s something important to document and to hold on tightly to, and to also ... bring that back to counter so many of our people either dying too early or taking their lives.⁷⁰

As people have shared in our Truth-Gathering Process, one of the biggest challenges today for 2SLGBTQIA Indigenous people is finding a welcoming place to care for their spiritual health in community with others, when many events exclude gender-diverse people from participating in their chosen gender roles. However, Expert Witness Albert McLeod pointed out that there are historic accounts of Two-Spirit ceremonies, including the *Dance to the Berdash*, a painting by George Catlin from the 1830s. McLeod explains that “the warriors would acknowledge the trans female who was part of the community, and honour the trans woman for their contributions to the warrior society with regard to hunting and with regard to going to battle.”⁷¹ At the time, McLeod explains, the painter Catlin said he hoped that the Dance to the Berdash would soon be eliminated from Indigenous society.

In Inuit society, the *angakkuq* was an important figure who exemplified a holistic understanding of physical and other forms of health. “Angakkuit,” a term often translated as “shamans” in English, were responsible for healing and mediating the relationship between Inuit, animals, and the weather. If someone fell ill, it might just as likely be because they had damaged their relationship with the land and spirits around them as due to a physical ailment, and repairing these relationships was key to bringing someone back to good health.⁷²

While it wasn’t common for Inuit women to be angakkuit, it wasn’t unheard of.⁷³ William Ukumaaluk, of Amitturmiuk, shares about the angakkuq Arnatsiaq, who found her power after she refused to return to her former husband:



He then took his snow knife and strongly hit the bedding skins to scare her. But due to her [angakkuq] power, Arnatsiaq pushed the blow against him and he went out. In the morning, someone came to tell her: “The man who tried to scare you with his knife hit himself and is dead.” It was she who, through her magic power, had caused him to hit himself. ... Arnatsiaq received many gifts, as she healed many a sick person. She was a powerful [angakkuq].⁷⁴

The National Inquiry’s testimonies reveal how one of the keys to healing is the requirement to respect the needs of Indigenous women, girls, and 2SLGBTQQIA people with respect to finding their own path toward personal and collective health. This can, in turn, influence the whole community. As Mi’kmaw Elder Miigam’agan shared:

We all know that when, when a mother, when a grandmother, when an auntie, when a sister is in, in a healthy and a secure setting and that she is not stressful and not in crisis, we can see immediately the influence and the shift of the children in the house. And the whole household shifts. So when she is feeling worthy, and that worthiness can only come from if you have a secure solid cultural foundation and our identity, a positive identity about ourselves, then we have a sense of self, a sense of pride.⁷⁵

Women as Providers

Families and survivors told us over and over again about the profound lack of security in their lives. This includes everything from poverty to food insecurity to personal safety. When they have advocated for themselves, their families, or their communities, many government authorities, Indian agents, and sometimes their own band councils or communities have ignored their needs. In fact, Indigenous women, girls, and 2SLGBTQQIA people have long had critical rights and responsibilities in creating safe communities by contributing to the provision and distribution of resources, creating social security nets, and through their special connections to water and land.



First Nations women scraping and stretching deer hide, Northwest Territories, n.d. Source: Library and Archives Canada/ Department of the Interior fonds/a047987.



In many communities, one of the most important responsibilities related to women is food production. Having a full store of food guards communities against hardship, which can come in many forms: illness, natural disaster, famine. Many Indigenous Peoples clearly understood the close ties women had to providing for their communities' socio-economic security. This comes out strongly in stories where the most important natural resource to that Indigenous society is conceptualized as female.

For the Tsimshian, the most sacred source of sustenance, both nutritional and spiritual, is oolichan oil. This is made from the fish that is the first major food source to arrive in the spring, ending the long and lean winter months – sometimes ending a famine. This sacred oil is portrayed as a woman in Tsimshian epic narratives.

Giant [Raven] camped at a certain place. He did not know how to cook his olachen. A woman came to the place where he had camped, and Giant spoke kindly to her, like a brother to his sister. Her name was Tsowatz. She was the Oil Woman, of dark complexion. Giant asked her, “Tell me, how shall I cook my olachen?”

[Oil Woman gives him detailed instructions that contain the proper protocol for respecting the oolichan fish.]

Thus spoke the Oil Woman to Giant, and Giant was glad to receive the instruction of Oil Woman. He took her gladly to be his sister.⁷⁶

Raven treats Oil Woman with honour and respect, asking her to be his sister, in recognition of the great value she brings to the world.

Gathering and preparing food creates wealth for an entire community, and it can be redistributed as needed to make sure everyone survives. Several stories show that women often extended that social security net to people others had given up on.⁷⁷

In stories, these people have usually consistently broken the rules or failed to contribute to the community. The community moves on to their next seasonal home and leaves the person who isn't contributing behind. But a grandmother or another woman will make the decision to leave that person a last little bit of resources, offering them a way back into the community if they're willing to take it. Using these resources, the people left behind are able to survive and learn the lessons they needed to learn to become a better person. They often then use their new skills to bring wealth and food to their communities. This shows that the women who shared their resources made the right decision. Not only does this save people's lives, it makes the whole community safer, too.

Women and girls also have distinct roles in providing for a community's security in their relationships with the natural elements. Some First Nations have conceptualized this responsibility as seeing women as “water keepers” and “land defenders.” The Métis/Anishinaabe story of the four spirits of the water illustrates this intimate connection with the source of all life.



I've been told that a long time ago, when water was first here ... four beings stepped forward – and I'm told that they were female – and they're the ones who said they would look after the different kinds of water. So one of them said [she] would look after the salt water, and one of them said [she] would look after the fresh water, and one of them said [she] would look after the fog, and one of them said [she] would look after the water our babies grow in. So those are things I really believe in, and that we have to acknowledge [and] ensure that those beings are honoured and thanked for stepping forward to look after those four types of water.⁷⁸

These water keeper roles may be formal or informal, but they are essential. Some women are responsible for ceremonies on and with water.⁷⁹ Others speak in front of the United Nations on the rights of water, and its living spirit, which we need to protect.⁸⁰ Water is life – nothing can exist without it.

These stories of women as water keepers and land defenders are not universal to all Indigenous societies, but women from all Indigenous communities have filled these roles. For example, there are many Inuit women who have fought tirelessly for the land and water in Inuit Nunangat. Prominent examples include activist Sheila Watt-Cloutier's work on persistent organic pollutants and climate change, leader Mary Simon's protests of the militarization of Inuit Nunangat, organizer Joan Scottie's community organizing against uranium mining in Nunavut, and land protector Beatrice Hunter's resistance to the Muskrat Falls hydroelectric project.

At their heart, women's roles and responsibilities and related rights as providers are based on the principle of reciprocity. Indigenous women who hunt, snare, fish, and prepare the food for their families do so in a spirit of close relationship with these animals, who have given themselves up to feed people. In return, women treat their bones, hides, and other remains with utmost respect. In turn, within a community, women help govern the redistribution of resources to make sure everyone has enough. You never know when you or your family will be in need. Protecting the land and water is part of being in respectful relationship with them, but it also recognizes that our fates are bound up together, and Indigenous women in particular can suffer when these relationships are harmed.



Women as Protectors

The final set of roles we will look at relates to Indigenous women's and gender-diverse people's responsibilities as protectors. In stories about these roles, women survive very difficult experiences of violence themselves, and they fight for their families and communities, even at great personal risk.

Stories show that even the people perceived as the “weakest,” or with the odds stacked highest against them, can succeed.

In the Nlaka'pamux (Interior Salish) story “Elk,” Elk kidnaps a woman, while she bathes in a river, to become his wife. But she is too smart for him, cleverly tricking him into giving her the clothes and moccasins she needs to escape.

After a while the girl felt cold, and said to herself, “I shall perish of cold.” Elk knew her thoughts, and said, “Here are some clothes: put them on.” ... Soon she said to herself, “My feet are cold” and the Elk gave her moccasins to put on. After running fast a day and a night, Elk began to slacken his pace.

Now the woman said to herself, “I will leave him.” So she broke off fir-branches as they passed along through the trees. These she placed on Elk's head, between his antlers. When she had thus disposed of a sufficient number of branches, she caught hold of the limb of a tree as they passed underneath, and swung herself up. Elk passed on, thinking that the girl was still there, for he felt the weight of the fir-branches between his antlers.⁸¹

She uses her wits to escape her pursuer several more times, before finally getting back home.

Other stories show women and gender-diverse people going to great lengths to protect others. In the Haida story “The One They Hand Along,” a young woman is kidnapped by the killer whale chief and taken to his home at the bottom of the ocean. Multiple members of her family go to rescue her. Before they leave, her two brothers, one of whom is a prepubescent boy, marry two female supernatural beings so that the beings can help them. These are Mouse Woman and a woman who is likely the mythical Xaalajaat, or Copper Woman.⁸²

There are many aspects of Copper Woman's gendered presentation that support understanding her as a Two-Spirit, or gender-diverse, woman: she wears her hair short and wears copper armour, a traditional male dress. She is also described as someone who likes to do things “backwards.” And, of the two brothers, she allies herself with the brother who is still too young to be properly married.

While Mouse Woman takes charge at first, and leads the girl's family to the chief's house with the help of a supernatural needle, it is Copper Woman who turns the tide at the critical moment.



When the family confronts the headman's family under the sea, they begin to cower and lose faith.

Hwuuuuuuuuuuuuuu!
The house quivered, they say,
and the earth shook.
Together they all shied away.
No one looked upward.

But the youngest son's wife raised her head
As the rest of them cowered, they say.
She looked to the rear of the house,
And she looked to the door.

"Raise yourselves up!
Have you no power?"
Those were her words.

The house quivered again,
And the earth shook.

Hwuuuuuuuuuuuuuu!
And again those in the house lowered their heads...

As she lifted her chin,
Something powerful came to her,
And their heads rose like the tide.
"A powerful woman you are."⁸³

Copper Woman's biggest gift to them was not a weapon, an item, or even secret knowledge. The gift she gave them was to remind them of the power they had all along. Like the inevitable return of the tide, their courage returned as well, and they were able to successfully negotiate their daughter's return.

Many Indigenous women continue to fill the role of protectors today. Gitksan researcher Dr. Cindy Blackstock's advocacy for the rights of Indigenous children, Inuit leader and activist Rosemary Kuptana's work to end the sexual abuse of Inuit children, and Métis scholar Emma LaRocque's activism to fight violence against Indigenous women are all examples of Indigenous women's work as protectors.



Dr. Cindy Blackstock testifies at the National Inquiry's hearing on child welfare in Winnipeg, Manitoba.

Existing Systems of Relationship, Governance, and Identity

Women's, girls', and 2SLGBTQQIA people's disappearances or violent deaths have ripple effects that throw entire communities out of balance, and into further danger. This also takes away some of the people who are fighting hardest for change. Restoring the balance, in these kinds of encounters, means seeing the right to justice of women, girls, 2SLGBTQQIA people, and their loved ones as a fundamental right.

The examples shared are stories connected to the violence that women, girls, and 2SLGBTQQIA people face today through the process of colonization, but are connected also to the strength of women, girls, and 2SLGBTQQIA people. As Michele G. shared:

I'm facing a powerful tribe – another powerful tribe, and a vibrant culture with traditional institutions that are still intact, and I feel like it hits me like a wave. I feel like I shed tears and say, okay, Creator I've got it, I know what it's like to be an Indian because you just – these Nations are so beautiful and amazing.⁸⁴

These stories are rooted in experience. Prior to colonization, the teachings, rights, roles, and responsibilities associated with culture, health, safety, and justice were also lived in a practical sense. As Val Napoleon shared in her testimony, "I do believe and it is my opinion that the foundational undermining of Indigenous legal traditions is connected to the undermining of Indigenous Peoples' humanity, and that is the bedrock of any genocide."⁸⁵



While all Indigenous Peoples had unique and dynamic traditions that changed over time, in many groups, women maintained the right to live free from violence, or had recourse to justice. Their power and place were seen in the leadership of their communities, as articulations of their rights as Indigenous women and as human beings, living in community.

Scholar Paula Gunn Allen has pointed out, “Although our traditions are as diverse as the tribes who practice and live within them, they are all earth-based and wilderness centered; all are ... concerned with sacred or non-political power.”⁸⁶ In this section, we explore principles positioning women and 2SLGBTQQIA people as people of value, power, and place in their families and in communities. We engage in this work as a way to show that the principles in the context of Indigenous and human rights existed prior to the onset of devastating colonial processes. Kim Anderson asserts:

We should be aware that every Indigenous society had a sense of a woman’s power and position within the community.... It is also important to know that life was certainly not always good for all Native women. Yet what we shared was a common sense of power, a power that was not part of the European woman’s experience.⁸⁷

The general principles outlined in the following section are not meant to romanticize or to fix First Nations, Inuit, and Métis in time or space. They are, however, a reflection of the need to focus on the lessons from the past – on establishing how communities were organized, and how women within them lived, governed, and protected themselves. In combination with traditional stories, these histories encourage us to consider how those principles might relate to the safety of Indigenous women, girls, and 2SLGBTQQIA people in the present, within the context of rights.

Influence of Women on Lands and Economies

Kim Anderson has pointed out in her work that First Nations, from time immemorial, were land-based peoples, whose relationships with other people, and with the land, structured the common values that formed important principles for living. On the lands Jacques Cartier claimed for France, many distinct First Nations were already living in societies. Their origin stories tell of their existence on their lands since time immemorial, a history that was quickly discounted by the explorers who came. Europeans colonized First Nations through interference in existing systems of land use and stewardship, and in trying to sever First Nations’ connection to the land.

As was explained in the previous section, some creation stories emphasize that the first human being placed on the land was either a woman or a non-gendered person. However, many concrete manifestations of the idea of the first human – living on the land since time immemorial – existed in many First Nations. Because of this, understanding the principles of relationships between various First Nations and the lands upon which they lived is an important part of understanding the basis of rights rooted in both collectivity and individuality. In other words, women living on the lands upon which their ancestors had lived had rights as a result of the relationship of their people with the land, as well as a result of their individual relationship with the land as women and gender-diverse people.



The Aboriginal Justice Inquiry of Manitoba pointed out, “When Europeans came to the Americas they were considered outsiders.... Elders have told us that, in the eyes of the Creator, the Europeans as outsiders could not enjoy the same rights as the original inhabitants.”⁸⁸ For many First Nations, land represented a mother figure. As professor and lawyer Aimée Craft has explained in her study of Treaty 1, the view of the land as mother was also a part of the traditional governance structure of many communities, a structure that included women. In her study, she points to an Anishinaabe understanding of “Mother Earth – and Earth as a Mother.”⁸⁹ Craft, as quoted in an interview on Treaties and traditional governance, says this leads “to the understanding of the ability we have to share in the bounty of Earth, but not make decisions for the Earth and not to sell the Earth – but to live in relationship with it.”⁹⁰ The responsibility for her care and stewardship fell to the Nations already living on the land, with important implications for the roles of women.

On a concrete level, the time women spend gathering berries, digging for clams, setting traps, and gathering medicines gives them a different knowledge of the land from that of men. They were and are also deeply connected to the land: pollution and chemicals impact women’s reproductive abilities and rates of breastfeeding. Because they are also the most closely connected to caregiving for the most vulnerable populations (children and elderly people), they are the early warning system when something in the water or the land is threatened.⁹¹

In addition, although men and women had their own areas of work, this did not necessarily prevent them from working in each other’s domain. Many First Nations women hunted, trapped, and harvested, as well as performed the labour to turn these raw materials into things that were necessary to community life, as did Inuit and Métis women.⁹² Knowledge of each other’s roles, for any gender, had important implications. As has been pointed out, “this knowledge allowed each gender to have respect for the work that was typically done by the other.”⁹³

Women’s participation in economic labour and in land-based labour had important impacts on the influence of women in community life. In many First Nations societies, women were farmers – among the Hurons and Haudenosaunee especially – and were responsible for the distribution of food. Sto:lo writer Lee Maracle explains, “Goods coming into the village belonged to the women. It was determined what was essential to the survival of the nation, and then the excess was handed over to the men, to engage in trade.”⁹⁴ In Plains societies, because women made the tipis, the physical home and its contents belonged to them. If there was a separation or divorce in the family, the former husband acknowledged this by taking only his hunting gear with him.⁹⁵



Front row, left to right: Assaajuq, Aasivak, Malaija, Akutuq and Sulugaalik, cutting whale fat at Pangnirtung, NWT, 1936. Qattuuq stands on the far left. Source: Library and Archives Canada/ Department of Indian Affairs and Northern Development fonds/a101931.

In some cases, gathering and farming (often considered women's work) were more important than hunting in terms of food security. A much larger portion of the diet of Indigenous Peoples in more southern climates comes from women, not men. In the Far North, sewing (also

considered women's work) was just as important to survival as the procurement of food. Moreover, many Indigenous women were highly skilled at men's jobs. Up to the present day, in some Inuit communities, women are among the most skilled and productive hunters. Inuk Elder, community organizer, and author Joan Scottie explained that she was raised to be a hunter: "My father taught me to hunt to survive. I was a tomboy and I didn't like doing women's stuff, such as sewing and staying in the *illu*; I was more interested in going out on the land."⁹⁶

Many women were also actively involved in trade. Basketry, moccasins, and beautifully beaded clothing were all valuable trade items women sold directly to supplement the family income. Métis and Dene women would trade the furs they had trapped on their own traplines,⁹⁷ and when Haida men traded goods, they needed their wives' approval.⁹⁸ Mi'kmaq women (and sometimes their husbands and sons) made baskets to sell and trade.⁹⁹ In the 1950s, a group of Inuit women from Salluit, Nunavik, Quebec, formed a collective to sell their own soapstone carvings, based mostly on the themes of mothers and their children and Inuit women's work. They did this to help them survive after their families had been forced from their traditional lands.¹⁰⁰

Colonization interfered heavily with these structures. Through the processes of "discovery" and the claiming of the land for European powers, the roles of women in relationship to the land were diminished and, in many cases, erased. Colonization sought to destroy the relationship among women and land and property, as it was understood in First Nations communities, and to replace this structure with a new, disempowering one that placed men firmly in charge of the resources that had, in various times, worked to keep women within their power and their place, and out of danger.



Influence of Women on Structures of Governance

As the previous section demonstrated, many Indigenous stories show mothers and caregivers as the first leaders, who shape a people's identity as a Nation is born. Many Indigenous societies replicate those kinship principles in their governance structures: just as motherhood is a leadership role, leaders may take on mothering roles.¹⁰¹ Colonization's interference in governance directly challenged the quality of the encounters that leaders foster with and between people from those based on respectful role modelling and persuasion (as in an Indigenous kinship relationship) to those based on enforceable authority (as in a more formal, structured hierarchy).

By way of example, First Nations in western Canada structured the Treaty encounters through a kinship relationship with Queen Victoria. This also made the arriving European settlers their brothers and sisters – the “red children” and “white children,” to be treated equally by their shared “Great Mother across the Salt Sea.”¹⁰² Another example is in the Haida language. In Haida, the root word for “chief” or “headman” literally translates as “town mother.”¹⁰³ In highly decentralized Inuit governance, the connections to family, extended family, and community were and remain very important to group identities.¹⁰⁴ Kinship ties (both biological and non-biological, through customary adoption and naming traditions) were and still are important to creating a broader identity within a particular region.

In many communities, the role of women in decision making was not only related to their position as mothers or as relatives. As Anderson explains, “Native women were not traditionally excluded from decision making, as has been the case for women in western politics.”¹⁰⁵ While some of this inclusion was in the spirit of respect for all members of the community as well as being tied to kinship principles, women's roles in relation to land and to property – to community wellness overall – also predisposed them to leadership and to making decisions in the best interest of all. Many who testified shared their own stories of women's leadership in their communities, as well.

As we heard from Joann Green, who testified as part of the Heiltsuk Women's Community Perspectives Panel,

“Women are known to be the backbone of the community and play a large role in Heiltsuk leadership.... The omux are a society of women of high standing in the community who give advice to our Humas, our Chiefs. Their advice centres on maintaining the unity and well-being of the community, including advice on justice, family, and cultural practices.”¹⁰⁶

Joseph Tanner, a white man adopted into an Anishinaabe family in the 1800s, said that his adoptive mother, Net-no-kwa, was a “principal chief” of the Ottawas.



Everything belonged to Net-no-kwa, and she had direction in all affairs of any moment... I have never met with an Indian, either man or woman, who had so much authority as Net-no-kwa. She could accomplish whatever she pleased, either with the traders or the Indians; probably in some measure, because she never attempted to do any thing which was not right and just.¹⁰⁷

Some communities also had male and female chiefs, some of whom were hereditary. In Kim Anderson's interviews with 12 modern-day female chiefs, half of them explicitly tied their experience of being mothers to the experience of being chiefs. Chief Veronica Waboose, of Long Lac #58 First Nation, said, "It's like looking after your kids; you want them to be better and that's the way I think a lot of the women chiefs feel about the community members. Although they're not their kids, they're definitely looking to them for good leadership, to take them in a good direction."¹⁰⁸

Even in communities with no direct or formal authority exercised by women, women were able to influence decision making through their relationships and relative influence. Within an Inuit camp, for example, there was usually an *isumataq*. This "camp boss" was often a middle-aged man who made decisions about when and where to hunt, travel, and move camps. At the same time, women then had authority over many aspects of camp life, and Elders of all genders were important advisors who were consulted before major decisions were made.¹⁰⁹

Of course, early First Nations dealt with community and gendered violence – as in any society. No discussion about the principles of respect and connection can ignore the idea that, in every time and place, members of society are targeted for harm, either individual or collective. But violence, as many writers explain, was subject to strong taboos. For example, there are historical accounts of Plateau women punishing rapists in various ways. In one case, a man was handed over to a group of women who physically molested and humiliated him, before expelling him from the community.¹¹⁰ Within some Plains communities, including Cree Nations, women could leave their partners if they were ever beaten, and the man could never again marry, because his assault on one woman was an assault on all. That person could also be banished or expelled.¹¹¹ While traditions vary, what they have in common is that the strict level of social control exercised by women through governance within their own communities meant that redress – and justice – could be found.

As this brief examination has demonstrated, the principles undergirding the inclusion of women in leadership and decision making foundationally are respect for her insight, role, and knowledge. While not all communities had formal positions for women, women contributed to governance in other ways, as well. Colonization sought to displace women from these roles and, in time, served to silence their leadership through the transformation of community structures, attitudes, and mechanisms for decision making, primarily through the *Indian Act*, the history of which is discussed in greater detail in Chapter 4. As this chapter will demonstrate, the silencing of women through various colonial measures is a contributor to the lack of safety and justice today.



Centrality of Women in Culture

Kim Anderson asserts, “Western culture has typically not promoted, documented, or explored the culture(s) of its women.”¹¹² On the other hand, First Nations cultures have generally contextualized the existence of women in important and foundational ways. These cultural practices are manifest in languages, in ceremony, and in the understanding of women as beings of power and of place, who are instrumental to the literal and figurative lifeblood of their communities and families. These practices, beliefs, and ways of being were fundamentally misunderstood or deliberately ignored within the context of colonization, which sought to erase and eradicate the power of women and 2SLGBTQIA people.

In many First Nations, creation was often understood within the context of childbirth. Birthing traditions varied across Nations. Some Nations would, for example, bury the child’s placenta as a way to keep the child’s spirit connected to Mother Earth. As Ininiw Elder Sarah Garrioch has explained, youth should have “great respect for this gift of childbearing. I realize that it is our responsibility as grandmothers to teach our young women about this thing. That is what my grandmother used to tell me. That was what I was told. And today it is our turn to tell these to our young women.”¹¹³



*First Nations women with a baby in a cradleboard, Flying Post, Ontario, 1906.
Source: Library and Archives Canada/National Photography collection/a059608.*



Prior to the interference of missionaries and, later, the state, many Indigenous women – both First Nations and Inuit – acted as midwives. The critical encounters involved in birth – between mother and child, and among the mother, child, and the midwife who guided the journey – were key to setting up a child’s life in a secure, loving, and connected way. This role was focused on many aspects of holistic health, for which women were responsible. As Janet Smylie, quoting Cherylee Bourgeois, explained:

Indigenous midwifery is not just about providing pre-natal care and attending births. Historically and currently, it’s about medicines to treat sick children, counselling people, including counselling people who were fighting. So, midwives in Métis communities were important interveners when we did have family violence. And, [they were] teachers of culture through storytelling. And, actually, not only did they attend birth, they also attended death and prepared bodies after death.¹¹⁴

As Pauktuutit, a national organization representing Inuit women, has documented, “Traditional childbirth practices were intrinsic to the Inuit way of life and crucial to maintaining the social fabric of Inuit communities.”¹¹⁵ The participation of Inuit women, and other members of the family including grandparents, helped to bond the family unit, and the importance of the midwife, particularly in remote communities, can’t be overstated. In addition, the respect due to the person who had helped in the birth itself translated into practices later on – for instance, in the gifting of the child’s “first piece of sewing or the first animal hunted” to the midwife. The centralization of colonization, documented in further detail in Chapter 4, specifically threatened these important practices, and Inuit midwives could be threatened with legal action if they continued to practise.

Women’s connection to life and to Earth was manifest in other ways, as well. Specifically, both First Nations and, later, Métis women were often involved in the protocol and ceremony necessary to show respect for the animals being hunted, both before and after the hunt. For both First Nations and Métis, this knowledge was grounded in the traditions of their First Nations mothers and grandmothers, as well as, in the case of the Métis, in how these traditions were manifest within particular communities and geographies. Without this protocol, it was believed, the animals would refuse to allow themselves to be given to people for their food. Inuit women also held a special connection to the animals; for example, Iñupiat women in Alaska would carry out certain ceremonies to show the whales respect before and after the men went out to hunt them.¹¹⁶

Many Métis communities owed their existence to strong networks of female kinship, which encouraged people to live near their maternal relations. These were connections of which Métis, including leaders such as Charles Nolin and Louis Riel, were accurately aware. Apparent divisions within the community – Protestant vs. Catholic, French vs. English – were, in fact, overcome by bounds of a “web of blood relationships” that united the community around women and their Indigenous practices. Métis have always made sense of their place in the world through their kin connections – what has been called *wahkohtowin*. At the heart of these webs of relationships were the women and girls who helped to establish strong and vibrant communities grounded in their Indigenous knowledge and traditions.¹¹⁷



Women within Inuit societies also engaged in important and foundational cultural practices. Lighting the *qulliq* (oil lamp) is an example of an important Inuit women’s ceremony. Although it also serves the practical purposes of heating the *igluvijaq* (snow house), drying clothes, and cooking food, Inuk Elder Sarah Anala explained at our Knowledge Keeper panel in Moncton that “[Lighting the qulliq is] more a spiritual illumination that we pursue, and peace and harmony and balance amongst all of us.”¹¹⁸ In addition, throat singing – the most complex human vocalization on earth – is a game or competition between Inuit women. As Becky Kilabuk, who throat-sang for the National Inquiry in Iqaluit, says, “You challenge each other. It keeps you sharp. It keeps you alive.”¹¹⁹ It is also a different learning opportunity: because throat singing was almost lost, more young people are now learning and teaching it to their parents and Elders in return.



Annie Bowkett tends the qulliq in Winnipeg, Manitoba.

The link among cultural teachings, identity, and resilience was fractured through the process of colonization – but not broken. The fact that ceremonies, teachings, and languages do survive today is a testament to those women, those cultural carriers who, along with male, female, and gender-diverse Elders, continue to carry the ancestors as a potential path forward toward healing and safety.



Completing the Circle: Alternative Understandings of Gender and Sexuality

Some First Nations also challenged European norms that understood gender as binary, or male and female only, and that understood sexuality as heterosexual, or between a woman and a man. In some cases, there was important fluidity and flexibility between the norms. Expert Witness Albert McLeod explains:

In pre-contact Indigenous cultures, gender and sexual diversity was generally embraced and not suppressed. This understanding continues today despite the impact of colonization. Some Two-Spirit men and trans women are aligned with their ancestral grandmothers in that they have feminine identities, interests and skill sets, they also desire and are attracted to men. . . . Some Two-Spirit women are aligned with their ancestral grandfathers and therefore follow masculine roles and pursuits. In most cases, Two-Spirit people have merged gender identities that fit into the Indigenous world view.¹²⁰

As Kim Anderson explains, gender prior to colonization was understood within the context of fluidity; in some communities, it was considered that there were in fact four genders, rather than two. These included “man; woman; the two-spirit womanly males; and two-spirit manly females.”¹²¹

What’s more, McLeod – who often goes by “Auntie” – explained that the Anishinaabe principle of non-interference gave gender-diverse people the space to follow their own vision and path that the Creator gave them. For example, Ozawwendib was an Anishinaabe woman assigned male at birth, who began wearing women’s clothing and taking on women’s roles in her community early on. She was also a well-respected warrior. She had several husbands, and these marriages were treated no differently from other marriages.¹²² In another example, in the matrilineal Kwa’kwala society, men would marry other men when there was no daughter in the family to carry on the family name and responsibilities, although it’s not clear if they then made a home together.¹²³ As witness Jeffrey McNeil-Seymour recalls Lee Maracle explaining, “There’s no homosexuality, there’s no heterosexuality. Before contact, there was just human sexuality.”¹²⁴

For some First Nations, gender fluidity was based on the fact that gender was linked with their role in the community – a role that would be defined with time and experience. According to writer Jeannette Armstrong, of the Interior Salish Okanagan:

In the Okanagan, as in many Native tribes, the order of life learning is that you are born without sex and as a child, through learning, you move toward full capacity as either male or female. Only when appropriately prepared for the role do you become a man or woman. The natural progression into parenthood provides immense learning from each other, the love, compassion and cooperation necessary to maintain family and community. Finally as an elder you emerge as both male and female, a complete human, with all skills and capacities complete.¹²⁵



Similarly, with reference to Algonquian societies, Kim Anderson writes that after menopause, older Algonquian women were considered “both genders” and could enter into men’s spaces.¹²⁶

In some First Nations, gender bending was a way to ensure the survival of the clan, because it helped to address population imbalances between women and men, particularly in smaller communities. For instance, if there weren’t enough hunters, a woman or girl could take on that work, or vice versa, where men could take on the work traditionally done by women.

In Inuit societies, the division between genders was blurred by the role of names, as well as practically by the role a person took on. When an Inuk is born, they are usually given the atiq (name) of a deceased member of the community. The atiq, however, is more than just a name. The concept bears some similarities to the western concept of “soul.” Through the atiq, the child inherits tastes, personality, and social relationships from the deceased person. People will usually refer to the child with their kinship terms they used for the deceased. Naming in Inuit culture is therefore a form of reincarnation, whereby deceased members of the community “come back” in the child who is given their name.¹²⁷

This relationship between names and identity could have implications for gender. Boys named after deceased women were initially raised as girls, while girls named after deceased men were initially treated as boys. This gender fluidity included being dressed in clothing and learning skills that were appropriate for the gender of their name, rather than their biological sex. At the onset of puberty, their clothing and labour would be realigned to be consistent with their biological sex.¹²⁸

In whatever way Indigenous people understood their gender and sexuality, gender-diverse ancestors and people living today have valuable perspectives to share. As McNeil-Seymour shared, “As we know, culture isn’t static and it is constantly in motion, so we have to also evolve with that... I feel like us Two-Spirit people are here to bring back balance and to be the go-betweens in all of those traditional roles and identities that we have.”¹²⁹ McLeod similarly affirms: “And so for a Two-Spirit people, we come to that circle with our understanding of those teachings and our contribution. And so when we’re present, it means the whole circle is complete.”¹³⁰ For some witnesses, the importance of completing this circle means that 2SLGBTQIA people need to be welcomed once again into ceremony, to try to share more of these teachings with communities or community members who have been taught to reject gender fluidity through colonization and Christianity. This circle includes transgender people, to bring attention to the cases of violence that can be ignored when they are excluded.

“INSTEAD OF SAYING, ‘WHAT ARE THE TRADITIONAL GENDER ROLES?’ AS IF THEY ALWAYS HAVE TO BE THAT WAY AND ALWAYS WERE UNCHANGING IN THE PAST, WE LOOK AT HOW DO OUR UNDERSTANDINGS ABOUT GENDER AND SEXUALITY TODAY SHAPE THE WAY THAT WE WORK WITH LAW AND SHAPE OUR LEGAL INTERPRETATIONS?”

Val Napoleon



As a whole, the process of colonization fundamentally tried to alter women’s and 2SLGBTQQIA people’s identities and roles in their communities. Identity, as supported through language, storytelling, ceremony, and connection, underwent assault from all sides through the processes of colonization, including relocation, residential schools, and adoption, as well as the broader processes of isolating Indigenous people and restricting access to traditional territories, as will be explored in Chapter 4. The power and place accorded to women by virtue of their being women – a “recognition of being,” to borrow the title of Kim Anderson’s book – were challenged by encounters with colonizers who had little interest in according any privilege or protection to Indigenous women, girls, and 2SLGBTQQIA people.

Conclusion: Finding Solutions through New Relationships

This chapter has outlined the principles of respect, reciprocity, and interconnectedness that are foundational to many systems of Indigenous law and that represent an important way of understanding various rights, as articulated in Indigenous terms. These roles, responsibilities, and related rights aren’t meant to trap Indigenous women, girls, or 2SLGBTQQIA people in any prescribed form of identity. As Val Napoleon shared, in her testimony before the National Inquiry, “Instead of saying, ‘What are the traditional gender roles?’ as if they always have to be that way and always were unchanging in the past, we look at how do our understandings about gender and sexuality today shape the way that we work with law and shape our legal interpretations?”¹³¹



Young Inuk woman carrying an infant in her amauti, ca. 1947-1948.

Source: Library and Archives Canada/ Richard Harrington fonds/a147049

Credit: Richard Harrington.

And, as Dawnis Kennedy expressed, “You know, I think that if women were taking up their role, we wouldn’t be worried about protecting women. We’d just be watching the women do their work protecting life.”¹³²

Specifically, we hope to highlight a combination of stories and histories that demonstrate power and place for Indigenous women, girls, and 2SLGBTQQIA people, as represented in the National Inquiry’s own testimony and in the diverse landscape of Indigenous ways of knowing. Val Napoleon asserts:



Indigenous law hasn't gone anywhere in Canada. And it exists in the ways that people are trying to work in their communities, but that it's been undermined, and that the work before us all is to rebuild it, and that there are structured critical ways that we can do that, and that we have to put in the time and the mental work as well as emotional and spiritual work to do that, so that we don't idealize Indigenous law and so that it is capable of dealing with the realities that our communities are living with. Some of those communities are very dangerous places for women and girls.¹³³

As we have illustrated, a fundamental element of safety rests in understanding the roles, responsibilities, and inherent rights conveyed by women and for women in their own terms. The Indigenous laws and human rights that contribute to the safety of Indigenous women, girls, and 2SLGBTQQIA people vary from group to group, but are represented in land, stories, ceremony, and world views that emphasize the importance of relationships among people and between people and their environments. These roles, responsibilities, and rights were both collective and individual. Professor Brenda Gunn explains, "When I think about collective governance in many Indigenous communities, how I understand it, it was never sacrificing individual identity or being or rights for the collective.... But, it was how the collective was responsible for protecting the individuals, and how the individual contributed and was part of the collective."¹³⁴

As an Inquiry, we have operated on the premise that our women and girls are sacred, and that, in their absence, it is not only family members, but entire communities and Nations, who are placed at further risk and who lose irreplaceable pieces of themselves. This sacred dimension isn't otherworldly, or ungrounded. Rather, as our testimony shows, women as teachers, leaders, healers, providers and protectors were and remain indispensable parts of the equation to generating solutions for the crisis of missing and murdered Indigenous women and girls. As Audrey Siegl, a member of the National Inquiry's team, shared:

For our women ... for our young women, for our grandmothers, for our women who travel with us, who guide us, who love us, who share strength to do this heartbreaking work ... we are sacred because we exist. We are sacred because we have survived. We survived when many did not. We watch our women die every day here in Canada. I don't know when safety, peace and justice are going to come for us. Just know that we love you and that we are doing our best to honour and represent our women and our experiences. We are doing this hard and ugly and necessary work so others don't have to ... so they don't have to carry so much.

And, where we leave off with this work now, inevitably, some are going to have to pick it up and carry it on. I hope that it's easier for them. I hope that it's lighter for them.¹³⁵

Respect, reciprocity, and interconnectedness – these principles can hold the keys toward understanding what was threatened through colonial encounters, and the transformational power for harm, or for health, of each and every person, process, and institution involved in the crisis of missing and murdered Indigenous women and girls.



In explaining why she chose to testify before the Inquiry, Dawnis Kennedy notes the contemporary importance of Indigenous law:

It is those who consider themselves the most powerful in modern society that also need our law, our Onaakonigewin, our knowledge about life and how to live a good life in harmony with each other and with all of our relations, not just humanity, with all our relatives: the plants, the animals, the stars, the birds, the fish, the winds, the spirit; our mother, the earth; our grandmother, the moon; our grandfather, the sun; all of our relatives in the universe. That is what our law teaches us, how to live life in relationship and how to ensure the continuation of life into the future seven generations ahead.¹³⁶

In the historical Cree story “Gift of the Old Wives,” the old women of a community must stay behind and die at their enemies’ hands to keep the rest of their community safe. Before the chief eventually accepts this gift, he says, “But who will teach our children and our children’s children? ... Without your wisdom, how will our young people learn the Cree ways?”¹³⁷

Stories are medicine.¹³⁸ As writers and scholars Leanne Simpson and Kiera Ladner explain, grandmothers and aunties tell us stories and keep us alive: “Warmth in our hearts and warmth in our bellies.”¹³⁹ Indigenous women, girls, and 2SLGBTQQIA people have stories of strength and resilience. They continue to pass on these teachings, by example or by story. They represent an irreplaceable facet of being part of, and of building, communities and Nations. Stories can also help us, as a society, find our way “home”¹⁴⁰ – and in doing so, create safer spaces and places for Indigenous women, girls, and 2SLGBTQQIA people.

“FOR OUR YOUNG WOMEN, FOR OUR GRANDMOTHERS, FOR OUR WOMEN WHO TRAVEL WITH US, WHO GUIDE US, WHO LOVE US, WHO SHARE STRENGTH TO DO THIS HEART-BREAKING WORK ... WE ARE SACRED BECAUSE WE EXIST. WE ARE SACRED BECAUSE WE HAVE SURVIVED. WE SURVIVED WHEN MANY DID NOT. WE WATCH OUR WOMEN DIE EVERY DAY HERE IN CANADA. I DON’T KNOW WHEN SAFETY, PEACE AND JUSTICE ARE GOING TO COME FOR US. JUST KNOW THAT WE LOVE YOU AND THAT WE ARE DOING OUR BEST TO HONOUR AND REPRESENT OUR WOMEN AND OUR EXPERIENCES.”

Audrey Siegl



Notes

- 1 As cited in Monture, “Women’s Words,” 46; as appearing in Grant, *Our Bit of Truth*, 15.
- 2 Tuma Young (L’nu, Malagawatch First Nation), Part 3, Public Volume 1, Winnipeg, MB, p. 201.
- 3 Dr. Janet Smylie (Cree/Métis), Mixed Parts 2 & 3, Public Volume 2, Iqaluit, NU, p. 117.
- 4 Dawnis Kennedy (Minnawaanigogiiizhigok) (Anishinaabe), Part 3, Public Volume 2, Winnipeg, MB, p. 191.
- 5 Dr. Val Napoleon (Saulteau First Nation, Gitksan), Part 3, Public Volume 2, Winnipeg, MB, pp. 49-50.
- 6 Tuma Young (L’nu, Malagawatch First Nation), Part 3, Public Volume 1, Winnipeg, MB, p. 148.
- 7 Dr. Val Napoleon (Saulteau First Nation, Gitksan), Part 3, Public Volume 1, Winnipeg, MB, p. 87.
- 8 Snyder, Napoleon, and Borrows, “Gender and Violence,” 596.
- 9 Kulchyski, *Aboriginal Rights*.
- 10 Dawnis Kennedy (Minnawaanigogiiizhigok) (Anishinaabe), Part 3, Public Volume 2, Winnipeg, MB, p. 200.
- 11 Dawnis Kennedy (Minnawaanigogiiizhigok) (Anishinaabe), Part 3, Public Volume 2, Winnipeg, MB, pp. 190-191.
- 12 Tuma Young (L’nu, Malagawatch First Nation), Part 3, Public Volume 1, Winnipeg, MB, p. 157.
- 13 Translation ours. Jean Leclair, Part 3, Public Volume 6, Quebec City, QC, p. 175.
- 14 Dawnis Kennedy (Minnawaanigogiiizhigok) (Anishinaabe), Part 3, Public Volume 2, Winnipeg, MB, p. 174.
- 15 Dr. Val Napoleon (Saulteau First Nation and Gitksan), Part 3, Public Volume 1, Winnipeg, MB, p. 95. See also Borrows, *Canada’s Indigenous Constitution*.
- 16 Dr. Val Napoleon (Saulteau First Nation and Gitksan), Part 3, Public Volume 1, Winnipeg, MB, p. 80.
- 17 Sandra Omik (Inuit, Pond Inlet), Part 3, Public Volume 2, Winnipeg, MB, p. 116.
- 18 Sandra Omik (Inuit, Pond Inlet), Part 2, Public Volume 2, Winnipeg, MB, p. 118.
- 19 Snyder, Napoleon, and Borrows, “Gender and Violence,” 596–97, and 610.
- 20 Elder Kunuk Muckpalook (Inuit), Part 3, Public Volume 2, Winnipeg, MB, p. 120.
- 21 Sandra Omik (Inuit, Pond Inlet), Part 3, Public Volume 2, Winnipeg, MB.
- 22 Dr. Hadley Friedland, Part 3, Public Volume 1, Winnipeg, MB, p. 79.
- 23 Dawnis Kennedy (Minnawaanigogiiizhigok) (Anishinaabe), Part 3, Public Volume 2, Winnipeg, MB, p. 174.
- 24 Dr. Val Napoleon (Saulteau First Nation and Gitksan), Part 3, Public Volume 1, Winnipeg, MB, pp. 70-71.
- 25 Dr. Val Napoleon (Saulteau First Nation and Gitksan), Part 3, Public Volume 1, Winnipeg, MB, p. 112.
- 26 Translation ours. Jean Leclair, Part 3, Public Volume 6, Quebec City, QC, p. 218.
- 27 Dawnis Kennedy (Minnawaanigogiiizhigok) (Anishinaabe), Part 3, Public Volume 2, Winnipeg, MB, p. 170.
- 28 For examples, see Law Society of Canada, ed., *Indigenous Legal Traditions*; Napoleon, “Thinking About Indigenous Legal Orders”; and Borrows, “Eliminating Pre and Post-Contact Distinctions.”
- 29 Dawnis Kennedy (Minnawaanigogiiizhigok) (Anishinaabe), Part 3, Public Volume 2, Winnipeg, MB, p. 184.
- 30 Cruikshank, *Life Lived Like a Story*.
- 31 Whiteduck, “But It’s Our Story.”
- 32 Napoleon and Friedland, “An Inside Job.”
- 33 Dr. Val Napoleon (Saulteau First Nation and Gitksan), Part 3, Public Volume 1, Winnipeg, MB, p. 81.
- 34 Napoleon and Friedland, “An Inside Job,” 738.
- 35 LaRocque, cited in Anderson, *A Recognition of Being*, 36–37.
- 36 Anderson, *A Recognition of Being*, 37.



- 37 Many stories have been passed down orally for generations, while others have been recorded. The recording of these stories, especially historically, was often done by colonial European, often male, ethnographers who summarized stories or offered interpretations according to their own world views. Even just reading stories in English loses the nuance encoded in the original languages they are told in, and many stories and teachings are either fractured or lost. For this reason, we have prioritized stories told by Indigenous women and gender-diverse people themselves, in as close a translation as possible. It also wasn't possible to look at Indigenous women's roles and responsibilities Nation by Nation in the space we have, so we have chosen instead to draw broader conclusions and demonstrate with examples from different Indigenous societies. These stories are not intended to represent a pan-Indigenous set of beliefs, but to offer insight into some of the important principles they convey, which may vary from Nation to Nation, and from community to community.
- 38 Snyder, Napoleon, and Borrows, "Gender and Violence," 612.
- 39 Eva P. (Alexis Nakota Sioux Nation), Part 1, Public Volume 31, Saskatoon, SK, p. 23.
- 40 Toni C. (Cree), Part 1, Statement Volume 425, Onion Lake, SK, p. 7.
- 41 Ann M. R. (Kaska Dena), Part 1, Public Volume 3, Whitehorse, YT, p. 39.
- 42 Fay Blaney (Xwémalhkwa of the Coast Salish), Part 3, Public Volume 5, Quebec City, QC, pp. 334-335.
- 43 Ann M. R. (Kaska Dena), Part 1, Public Volume 3, Whitehorse, YT, p. 38.
- 44 Interview with Bernie Williams and Audrey Siegl, September 30, 2018, by Kelsey Hutton, p. 66-67.
- 45 Interview with Bernie Williams and Audrey Siegl, September 30, 2018, by Kelsey Hutton, p. 46.
- 46 Translation ours. Interview with Pénélope Guay, September 30, 2018, by Annie Bergeron, p. 22.
- 47 Rhonda M. (Anishinaabe), Part 1, Public Volume 7, Smithers, BC, p. 26.
- 48 Grace T. (Eagle Clan, Tsimshian), Part 1, Public Volume 118, Vancouver, BC, p. 18.
- 49 Métis people who are of Anishinaabe or Cree origin may also demonstrate some adoption of these belief systems, though many Métis are also strongly affiliated with the Catholic or Protestant churches. See Chantal Fiola, *Rekindling the Sacred Fire*. Many Inuit would also hold largely Christian views of creation due to the history of their transition to Christianity in the late 19th century, but more recent ethnographies argue that Inuit incorporated ideas from Christianity into a broader Inuit cosmological framework. See Brody, *The Other Side of Eden* and Oosten, Laugrand, and Remie, "Perceptions of Decline."
- 50 Horn-Miller, "Distortion and Healing."
- 51 Anderson, "New Life Stirring," p. 13.
- 52 Horn-Miller, "Distortion and Healing."
- 53 Christopher, Flaherty, and McDermott, *Unikkaaqtuat*.
- 54 Ibid., 42-43.
- 55 Laugrand and Oosten, *The Sea Woman*. See also Bennett and Rowley, *Uqalurait*.
- 56 Dawnis Kennedy (Minnawaanigogizhigok) (Anishinaabe), Part 3, Public Volume 2, Winnipeg, MB, pp. 188-189.
- 57 There are also the Algonquian stories of the Woman Who Built the First Sweatlodge and of the Grandmother of Sacred Pipes; the Haida story of Cumulus Cloud Woman, who spreads tobacco seeds across Haida Gwaii, the medicine woman who calls to Sister Cedar and makes cedar every woman's sister; and the Tsimshian tell the story of the woman who gave men Devil's Club, a very important ceremonial herb.
- 58 Dooling, *The Sons of the Wind*; Hazen-Hammond, *Spider Woman's Web*.
- 59 Barkwell, Dorion, and Hourie, *Metis Legacy II*, 35.
- 60 Ibid., 38.
- 61 Donna Adams et al., *Inuit Leadership and Governance*, 43.
- 62 Barkwell, Dorion, and Hourie, *Metis Legacy II*, 58-59.
- 63 Trudy S. (Mowachaht/Muchalalt First Nation), Part 1, Public Volume 95, Vancouver, BC, p. 23.
- 64 Lee, "Defining Traditional Healing."
- 65 Joann Green (Heiltsuk), Part 1, Public Volume 90, Vancouver, BC, pp. 66-67.



- 66 Ha-yen-doh-nees, *Seneca Indian Stories*.
- 67 Ibid., 58.
- 68 Ibid., 58–59.
- 69 Lévesque, Geoffroy, and Polèse, “Naskapi Women,” 79.
- 70 Jeffrey McNeil-Seymour (Tk’emlups te Secwepemc/English), Mixed Parts 2 & 3, Public Volume 3, Iqaluit, NU, p. 225.
- 71 Albert McLeod (Nisichawayasihk Cree Nation/Métis community of Norway House), Part 3, Public Volume 8, Toronto, ON, p. 51.
- 72 Bennett and Rowley, *Uqalurait*. See also Aupilaarjuk et al, *Cosmology and Shamanism*.
- 73 Koperqualuk, “Puvirniturmiut Religious and Political Dynamics.”
- 74 Bennett and Rowley, *Uqalurait*, 180.
- 75 Elder Miigam’agan (Mi’kmaq), Part 1, Public Volume 44(a), Moncton, NB, p. 126.
- 76 Boas and Tate, *Tsimshian Mythology*, 66.
- 77 For an example, see the “Story of Kuxka’in” in Teit, *The Shuswap*.
- 78 Szack, “Keepers of the Water,” 69.
- 79 Szack, “Keepers of the Water.”
- 80 Johnson, “13-year-old.”
- 81 Teit, *Mythology of the Thompson Indians*, 363.
- 82 Bringhurst, *A Story as Sharp*.
- 83 Ibid., 93–94.
- 84 Michele G. (Musqueam), Part 1, Public Volume 84, Vancouver, BC, p. 79.
- 85 Dr. Val Napoleon (Saulteau First Nation and Gitksan), Part 3, Public Volume 2, Winnipeg, MB, pp. 97-98.
- 86 Allen, *The Sacred Hoop*, 78.
- 87 Anderson, *A Recognition of Being*, 57.
- 88 AJI, “Chapter 5: Aboriginal and Treaty Rights.”
- 89 As interviewed by Wiebe, “The Role of Indigenous Women.” See also Aimée Craft, *Breathing Life into the Stone Fort Treaty*.
- 90 Ibid.
- 91 Szack, “Keepers of the Water.”
- 92 Kermoal and Altamirano-Jiménez, *Living on the Land; Anderson, Life Stages and Native Women*; Bennett and Rowley, *Uqalurait*.
- 93 Anderson, *A Recognition of Being*, 59.
- 94 Ibid., 61.
- 95 Brafford and Thom, *Dancing Colors*; Anderson, *Life Stages and Native Women*.
- 96 Joan Scottie, in *Arnait Nipingit*, 119.
- 97 Anderson, *Life Stages and Native Women*; Cruikshank, *Life Lived Like a Story*.
- 98 Blackman and Davidson, *During My Time*.
- 99 Turnbaugh and Turnbaugh, *Basket Tales*.
- 100 Wight, “Women and Art in Salluit”; Graburn, *Eskimos Without Igloos*; Roberts, *The Inuit Artists of Sugluk*.
- 101 Anderson, “Leading by Action.”
- 102 Carter, “Your Great Mother”; Miller, “Victoria’s ‘Red Children.’”
- 103 Bringhurst, *A Story as Sharp*.
- 104 Amy Hudson (Inuit, NunatuKavut), Part 3, Public Volume 9, Toronto, ON, p. 151.
- 105 Anderson, *A Recognition of Being*, 65.
- 106 Joann Green (Heiltsuk), Part 1, Public Volume 90, Vancouver, BC, p. 18.
- 107 Cited in Morris, “Gifted Woman,” 76.
- 108 Anderson, “Leading by Action,” 113.
- 109 Bennett and Rowley, *Uqalurait*.
- 110 Anderson, *A Recognition of Being*, 95.
- 111 For more on Plains marriage traditions, see Carter, *The Importance of Being Monogamous*.
- 112 Anderson, *A Recognition of Being*, 30.
- 113 Pratt, Bone, and the Treaty and Dakota Elders of Manitoba, with contributions by the AMC Council of Elders, *Untuwe Pi Kin He*, 104.
- 114 Dr. Janet Smylie (Cree/Métis), Mixed Parts 2 & 3, Public Volume 2, Iqaluit, NU, p. 160.
- 115 Pauktuutit, “Midwifery.”
- 116 Bodenhorn, “I’m Not the Great Hunter.”
- 117 Macdougall, *One of the Family*. See also Macdougall, “The Myth of Metis Cultural Ambivalence.”



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- 119 Becky Kilabuk (Inuit, Pangnirtung), Mixed Parts 2 & 3, Public Volume 4, Iqaluit, NU, p. 241.
- 120 Albert McLeod (Nisichawayasihk Cree Nation/Métis community of Norway House), Part 3, Public Volume 8, Toronto, ON, p. 57.
- 121 Anderson, *A Recognition of Being*, 89.
- 121 Morris, “Gifted Woman.”
- 123 Boas, *The Social Organization*.
- 124 Jeffrey McNeil-Seymour (Tk’emlups te Secwepemc/English), Mixed Parts 2 & 3, Volume 4, Iqaluit, NU, p. 170.
- 125 Armstrong and Cardinal, *The Native Creative Process*, 102.
- 126 Anderson, *Life Stages and Native Women*.
- 127 Brody, *The Other Side of Eden*.
- 128 Trott, “The Gender of the Bear.”
- 129 Jeffrey McNeil-Seymour (Tk’emlups te Secwepemc/English), Mixed Parts 2 & 3, Public Volume 4, Iqaluit, NU, pp. 189, 193.
- 130 Albert McLeod (Nisichawayasihk Cree Nation/Métis community of Norway House), Part 3, Public Volume 8, Toronto, ON, p. 89.
- 131 Dr. Val Napoleon (Saulteau First Nation and Gitksan), Part 3, Public Volume 1, Winnipeg, MB, p. 110.
- 132 Dawnis Kennedy (Minnawaanigogizhigok) (Anishinaabe), Part 3, Public Volume 2, Winnipeg, MB, p. 189.
- 133 Dr. Val Napoleon (Saulteau First Nation and Gitksan), Part 3, Public Volume 2, Winnipeg, MB, p. 32.
- 134 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 71.
- 135 Interview with Bernie Williams and Audrey Siegl, September 30, 2018, by Kelsey Hutton, p. 81.
- 136 Dawnis Kennedy (Minnawaanigogizhigok) (Anishinaabe), Part 3, Public Volume 2, Winnipeg, MB, pp. 169-170.
- 137 Walsh, *Beginnings*, 26.
- 138 Anderson, *Life Stages of Native Women*.
- 139 Simpson and Ladner, *This Is an Honour Song*, 8.
- 140 Whiteduck, “But It’s Our Story.”



Emphasizing Accountability through Human Rights Tools

Introduction: Why Human Rights?

Indigenous stories and histories from First Nations, Métis, and Inuit lay out the principles of respect, reciprocity, and interconnectedness that are key to using principles of Indigenous law, as articulated by various groups, as a way to begin to decolonize Western-based notions of rights. This project also begins to dismantle some of the physical or ideological structures that have led to the promotion of violence against Indigenous Peoples generally, and Indigenous women, girls, and 2SLGBTQQIA people specifically.

We heard, in the context of these relationships, how the basic rights of Indigenous women, girls, and 2SLGBTQQIA people suffer from human rights abuses that manifest in the lack of services or poor quality of services received, and in the lack of protection available to Indigenous women, girls, and 2SLGBTQQIA people. We also heard of the urgent need for basic tools for accountability that will keep governments from perpetuating this crisis for many more generations.

Canada is signatory to a variety of human and Indigenous rights instruments, which represent standards it has agreed to uphold. As Expert Witness Timothy Argetsinger, executive political advisor with Inuit Tapiriit Kanatami (ITK), explained:

The human rights framework approach is important, linking Canada's solemn commitments and obligations to various human rights instruments, which implicate a number of obligations related to some of the basic needs ... such as housing, [the] right to food, safety, and then the larger issue of violence against women and girls and how gaps or failure to act on those obligations create vulnerability.¹



Brenda Gunn, Métis Professor of Law at the University of Manitoba, agreed, arguing that using an international human rights-based approach could help identify which laws have failed to protect Indigenous women, girls, and 2SLGBTQQIA people, and which have, in some cases, contributed to the violence in their lives.² She said, “It can be used to address ... discriminatory practices and address some of the unjust distributions of power and begin to identify some of Canada’s actions that undercut human rights.”³

Understanding how various human rights instruments can help promote the rights of Indigenous women, girls, and 2SLGBTQQIA people is an important part of thinking about how to address the crisis of missing and murdered Indigenous women and girls. As Brenda Gunn testified, “If we want to fix, or address, or ‘reconcile’ – the word we use in Canada – what we need to do is start by realizing Indigenous Peoples’ rights. And that includes ... that this process of implementation is something to be done in the spirit of partnership and mutual respect.”⁴

Indigenous Peoples’ rights are human rights, in important ways. They are linked to human rights by virtue of being rights for all humans, on a basic level, but, as scholars Robyn Eversole, John-Andrew McNeish, and Alberto Cimadamore suggest, “Different cultural and national communities make the concept of human rights authentically their own in the process of analyzing their conditions and making their claims.”⁵ If we consider how human rights principles emerge as already existing within Indigenous rights claims, the two concepts are complementary, linked, and importantly grounded in the lived experiences of those who experience injustice.

Specifically addressing women within the discourse of human rights, Brenda Gunn argued that a human rights approach

keeps Indigenous women’s needs at the centre and at the focus of the work. It does this in part by acknowledging Indigenous women and girls as rights holders. It promotes their agency and autonomy and allows for the process to consider the various different contexts and different ways in which women experience discrimination.⁶

At the same time, we maintain, there is a need to distinguish nuances between human and Indigenous rights, as a way to extend beyond the rights that should be protected by the state and towards those rights that must be upheld through new relationships and by confronting racism, discrimination, and stereotypes in all of the encounters and relationships that people testifying before the National Inquiry cited. As Gladys R. pointed out:

“We want a working relationship with the rest of society. This is our land. We want to have a good working relationship. We welcomed everybody in. And what are they doing to us? Our young mothers are going missing. Our young mothers are being murdered at an astronomical rate, more than any other race in this country.”⁷



Anti-violence scholar Andrea Smith points out that human rights can work for the process of decolonizing. She explains, “I contend that while the ultimate goal of Indigenous liberation is decolonization rather than human rights protection, the human rights framework can potentially be used as part of a strategy for decolonization.”⁸ Decolonization using human rights instruments can work to increase safety for Indigenous women, girls, and 2SLGBTQQIA people, if those instruments are understood in relation to the basic principles articulated in the previous chapter: respect, reciprocity, and interconnectedness.

This chapter will, first, outline the contributions of a human rights approach, followed by a brief examination of many of the key international instruments that may serve to promote safety and justice for Indigenous women, girls, and 2SLGBTQQIA people. This chapter will then explore domestic rights instruments in Canada and principles established through the courts, before examining instances in which human and Indigenous rights approaches are conflicting. Ultimately, this chapter will argue that reconciling the need to respect individual and collective rights, as well as the unique needs of Indigenous women, girls, and 2SLGBTQQIA people in a variety of distinct Indigenous contexts, means respecting the urgent need for self-determined solutions as conceived, driven, and understood by those who are most targeted.

The International Human Rights Context

In Canada, there exists a robust international human rights framework that deals with rights for all citizens, including Indigenous Peoples.⁹ This section will focus on the international human rights instruments to which Canada has publicly committed in its protection of rights, and will include discussions of both human and Indigenous rights. These rights can help to ensure accountability in improving outcomes for First Nations, Métis, and Inuit within the context of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people.

Throughout the testimony, the National Inquiry heard from witnesses who argued that contemporary human and Indigenous rights instruments can play a role in the discussion on the rights guaranteed in the areas of culture, health, security, and justice through the promotion of new policies and principles, and the genuine commitment of all levels of government to addressing the problem of violence and the violation of basic human rights, not only in words, but in actions. These instruments are also public commitments, which can be useful standards for assessing state action, or inaction, in key areas linked to promoting safety.

“WE WANT A WORKING RELATIONSHIP WITH THE REST OF SOCIETY. THIS IS OUR LAND. WE WANT TO HAVE A GOOD WORKING RELATIONSHIP. WE WELCOMED EVERYBODY IN. AND WHAT ARE THEY DOING TO US? OUR YOUNG MOTHERS ARE GOING MISSING. OUR YOUNG MOTHERS ARE BEING MURDERED AT AN ASTRONOMICAL RATE, MORE THAN ANY OTHER RACE IN THIS COUNTRY.”

Gladys R.



Hard and Soft Law: Assessing the Scope of Protections through International Human Rights

International human rights instruments are treaties and other international documents relevant to international human rights law and the protection of human rights in general. They can be classified into two categories: declarations, adopted by bodies such as the United Nations General Assembly, which are considered “soft law” and are not strictly legally binding; and conventions, covenants, or international treaties, which are “hard law,” legally binding instruments concluded under international law.

Many of these instruments contain what are considered to be dual freedoms: they provide freedom from the state, when it doesn’t respect human rights; and freedom through the state, in the state’s ability to protect or promote these rights. For example, the right to adequate housing covers a right to be free from forced evictions carried out by state agents (freedom from the state), as well as a right to receive assistance to access adequate housing in certain situations (freedom through the state). While they are important pieces of the human rights framework, declarations don’t have binding power to compel states to respect the principles contained within them.

In terms of making sure that states meet their obligations, there does exist a variety of different mechanisms that can be called upon to assess where countries stand. The Office of the High Commissioner for Human Rights manages a variety of different human rights monitoring mechanisms in the United Nations (UN) system, including UN Charter-based bodies as well as bodies created under the international human rights treaties and made up of independent experts whose job it is to monitor how countries are complying with their obligations under the various covenants and treaties.

Charter bodies within the system include the Human Rights Council, which meets every year and is composed of 47 elected nation-states who are members of the UN. The council is tasked with preventing human rights abuses, as well as inequity and discrimination, and working to expose those who are committing the abuses. In addition, Special Procedures bodies also fall under the UN’s Charter-based bodies, and are often theme-specific or specific to human rights issues in a particular country. Special Procedures bodies are composed of volunteer experts, and include Special Rapporteurs or expert working groups who can examine, monitor, advise, and publicly report on human rights issues. The Universal Periodic Review is a Charter-based process involving a review of human rights records for all UN member states, where each state explains what it did to improve human rights issues in its own country. The Human Rights Council Complaints Procedure addresses communications submitted by individuals, by groups, or by non-governmental organizations who report being the targets of human rights violations.

In addition to its Charter-based bodies, the UN also has treaty bodies that monitor the implementation of core international human rights treaties and are made up of independent experts. Most conventions establish mechanisms to oversee their implementation, and to allow individuals or groups to take the state to an international complaints body, in order to enforce them. In some



cases, these mechanisms have relatively little power, and are often ignored by member states; in other cases, these mechanisms have great political and legal authority, and their decisions are almost always implemented. These mechanisms include human rights treaty bodies that monitor implementation of core treaties. They include:

- Human Rights Committee (HRC)
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on the Elimination of Discrimination Against Women (CEDAW)
- Committee Against Torture (CAT)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)¹⁰
- Committee on Enforced Disappearances (CED)

In addition to these, there are other United Nations bodies working on the promotion and protection of human rights, including the General Assembly itself, the Third Committee of the General Assembly, the Economic and Social Council, and the International Court of Justice.¹¹ In addition, the United Nations' partners and agencies promote and protect human rights, working with the other human rights bodies listed in this section. These other agencies and partners include:

- United Nations High Commissioner for Refugees (UNHCR)
- Office for the Coordination of Humanitarian Affairs (OCHA)
- Inter-Agency Internal Displacement Division (IDD)
- International Labour Organization (ILO)
- World Health Organization (WHO)
- United Nations Educational, Scientific and Cultural Organization (UNESCO)
- Joint United Nations Programme on HIV/AIDS (UNAIDS)
- Inter-Agency Standing Committee (IASC)
- Department of Economic and Social Affairs (DESA)
- Commission on the Status of Women (CSW)
- Office of the Special Adviser on Gender Issues and the Advancement of Women (OSAGI)
- Division for the Advancement of Women (DAW)



- United Nations Population Fund (UNFPA)
- United Nations Children’s Fund (UNICEF)
- United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women)
- United Nations Development Programme (UNDP)
- Food and Agriculture Organization of the United Nations (FAO)
- United Nations Human Settlements Programme (UN-HABITAT)
- United Nations Mine Action Service (UNMAS)

International Covenants

Canada has ratified seven core international human rights instruments that are considered to be enforceable as covenants or conventions. These are relevant to the crisis of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people. Each instrument has established a committee of experts to monitor implementation of its provisions by its States Parties, and Canada and other signatory states are required to report periodically on the fulfillment of their obligations under each.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of 1966 was one of the first human rights treaties to be adopted by the United Nations. It formally took effect in 1969. Under the ICERD, racial discrimination is where a person or a group is treated differently from other people or groups because of their race, colour, descent, national origin, or ethnic origin, and this treatment impairs, or is intended to impair, their human rights and fundamental freedoms. For example, an act is racially discriminatory if a person is denied a service or employment because of their race or ethnicity, or when a law or policy impacts unfairly on a particular racial or ethnic group. The convention permits distinctions between citizens and non-citizens, but not between different groups of non-citizens. It asserts that all human rights in political, economic, social, cultural, and other fields of public life are to be ensured to everyone without racial discrimination.

The convention indicates that there is one type of act, called a “special measure,” that is not considered to be discriminatory even though it involves treating specific racial, ethnic, or national peoples or individuals differently. Special measures are programs that aim to ensure the adequate advancement of certain racial groups who require support to be able to enjoy their human rights and fundamental freedoms in full equality. Special measures aren’t only allowed by the convention; they’re required when needed for all groups to be able to enjoy their rights.



The *International Covenant on Civil and Political Rights* (ICCPR) is another of the earliest of these binding instruments. Adopted by the UN in 1966, it came into force on March 23, 1976, and is one of the two treaties that give legal force to the *Universal Declaration of Human Rights* (UDHR). The ICCPR rights are fundamental to enabling people to enjoy a broad range of human rights. Along with the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *Universal Declaration of Human Rights*, the ICCPR and its two Optional Protocols are collectively known as the *International Bill of Rights*.

At its core, the ICCPR recognizes the inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights. The unifying themes and values of the ICCPR are found in articles 2 and 3 and are based on the notion of non-discrimination and the fact that all individuals within the state should be able to enjoy full civil and political rights, regardless of background. Article 3 also ensures the equal right of both men and women to all civil and political rights set out in the ICCPR.

Rights protected under this instrument are very broad. As they relate to the safety of Indigenous women, girls, and 2SLGBTQQIA people, rights protected by the ICCPR include freedom from torture and other cruel, inhumane, or degrading treatment or punishment; the right to equitable treatment by the judicial process; the right to privacy, home, and family life; the right to marriage and the rights of children; the right to political participation; and the right to equality and non-discrimination.

Struggles for these rights are real and common for Indigenous women, girls, and 2SLGBTQQIA people. As Delores S. shared:

Families are fighting to get real investigations and real access to justice, [so] they had to become full-time advocates. That comes at a great cost, including self-care. When I got involved in Nadine’s case, I did not understand the cost that I, myself, would have to – would have to pay. To invest my time, to invest my emotions, to invest everything at the expense of a system that is not taking our loved one seriously.¹²

Witnesses who shared with the Inquiry spoke to many of these rights being breached when they discussed a lack of response by authorities, the failure to be taken seriously or believed when they reported concerns or complaints, and discriminatory treatment within the judicial process.

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) places a further obligation on states in terms of the protection of the rights of the UDHR, and was passed in 1966 and enacted in 1976, along with the ICCPR. The covenant defines these rights as “those human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education.”¹³



Under its protections, states must commit to act to the extent of their ability to secure the exercise of the rights protected within it, including the adoption of all reasonable measures, including legislation, to secure the rights listed. It provides for the need for states to recognize that the protection of economic, social, and cultural rights is directly tied to foundational rights principles, such as cultural identity, health, security, and justice.

As the testimonies heard by the National Inquiry demonstrate, the denial of economic, social, and cultural rights can lead to violations of other human rights and the targeting of people who do not enjoy these rights.

As Virginia C. explained, of her loved one:

There is so much more of Mom’s story that could be told. Mom should not have had to endure this tragic end to her beautiful person. She had suffered so much already, extreme incidents of domestic violence over a span of 12 years in her first common-law marriage, extreme poverty, living in an isolated northern Saskatchewan Métis community, living mainly off the land and receiving only occasional subsistence vouchers from the DNR [Department of Natural Resources].¹⁴

For Indigenous women, girls, and 2SLGBTQQIA people, the denial of the right to housing or adequate health care can place people in even more vulnerable situations, making them targets for predators. Further, the failure to protect a woman’s or child’s right to adequate housing, for example, can make people stay in abusive situations, in order to avoid becoming homeless.

The *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* was adopted by the United Nations General Assembly in 1979 and entered into force on September 3, 1981, to protect women from all forms of discrimination. The convention was the culmination of more than 30 years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women’s rights. In its introduction to the convention, the United Nations articulates the importance and spirit of the document: “The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.”¹⁵ The convention purports to present not only the meaning of “equality,” but also a plan for action by states to work to guarantee the rights within it.

“INDIGENOUS PEOPLE, AND IN PARTICULAR WOMEN, BATTLE SOCIAL MISCONCEPTIONS, STIGMA, STEREOTYPES, VIOLENCE, IN CANADA, JUST FOR BEING AN INDIGENOUS WOMAN. INDIGENOUS WOMEN ... ARE THE CARRIERS OF LIFE AND TEACHINGS MEANT TO BE PASSED ON TO THE NEXT GENERATION, AND THIS PIVOTAL ROLE HAS BEEN NEARLY DESTROYED BY THE COLONIAL ACTIONS OF CANADA ... AND THE CONTINUED ACTIVE DISENGAGEMENT OF THIS COUNTRY AT MANY LEVELS.”

Crystal F.



In its preamble, the convention explicitly acknowledges that “extensive discrimination against women continues to exist,” and emphasizes that such discrimination “violates the principles of equality of rights and respect for human dignity.” The convention defines discrimination against women as

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

In other words, it supports the idea of women as individual rights holders and as legal agents. It directs States Parties to take any action necessary, including implementing legislation and legal protections, for women to allow them to enjoy all of their rights.

Overall, the convention deals with civil rights and the legal status of women, as well as reproductive rights. It looks to affirm the rights of women as apart from the rights of men, understanding the history of the way in which women’s rights have often been tied to that of their husband or partner. The convention also insists that women’s role in having children shouldn’t be the basis for ongoing discrimination or exclusion. Finally, the convention deals with how some interpretations of traditional culture can serve to limit women’s rights, and how men have an important role to play in equality.

This convention has important implications for Indigenous women’s, girls’, and 2SLGBTQQIA people’s intersectional experiences of discrimination and oppression. As Crystal F. shared:

Indigenous people, and in particular women, battle social misconceptions, stigma, stereotypes, violence, in Canada, just for being an Indigenous woman. Indigenous women and girls ... are the carriers of life and teachings meant to be passed on to the next generation, and this pivotal role has been nearly destroyed by the colonial actions of Canada ... and the continued active disengagement of this country at many levels.¹⁶

The *Convention on the Rights of the Child* (UNCRC) entered into force on September 2, 1990. Parties to the UNCRC have committed to respecting the civil, political, economic, social, and cultural rights of children, regardless of origin, ethnicity, religion, or ability. In some ways, the UNCRC is a combination of the ICESCR and the ICCPR, along with the UDHR, oriented towards the protection of children. The UNCRC celebrates the family as an important unit for ensuring that the rights of children are respected and protected, and for ensuring healthy communities and societies. Its 54 articles place a duty on governments to meet children’s basic needs and help them reach their full potential.



Under this convention, the basic rights of children include the right to life, survival, and development; the right to protection from violence; the right to an education geared towards helping children realize their potential; the right to be raised by, or have a relationship with, biological parents; and the right to be listened to when they express opinions. In 2000, two Optional Protocols were added to the UNCRC. One asks governments to ensure that children under the age of 18 are not forcibly recruited into their armed forces, and the second calls on governments to stop child prostitution, child pornography, and the sale of children into slavery. A third Optional Protocol was added in 2011 that allows children whose rights have been violated to complain directly to the UN Committee on the Rights of the Child.

In the testimonies made to us, many families talked about how their children were targeted by a lack of basic respect for their rights, particularly within the context of child welfare. An increase in the number of completed and attempted suicides is one example that families pointed to as being linked to the separation of families. As Lorraine S. explained:

What I see happening is our kids are doing their own suicides now, or now they're killing each other because they don't have a connection, they don't have a bonding with somebody. They don't have a bonding with the grandparents anymore, with the parents, it's all disrupted.¹⁷

Canada ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) in 1987. The CAT requires states to take all necessary measures to prevent and punish torture and cruel treatment. It bans torture in all circumstances, or the removal of people to different countries where there are grounds for thinking they might be tortured there. It also provides a detailed definition of torture and outlines how torture should be prevented and how torturers should be punished – some of which Indigenous advocates have said should apply to violence against Indigenous women and girls in Canada.

As Brenda Gunn testified:

There is some increasing recognition that gender-based violence against women in some circumstances may be considered torture.... The committee that oversees this convention has noted that Indigenous women in Canada experience disproportionately high levels of life-threatening forms of violence, spousal homicide, and enforced disappearances, and that Canada has failed to promptly and effectively investigate, prosecute, and punish perpetrators or provide adequate protection for victims.¹⁸

Dr. Dalee Sambo Dorough, Chair of the Inuit Circumpolar Council and former Chair of the United Nations Permanent Forum on Indigenous Issues, also noted in her testimony to the National Inquiry:

The effects of violence against women are similar to those who've experienced torture and cruel, inhumane, or degrading treatment or punishment. Powerlessness, post-traumatic stress disorder, physical deformity are just a few of the outcomes which these two groups actually share.¹⁹



Canada has also ratified the *Convention on the Prevention and Punishment of the Crime of Genocide* (PPCG), which was adopted by the United Nations General Assembly on December 9, 1948. The implications of the PPCG are explored more fully throughout Section 2, and in relation to the four key rights areas that family members and survivors discussed. Ultimately, all of the rights violations that the National Inquiry heard about were also related to what those who shared their stories perceived as a targeted war of genocide perpetuated against Indigenous Peoples.

In the words of Dalee Sambo Dorough, the sum of all conventions and declarations, and their status within customary international law as well as in concrete domestic legislation, means that these tools can do a great deal to increase the safety of Indigenous women, girls, and 2SLGBTQIA people. As she explains:

All of the human rights standards affirmed in the UN Declaration [on the Rights of Indigenous Peoples], and how they intersect with other international human rights treaties, actually does create a pathway towards justice for Indigenous Peoples, that this is one way to guarantee our access to justice in every possible context, whether it's land rights, self-government and self-determination, the right to health, the right to education, gender equality, non-discrimination – you name it.

International Declarations and Customary Law

Many human rights declarations adopted by the UN have relevance to the rights of Indigenous women and 2SLGBTQIA people in Canada. Canada has agreed to support the declarations described below, even though the declarations themselves don't have specific binding powers forcing Canada to comply with the principles within them.

However, as some of our witnesses pointed out, even declarations otherwise considered to be “soft law” can, over time, obtain the status of customary international law. Customary international law applies directly to Canada as law, unless there is a specific piece of legislation that says that it won't, in certain areas, and declarations are directly enforceable. But, as Brenda Gunn pointed out, “What we do see the Supreme Court of Canada doing in multiple cases and in different ways is always striving to interpret Canadian law along and in line with Canada's international human rights obligations.”²¹

The technical rule is that for international human rights treaties, including covenants, to apply in Canada, the treaty must be transformed into an instrument of domestic law (a law of Canada). However, that is not always how they have been interpreted in the courts, including the Supreme Court. Brenda Gunn explained:

While we have these two categories, it's particularly important, I think, to note that when we're referring to human rights, particularly in the application in Canada, there's been a decreased emphasis on the type of instrument – is it hard law or soft law? But we see particularly Canadian courts far more concerned about the normative value of the various instruments.²²



The Supreme Court has also pointed out that unimplemented treaties – those that haven't yet been enacted in domestic legislation – can, in fact, have legal effect in Canada.²³

The *Universal Declaration of Human Rights* (UDHR) was adopted by the UN General Assembly on December 10, 1948. The creation of the United Nations signalled an important shift in global dynamics, with the international community vowing never to allow the atrocities of the Second World War to happen again.

The *Universal Declaration of Human Rights* establishes principles upon which all human rights instruments are based. These include foundational rights, such as the right to “life, liberty and security of person”²⁴ (Article 3), as well as rights pertaining to areas such as legal representation, identity, family, property, religion, opinion, assembly, security, education, and others. The rights outlined in the UDHR are given legal force by the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

“ALL OF THE HUMAN RIGHTS STANDARDS AFFIRMED IN THE UN DECLARATION [ON THE RIGHTS OF INDIGENOUS PEOPLES], AND HOW THEY INTERSECT WITH OTHER INTERNATIONAL HUMAN RIGHTS TREATIES, ACTUALLY DOES CREATE A PATHWAY TOWARDS JUSTICE FOR INDIGENOUS PEOPLES, THAT THIS IS ONE WAY TO GUARANTEE OUR ACCESS TO JUSTICE IN EVERY POSSIBLE CONTEXT, WHETHER IT'S LAND RIGHTS, SELF-GOVERNMENT AND SELF-DETERMINATION, THE RIGHT TO HEALTH, THE RIGHT TO EDUCATION, GENDER EQUALITY, NON-DISCRIMINATION – YOU NAME IT.”

Dalee Sambo Dorough

Because the ICCPR and the ICESCR are covenants, they are monitored. The ICCPR is monitored by the United Nations Human Rights Committee and the ICESCR is overseen by the Committee on Economic, Social and Cultural Rights. These committees are composed of experts who receive reports by States Parties on how rights are being implemented. In addition, there are Optional Protocols attached to the ICCPR and ICESCR that provide individuals with a complaints mechanism if they feel their rights under the covenants have been violated.

The *Declaration on the Elimination of Violence Against Women* (DEVAW) was adopted by the UN General Assembly in 1993. It lays out a widely accepted definition of “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”²⁵ The declaration sets out three categories of violence against women: violence by the state or government; violence against women occurring in society at large, which includes trafficking; and violence within the family unit. The declaration takes a long view, explaining that violence against women is rooted in the historically unequal power relations between women and men. It also defines “violence” as a social mechanism that serves to place and to keep women in a subordinate position compared with that of men, and therefore contributes to ongoing inequality.



The declaration urges member states of the United Nations to use the powers at their disposal to combat violence through legislation, as well as to work to provide better services to women who are victimized, and to prevent violence for the future. In Article 4(k), the DEVAW further directs states, specifically, to

promote research, collect data and compile statistics ... relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women.²⁶

The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) was adopted by the UN General Assembly in 2007, with several notable objectors, including Canada. In 1982, the Economic and Social Council established the Working Group on Indigenous Populations with the mandate to develop a set of minimum standards that would protect Indigenous Peoples. The details of UNDRIP, as it has taken shape in debates within Canada and within the context of discussions regarding missing and murdered Indigenous women and girls, will be addressed in greater detail further within the chapter. UNDRIP is an important declaration overall. It proclaims a historic body of collective rights and human rights of Indigenous Peoples and individuals that specifically points to the legacies of colonization and dispossession as human rights issues. Its very first article “asserts the rights of both individuals and collectives to the full scope of protection for human rights and fundamental freedoms existing in other international human rights instruments, including international human rights law.”²⁷

The declaration deals largely with the rights of Indigenous Peoples as they relate to culture, religion, and language, as well as economic, social, and political development and territory. Significantly, the declaration promotes the principle of self-determination without necessarily making comment on the foundation or legitimacy of colonizing nations themselves, who are positioned, within the declaration, as ensuring their own compliance with upholding these rights.

The *Vienna Declaration and Programme of Action* (VDPA) is a human rights declaration adopted by consensus at the World Conference on Human Rights on June 25, 1993, in Vienna, Austria. The creation of the position of United Nations High Commissioner for Human Rights was a result of this declaration, which reaffirmed the Universal Declaration of Human Rights and the United Nations Charter. Its preamble states:

The World Conference on Human Rights, considering that the promotion and protection of human rights is a matter of priority for the international community, and that the Conference affords a unique opportunity to carry out a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and balanced manner.²⁸



The VDPA reaffirms human rights as a universal and relevant standard “for all peoples and all nations.”²⁹ It cites the ICCPR and the ICESCR and particularly relevant instruments to the achievement of this standard, and calls for increased investment in education about human rights principles. It cites all human rights as equally important, and makes specific mention of factors that may represent obstacles to attaining the enjoyment of human rights, including poverty, underdevelopment, and racism. In addition, the VDPA pays special attention to the need to address gender-based violence and ongoing discrimination. It maintains that this type of violence can be addressed through “national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.”³⁰

The *Beijing Declaration and Platform for Action* (BDPA) was the result of the 1995 Fourth World Conference on Women, reaffirming the VDPA’s assertion that the human rights of women and girls are inalienable, integral, and indivisible as part of the field of universal human rights. The *Beijing Platform* emphasizes the commonality of women’s experiences, urging states to become further involved in creating equality around the world. It is described as “an agenda for women’s empowerment”³¹ that sets up a necessary partnership for long-term development of peoples around the world. Its many and broad recommendations deal with key issues such as poverty, education, health, environment, and women in positions of power and decision making.

Defining and Locating “Indigenous Rights” in Human Rights Law

While many conventions and declarations do relate to the rights of Indigenous women, girls, and 2SLGBTQQIA people, they don’t necessarily specifically address the particular context of colonialism, its contemporary legacies, and its current form today. The need to address this kind of legacy is particularly what animated the development of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). While the declaration has many critics, some also see it as an instrument of great potential for the future, one that might be grounded in Indigenous understandings about rights. As Brenda Gunn noted:

The UN Declaration grounds Indigenous Peoples’ inherent human rights in Indigenous Peoples’ own customs, laws and traditions. And so this instrument makes it really clear that when we’re talking about international human rights and the rights of Indigenous Peoples that we need to make specific reference to Indigenous Peoples’ laws.³²

For decades, allies and activists have been working on the creation of an instrument devoted to Indigenous rights. While it is a declaration, not a convention, UNDRIP represents an important first step in recognizing and addressing the particularities of Indigenous Peoples’ rights, and how they might be protected.

The efforts to draft a specific instrument dealing with the protection of Indigenous Peoples worldwide date back over several decades.



In 1982, UN Special Rapporteur of the Subcommission on the Prevention of Discrimination and Protection of Minorities, José R. Martínez Cobo, released a study about the systemic discrimination faced by Indigenous Peoples worldwide. His findings were released as the “Study of the Problem of Discrimination against Indigenous Populations.” The UN Economic and Social Council created the Working Group on Indigenous Populations (WGIP), comprised of five independent experts as well as Indigenous advisors, in order to focus exclusively on Indigenous issues around the globe. It began to draft a declaration of Indigenous rights in 1985.

The draft declaration was subject to a series of reviews to assure UN member states that it remained consistent with established human rights, and did not contradict or override them. UNDRIP deals with many Indigenous rights, a consideration much debated during initial discussions. Many UN member states worried that accepting UNDRIP as drafted would undermine their own political autonomy. Of particular concern were the articles affirming Indigenous Peoples’ right to self-determination and their right to give or withhold consent to actions that may impact lands, territories, and natural resources. For countries with resource-rich economies and running large-scale development projects, in particular, the extent of this right, and of the protections for it, has generated concern.

However, many Indigenous representatives refused to change the draft, arguing that the document simply extended to Indigenous Peoples the rights already guaranteed to colonialists.³³ As human rights lawyer James Sákéj Youngblood Henderson observes, “[Member states] worried about the implications of Indigenous rights, refusing to acknowledge the privileges they had appropriated for themselves.”³⁴

The WGIP’s final draft represented a compromise between UN member states and Indigenous representatives. In 2006, the draft was accepted by the UN Human Rights Council, and on September 13, 2007, the *Declaration on the Rights of Indigenous Peoples* was adopted by a majority of 144 states in favour, four votes against (Australia, Canada, New Zealand, and the United States), and 11 abstentions.³⁵ The four countries who voted against it share very similar colonial histories and, as a result, shared common concerns. Each nation argued that the level of autonomy recognized for Indigenous Peoples would undermine their own states, particularly in the context of land disputes and natural resources. Some governments claimed that UNDRIP might override existing human rights obligations, even though the document itself explicitly gives precedence to international human rights.

“THE UN DECLARATION GROUNDS INDIGENOUS PEOPLES’ INHERENT HUMAN RIGHTS IN INDIGENOUS PEOPLES’ OWN CUSTOMS, LAWS AND TRADITIONS. AND SO THIS INSTRUMENT MAKES IT REALLY CLEAR THAT WHEN WE’RE TALKING ABOUT INTERNATIONAL HUMAN RIGHTS AND THE RIGHTS OF INDIGENOUS PEOPLES THAT WE NEED TO MAKE SPECIFIC REFERENCE TO INDIGENOUS PEOPLES’ LAWS.”

Brenda Gunn



In its own refusal, Canada, represented by Chuck Strahl, then the minister of Indian Affairs, explained the government's reasoning: "By signing on, you default to this document by saying that the only rights in play here are the rights of First Nations. And, of course, in Canada, that's inconsistent with our Constitution."³⁶ Strahl further maintained that Canada already respects Indigenous rights, as laid down in the *Charter of Rights and Freedoms* and the Constitution, which, he said, reflects a much more tangible commitment than the "aspirational" UNDRIP.

Indigenous and human rights organizations and activists continued to lobby for Canada to sign UNDRIP, and in March 2010, Governor General Michaëlle Jean announced that the Canadian government "will take steps to endorse this aspirational document in a manner fully consistent with Canada's Constitution and laws."³⁷ Although it was progress, this did not represent an official change in position.

In November 2010, Canada announced it would officially support UNDRIP. While this move was celebrated by many people as a positive step forward, the continued use of qualifiers in official speeches left many others skeptical of Canada's true commitment. Canada suggested that its endorsement of UNDRIP would not change Canadian laws: "Although the Declaration is a non-legally binding document that does not reflect customary international law nor change Canadian laws, our endorsement gives us the opportunity to reiterate our commitment to continue working in partnership with Aboriginal peoples in creating a better Canada."³⁸



Brenda Gunn, Métis professor of law at the University of Manitoba.

In May 2016, however, Canada formally announced its full support, and adopted plans to implement it in accordance to the Canadian Constitution.

The first of UNDRIP's 46 articles declares that "Indigenous Peoples have the right to the full enjoyment, as a collective or as individuals, of all

human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law."³⁹ Significantly, in Article 3, UNDRIP also recognizes Indigenous Peoples' right to self-determination, which includes the right "to freely determine their political status and freely pursue their economic,



social and cultural development.”⁴⁰ Article 4 affirms Indigenous Peoples’ right “to autonomy or self-government in matters relating to their internal and local affairs,” and Article 5 protects their right “to maintain and strengthen their distinct political, legal, economic, social and cultural institutions.”⁴¹ Article 26 states that “Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired,”⁴² and it directs states to give legal recognition to these territories.

The declaration also guarantees the rights of Indigenous Peoples to enjoy and practise their cultures and customs, their religions, and their languages, and to develop and strengthen their economies and their social and political institutions. It states that Indigenous Peoples have the right to be free from discrimination, and the right to a nationality.

As it relates to the difficult conditions of economic and social marginalization that many of our witnesses cited, Article 21 posits that special measures should be taken to improve social and economic conditions, and that extra attention should be paid to the rights and means of Indigenous women and youth. Article 22 stresses that measures should be taken to guarantee the protection of Indigenous women and children against all forms of violence and discrimination. The declaration does not override the rights of Indigenous Peoples contained in their Treaties and agreements with individual states, and it commands these states to observe and enforce the agreements.

Women are referenced specifically in UNDRIP, but in only one clause. However, Brenda Gunn explains: “I think it’s important to highlight that even though the gender lens isn’t explicitly included throughout all of the articles, it is one of the interpretive approaches or the framework that we need to be using when looking at it.”⁴⁴

Dalee Sambo Dorrough adds, regarding the declaration’s inclusion of individual and collective rights:

That was the most compelling argument, that the UN Declaration on the Rights of Indigenous Peoples has to create a balance between individual rights of women, Indigenous women, and the collective rights of Indigenous Peoples. And, at the end of the day, that’s the argument that won, and I think that it’s important – it’s an important moment in history that Indigenous women, based upon all of the experiences that they’ve had until that moment, compelled them to raise their voices against a pretty overwhelming and strong argument that we need our collective rights protected.⁴⁵

Despite its important tenets, UNDRIP remains a declaration with no explicit enforcement mechanisms, other than those working groups and Rapporteurs devoted, thematically, to the monitoring of Indigenous rights. For this reason, there have been many critiques of UNDRIP as a document without any “teeth,” especially when it comes to the estimated 5,000 distinct Indigenous communities worldwide and the estimated 375 million people who live in them, each with their own cultural or religious institutions and forms of self-government, within diverse national contexts.



UNDRIP also problematically and foundationally still assumes the sovereignty of the nation-state. As scholar Duane Champagne points out, the nation-states still define who are Indigenous Peoples, and the denial of basic rights to identity is a cornerstone of eliminating populations – as the Canadian experience has demonstrated: “UNDRIP does not address indigenous political, cultural, and territorial claims on a government-to-government or culture-to-culture basis.”⁴⁶ Within the declaration, further, the colonizing state remains the protector and guarantor of Indigenous rights, a task for which it has not demonstrated its commitment in the past – and, arguably, still today. As National Inquiry Grandmother Bernie pointed out:

When we did those walks across Canada, we sat one day with the walkers and that. We went through the [United Nations Declaration on the Rights of Indigenous Peoples]. It took us a week to go through it, you know, for our study, little things, you know, at nighttime and that. We counted 17 violations against our women and children.... Seventeen violations, and yet nothing’s done.⁴⁷

For these reasons, while UNDRIP is an invitation to participate in more inclusive multicultural nation-states and improve equality of access to economic opportunities, it should not be regarded as the “be all, end all” of Indigenous rights.

Despite its limitations, there is potential in the declaration, especially if it were to become customary international law. Even supporters of the declaration recognize that it is not the end of the journey towards realizing Indigenous and human rights. As Jean Leclair pointed out at the Inquiry’s hearing on human rights, “I think that we have to remind people of the importance of this Declaration, of the need to implement it. It will not produce social reality on its own, but it’s a great tool and we should not diminish its importance ... because that’s very normative too. These symbols are very powerful and they can bring change.”⁴⁸

“THAT WAS THE MOST COMPELLING ARGUMENT, THAT THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES HAS TO CREATE A BALANCE BETWEEN INDIVIDUAL RIGHTS OF WOMEN, INDIGENOUS WOMEN, AND THE COLLECTIVE RIGHTS OF INDIGENOUS PEOPLES. AND, AT THE END OF THE DAY, THAT’S THE ARGUMENT THAT WON, AND I THINK THAT IT’S IMPORTANT – IT’S AN IMPORTANT MOMENT IN HISTORY THAT INDIGENOUS WOMEN, BASED UPON ALL OF THE EXPERIENCES THAT THEY’VE HAD UNTIL THAT MOMENT, COMPELLED THEM TO RAISE THEIR VOICES AGAINST A PRETTY OVERWHELMING AND STRONG ARGUMENT THAT WE NEED OUR COLLECTIVE RIGHTS PROTECTED.”

Dalee Sambo Dorough



Dr. Dalee Sambo Dorough testified before the National Inquiry in Quebec City, Quebec, on the subject of human and Indigenous rights. Credit: Marc Lester, Anchorage Daily News.

Applying International Human Rights Instruments to Ensure Accountability

In a practical sense, these binding conventions, and even non-binding declarations, can help Indigenous women hold governments to account by identifying both specific measures and broader obligations the state has to ensure the safety and security of Indigenous women, girls, and 2SLGBTQQIA people. These are obligations to which the state has agreed. Dalee Sambo Dorough pointed out:

All of these instruments came at the hands of and are the product of governments. They established and set their own expectations, and I think that's another important thing we have to remember.... Governments drafted these instruments, and they established their own expectations through consensus decision-making.⁴⁹

As such, they can be useful tools in our efforts to address the crisis of violence against Indigenous women, girls, and 2SLGBTQQIA people. Notably, they provide a framework for the realization of the foundational rights upon which this report is based, and which are encapsulated in foundational stories related to the rights, roles, and responsibilities of Indigenous women and gender-diverse people, in their own terms.



As Dalee Sambo Dorough told the National Inquiry, the Special Rapporteur on Indigenous Peoples for the United Nations has pointed out that even though the declaration itself is not legally binding in the same way as a treaty might be, the declaration

reflects legal commitments that are related to the [UN] Charter, other treaty commitments, and customary international law.... It builds upon the general human rights obligations of states under the Charter and is grounded in fundamental human rights principles such as non-discrimination, self-determination, and cultural integrity that are incorporated into the widely ratified human rights treaties.... To that extent, the declaration reflects customary international law.⁵⁰

These obligations are normative, in the sense that they are built by norms generally accepted by the international community. Normative obligations identified by witnesses for the National Inquiry included the concepts of universality and inalienability. In other words, all people are entitled to human rights, and those rights cannot be taken away. In addition, the understanding of indivisibility, interdependence, and interrelatedness of human rights supports the principles that human rights must be considered and deployed together to uphold the dignity of people. Of significance to the issue of violence against Indigenous women, girls, and 2SLGBTQQIA people, this means that all rights are interrelated and cannot be considered in isolation. Brenda Gunn pointed out:

We must look at the totality of human rights and human rights obligations so that we can't just look at civil and political rights, or look at economic, social, cultural rights, or we can't divorce the issues of the right to housing from the right to participate in public life; that all of these actually work together.⁵¹

She added: "Very rarely is there a state action that violates merely one article of one convention. The way in which human rights work together, they are so interconnected and to really understand the breadth and the depth of the obligation, you really want to look at them together."⁵²

Viewing human rights as an indivisible whole also relates to two other important principles: non-discrimination and substantive equality. Although all people have the same human rights, these principles make the point that, as Brenda Gunn said, "this doesn't mean that everyone is treated the same."⁵³ International law, including UNDRIP, which Gunn cited in her testimony, makes it clear that states may have to take special measures to ensure that these rights are realized for every person, including Indigenous people. As Saskatchewan's Advocate for Children and Youth Corey O'Soup testified on the issue of health and educational supports, "We've been so far behind for so long that we need special measures in order to bring us just to the level of non-Indigenous kids in our provinces, in our country as well, you know."⁵⁴ International human rights



law also includes the need for participation and inclusion of Indigenous people in decision-making processes, though it does not define the extent of the right, necessarily, which has allowed states to try to circumvent this by saying that Indigenous Peoples' interests or rights are not engaged within an issue.



Due to the shortage of houses in many First Nations communities, often inadequate structures like this are being used as homes. Pictured is a structure being used as a home in Attawapiskat, Ontario. Photo courtesy of MCC (Mennonite Central Committee) by Lyndsay Mollins Koene. No copyright infringement intended.

Perhaps one of the strongest features of a human rights-based approach, as Brenda Gunn sees it, is that it takes these basic issues, related to safety, out of the realm of policy and into the realm of law. As she explained, using housing as an example:

This isn't just a policy issue that can be prioritized or not prioritized in any sort of budget, that every person has a right to an adequate house which includes a safe house, not being afraid of being evicted, that it's sort of adequate in condition, but also in the security of tenure to that placement.⁵⁵

This approach places Indigenous women, girls, and 2SLGBTQQIA people as rights holders, to whom Canada and other governments have obligations. While these rights may be articulated in services, the fact that they are rights places an onus on governments to look at these issues as beyond the level of simple policy making. Human rights instruments, Gunn argues, provide the ability to create a list of obligations that Canada is required to fulfill, and to detail the ways in which it has failed to act, or acted improperly, in fulfilling those obligations.⁵⁶



“WE MUST LOOK AT THE TOTALITY OF HUMAN RIGHTS AND HUMAN RIGHTS OBLIGATIONS SO THAT WE CAN’T JUST LOOK AT CIVIL AND POLITICAL RIGHTS, OR LOOK AT ECONOMIC, SOCIAL, CULTURAL RIGHTS, OR WE CAN’T DIVORCE THE ISSUES OF THE RIGHT TO HOUSING FROM THE RIGHT TO PARTICIPATE IN PUBLIC LIFE; THAT ALL OF THESE ACTUALLY WORK TOGETHER.”

Brenda Gunn

Domestic Rights Instruments in Canada

The Canadian Human Rights Act

One of the ways that Canada has moved to adopt these rights in Canada is through the *Canadian Human Rights Act*. The Act is the product of translating some of these international instruments into domestic law. After the Second World War, the importance of introducing explicit human rights instruments, brought to light with the atrocities of the Holocaust, became evident. Following the formation of the United Nations in 1945 and the creation of the *Universal Declaration of Human Rights* in 1948, many countries started to look at what kind of legislation, at a domestic level, could be put in place to uphold the principles of this declaration.

The federal government didn’t lead the way, at least in Canada. Ontario passed the first legislation dedicated to anti-discrimination in 1944, and Saskatchewan followed with its own bill on civil rights in 1947. Notably, the Saskatchewan *Bill of Rights Act* protected civil liberties such as free speech, freedom of assembly, freedom of religion, freedom of association, and due process, while also prohibiting discrimination on the basis of race, religion, and national origin. Over a decade later, federal legislators enacted the *Canadian Bill of Rights* in 1960, which applied to the federal government and which protected freedom of speech, freedom of religion, and equality rights, among others. This was a limited piece of legislation: it didn’t apply to private industry or to provincial governments, and never became an important tool for the protection of human rights in Canada.⁵⁷

During the same period, provinces also worked on strengthening their own human rights instruments. In 1962, Ontario passed the *Human Rights Code* as a consolidation of other laws, as well as created the Ontario Human Rights Commission with the mandate to prevent human rights abuses and to educate the public about human rights across the province. As the Canadian Human Rights Commission explains:

“In the years that followed, other jurisdictions across the country introduced similar pieces of legislation. This cross-Canada development coincided with the growing prominence of social movements, which sought to advance issues such as racial justice and women’s rights at home and abroad.”⁵⁸



In 1977 and within the context of the United Nations member states' acceptance of both the ICCPR and ICESCR, Parliament passed the *Canadian Human Rights Act*. The Act applies only to people who work for or receive services from the federal government, to First Nations, and to federally regulated private companies.

As the history of the issue shows, each province and territory in Canada has its own human rights legislation that applies to provincially and territorially related services and areas of jurisdiction, like schools, hospitals, or employment. This can be confusing. While the federal government has responsibility for “Indians, and lands reserved for Indians”⁵⁹ under section 91(24) of the Canadian Constitution, many of the service areas where Indigenous people told us they faced violence or discrimination were actually areas of service provided by provinces or territories, but funded by the federal government.

The *Canadian Human Rights Act* prohibited discrimination on the basis of recognized grounds of discrimination such as race, religion, and national origin, but also broke some new ground, including standards regarding sex, ethnic origin, age, marital status, physical disability, and pardoned conviction. The *Canadian Human Rights Act* also provided for the creation of two human rights bodies: the Canadian Human Rights Commission and the Human Rights Tribunal Panel, the latter created in 1985. It was renamed the Canadian Human Rights Tribunal in 1998.

In 1996, the Act was amended to include sexual orientation as a prohibited grounds of discrimination, and then amended to include gender identity or expression in 2017. Until 2013, the Act also contained clauses prohibiting hate speech, which it defined as “any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.”⁶⁰ But, after challenges to this provision and the publicity around it, this section was repealed in 2013.

In its current form, the Act lays out 13 prohibited grounds of discrimination: “race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.”⁶¹

The Act also addresses discrimination, harassment, and the issue of bona fide justifications (another way of saying that determining human rights complaints under the Act can't create “undue hardship” on the employer or provider of services). It prohibits discrimination in the workplace, in employment application processes, in job advertisements, and in the provision of goods and services. The Act also prohibits, but does not define, harassment.



Alongside the Act, provinces and territories all have their own human rights legislation, which offer protection from discrimination and/or harassment in many of the same areas as the *Canadian Human Rights Act*, and in the following areas of protection:

<p>Alberta Human Rights Act – 1966</p>	<ul style="list-style-type: none"> • Statements, publications, notices, signs, symbols, emblems or other representations that are published, issued, displayed before the public • Goods, services, accommodation or facilities customarily available to the public • Tenancy • Employment practices, employment applications or advertisements • Membership in trade unions, employers’ organizations or occupational associations
<p>British Columbia Human Rights Code – 1973</p>	<ul style="list-style-type: none"> • Employment • Membership in trade unions and occupational or professional associations • Services and facilities that are customarily available to the public • Purchase of property • Tenancy • Hate propaganda
<p>Manitoba Human Rights Code – 1987 (replaced Human Rights Act 1970)</p>	<ul style="list-style-type: none"> • Employment • Housing • Accommodation • The provision of services or contracts, and signs and notices
<p>New Brunswick Human Rights Act – 1967</p>	<ul style="list-style-type: none"> • Employment • Housing • Public service sectors, which can include: schools, stores, motels, hospitals, police, and most government services • Publicity • Certain associations
<p>Newfoundland and Labrador Human Rights Act – 1971</p>	<ul style="list-style-type: none"> • Employment • Membership in a trade union • Provisions of goods and services • Commercial and residential rentals • Publications • Contracts • Protects equal pay for the same or similar work • Association with persons who are identified by one of the prohibited grounds
<p>Northwest Territories Human Rights Act – 2004</p>	<ul style="list-style-type: none"> • Employment • Membership in a professional organization, worker’s association or trade union • Access to public services such as health care and education, and to facilities such as stores and restaurants • Tenancy or leasing a business space • Published material such as newspapers, magazines, signs or advertisements



<p>Nova Scotia Human Rights Act – 1967</p>	<ul style="list-style-type: none"> • Employment • Housing or accommodation • Services and facilities • Purchase or sale of property • Volunteer public service • Publishing, broadcasting or advertising • Membership in a professional, business or trade association, or employers' or employees' organizations
<p>Nunavut Human Rights Act – 2003</p>	<ul style="list-style-type: none"> • Employment • Obtaining or maintaining a membership in an employee organization • Accessing goods, services, facilities or contracts available to the general public • Renting or attempting to rent any residential or commercial building • Publishing or displaying information or written material
<p>Ontario Human Rights Code – 1962</p>	<ul style="list-style-type: none"> • Accommodation (housing) • Contracts • Employment • Goods, services and facilities • Membership in unions, trade or professional associations
<p>Prince Edward Island Human Rights Act – 1968</p>	<ul style="list-style-type: none"> • All aspects of employment • Leasing, purchasing or selling property • Offering accommodations, services or facilities to the public • Membership in professional, business or trade associations, employer or employee organizations • Publishing, broadcasting and advertising • Volunteering
<p>Quebec Charter of Human Rights and Freedoms – 1975</p>	<ul style="list-style-type: none"> • Employment (includes hiring and pre-hiring, working conditions, professional training, promotion or transfer, lay-off, suspension or dismissal) • Housing (includes leasing of an apartment, occupancy of rented premises) • Public services, public transport and public places (includes businesses, restaurants and hotels, parks, camp sites, caravan sites and schools and churches) • Juridical acts (includes contracts, collective agreements, wills, insurance or pensions contracts, social benefit plans, retirement, pension or insurance plans, public pension or public insurance plans)
<p>Saskatchewan Human Rights Code – 1979</p>	<ul style="list-style-type: none"> • Employment or occupation • Education • Housing • Publications • Public services (restaurants, stores, hotels, government services, etc.) • Contracts or purchase of property • Professional associations or trade unions
<p>Yukon Human Rights Act – 1987</p>	<ul style="list-style-type: none"> • Employment and any aspect of employment • Receiving goods and services • Housing, leasing or renting • Membership in or representation by trade unions or professional associations • Public contracts



Engaging the *Canadian Human Rights Act* to Defend Indigenous Rights

The *Canadian Human Rights Act* has been used successfully in many cases, including a recent and significant case specific to First Nations communities known as the landmark *First Nations Child and Family Caring Society of Canada v. Canada* decision, decided in 2016.

In this case, the First Nations Child and Family Caring Society of Canada successfully argued that the Canadian government's provision of child and family services to First Nations on-reserve and in Yukon constituted discrimination by failing to provide the same level of services that exist elsewhere in Canada. In short, under its constitutional obligations, the federal government funds a number of services that are delivered by First Nations or, in some cases, by the provinces or territories. In Yukon, this includes child and family services on-reserve delivered by First Nations. The federal government's rules require that First Nations child welfare agencies use the provincial or territorial child welfare laws, and that is a primary condition of receiving funding. The case demonstrated the comparatively low level of funding for First Nations child welfare agencies: its own records show that provincial and territorial services are funded at an amount between two to four times greater than First Nations services. This means that for every child in care, First Nations have much less to work with – for every dollar spent on provincial or territorial services, only a fraction is spent on First Nations.⁶²

The case engaged the concept of Jordan's Principle, named in memory of Jordan River Anderson, a Cree boy from Norway House Cree Nation who spent years of his short life in hospital while the federal government and provinces argued over who would pay for his services. Born with multiple disabilities, he was hospitalized from his birth, in 1999, and died in hospital in 2005. Jordan's Principle "aims to ensure First Nations children can access ALL public services normally available to other children on the same terms."⁶³ This can include cases where the waiting list is too long for a given service, allowing children to access the service in the private sector, instead. Jordan's Principle is not limited to medical needs, but covers all First Nations on- and off- reserve for all public services. In short, if a child has a need in areas such as health, social services, and education, Jordan's Principle works to cover the cost of the services required.

While the definition of Jordan's Principle as passed in the Canadian Parliament only specifically mentioned First Nations children, the First Nations Child and Family Caring Society of Canada insists that the government should respect the *Canadian Human Rights Act*, which prevents discrimination on the basis of race and ethnic or national origin, therefore making the principle applicable to Inuit and Métis children, as well.

Despite this, the government's narrow definition for the application of Jordan's Principle had the effect of disqualifying most children for services anyway, therefore limiting the federal government's obligation. In 2013, the Federal Court rejected the federal government's approach, and, in 2016, the Canadian Human Rights Tribunal found it to be outright discrimination. It ordered the federal government to stop its discrimination immediately, and to report on its progress in doing so. The tribunal's four-part decision also went further, pointing out that beyond ending the discrimination immediately, the government should also engage in reform to address some of the



The Spirit Bear Plan is an initiative by the First Nations Child & Family Caring Society of Canada that calls on the Canadian government to adopt the following actions:

CANADA to immediately comply with all rulings by the Canadian Human Rights Tribunal ordering it to immediately cease its discriminatory funding of First Nations child and family services. The order further requires Canada to fully and properly implement Jordan's Principle (www.jordansprinciple.ca).

PARLIAMENT to ask the Parliamentary Budget Officer to publicly cost out the shortfalls in all federally funded public services provided to First Nations children, youth and families (education, health, water, child welfare, etc.) and propose solutions to fix it.

GOVERNMENT to consult with First Nations to co-create a holistic Spirit Bear Plan to end all of the inequalities (with dates and confirmed investments) in a short period of time sensitive to children's best interests, development and distinct community needs.

GOVERNMENT DEPARTMENTS providing services to First Nations children and families to undergo a thorough and independent 360° evaluation to identify any ongoing discriminatory ideologies, policies or practices and address them. These evaluations must be publicly available.

ALL PUBLIC SERVANTS including those at a senior level, to receive mandatory training to identify and address government ideology, policies and practices that fetter the implementation of the Truth and Reconciliation Commission's Calls to Action.¹



Dr. Cindy Blackstock and Spirit Bear. Used with permission courtesy of the First Nations Child and Family Caring Society.

¹ <https://fncaringsociety.com/spirit-bear-plan>. Accessed January 5, 2019.

structural factors that feed these inequalities. In addition, the tribunal required longer term and deeper reforms, as well as ordered compensation for those children who have been harmed by the government's conduct.⁶⁴

In 2017, the tribunal issued an order that clarified that Jordan's Principle is not restricted to First Nations children with disabilities but to all First Nations children, and is intended to ensure that there are no gaps in government services. Further, the order specified that the government should pay for the service without delay, in reflection of its history of litigation in order to avoid the expense. The Order also specifically referenced how Jordan's Principle could be applied to avoid red tape and delays due to interjurisdictional squabbles between levels of government, or between government departments, when there was any debate over who should bear the cost.



According to many experts, this has profound implications in other service areas, including, potentially, education. It also reveals the extent to which governments will go in order to limit their obligations. Within the crisis of violence against Indigenous women, girls, and 2SLGBTQQIA people, then, this case is illustrative of how human rights approaches can bring the government to act on its obligations; but that those most affected must also be watchful and ensure that the principles of these instruments are applied in a good way, in a full way, to realize those principles. It also shows how, potentially, the government's own human rights obligations, according to rules it has set for itself, may, in fact, be grounds to pursue human rights-based complaints regarding its failure to properly ensure the safety of Indigenous women, girls, and 2SLGBTQQIA people, through both immediate and long-term measures aimed at addressing some of the structural inequalities that target them.

While this case, and others like it in the future, have tremendous potential for engaging the government to properly honour its commitments and responsibilities to all people living in Canada, it is not without limitations. For instance, launching a complaint within the *Canadian Human Rights Act* is complicated. First, the Canadian Human Rights Commission evaluates the extent to which the person making the complaint has tried to resolve the dispute in any other way. The legislation also allows only a 12-month window from when the discrimination happens to filing a complaint, which means that, in many cases, the eligibility period may have expired. This means that whether or not the situation engendering the complaint actually happened, no formal complaint can be made.⁶⁵

In addition, until 2008, complaints against the federal government about decisions or actions arising from or pursuant to the *Indian Act* were not allowed under section 67. As family member Wendy L. shared:

Before ... if I wanted to go and file a Canadian human rights complaint because of what was happening to me, or my mother, or other women, or other people [because of the *Indian Act*], there was no ability for me to do that.... So, again, it's just this constant obstacles that are put in our place that are – we're constantly being blocked, and challenged, and stopped. And we don't automatically have the same rights and freedoms as all other Canadians, we just don't.⁶⁶

This provision was changed in 2008, but served to limit the access of Indigenous women, girls, and 2SLGBTQQIA people to a complaint mechanism that might have helped to address some of the systemic problems brought on by the Act's provisions for over 30 years. The 2008 provision immediately applied to decisions and actions of the federal government but was delayed for three years with respect to First Nations, including band councils and related agencies, for things like denying housing or other services on any of the prohibited grounds.



For many Indigenous people, the process of launching human rights complaints remains intimidating. As Viola Thomas said:

Because what I find for a lot of our people who are ostracized is that they don't ever feel comfortable or confident enough to file human rights complaint because they're – they're fearful of what will happen if it happens to be a member who is on chief and council or if it's a member who is in a power position at the Band Office and ... they don't want it to affect their benefits, so, therefore, many of our people are silenced ... to be able to take action because of that imbalance of power within our communities and how sexism is really played out.⁶⁷

In addition, as Viola shared:

I think there is some real major challenges within current human rights law, whether it's federal or provincial jurisdictions of human rights. They individualize human rights. They do not have a – a real systemic approach to addressing collective human rights violations of Indigenous Peoples, which are multiple. It could be as a child, it could be as a woman, it could be as a Two-Spirited, but you have to tick off the one box. Oh, today, am I going file a complaint as a woman or as a Two-Spirited? I have to choose one over the other. So it seems to me that that in itself, of human rights law polarizes our collective human rights issues as Indigenous Peoples. And it's also compounded by the historic eradication of our distinctive roles as Indigenous women within our communities of whatever Nation that we come from.⁶⁸

The Canadian Human Rights Commission demonstrates some awareness of the need for a particular approach to the issues regarding Indigenous communities. As it says in its public materials:

Human rights decisions involving First Nations need to recognize Aboriginal and Treaty rights. For complaints about a First Nation government or service organization, the Commission and the Tribunal can consider the customary law of the First Nation. They need to balance collective and individual rights from a First Nation perspective, while respecting gender equality.⁶⁹

In addition, the Canadian Human Rights Commission has also acknowledged, with important implications for Indigenous Peoples, that treating everyone the same does not automatically result in equality. This question is about substantive equality. When substantive, or meaningful, equality is lacking, corrective measures can and should be taken – these are principles in human rights, Indigenous rights, and customary international law. As the Human Rights Commission points out, “Aboriginal people should expect to be treated equally with other people. But equality does not always mean treating everyone the same.”⁷⁰



The Canadian Constitution and the *Charter of Rights*

In Canada and within a legal setting, those identified as Aboriginal peoples under the Constitution – First Nations, Métis, and Inuit – have looked to three primary sources in defining their rights: the Royal Proclamation of 1763 (as well as Treaties that have since followed), the common law as defined in Canadian courts, and international law.⁷¹ Part of the way that Canada also deals with issues regarding Indigenous rights is embedded within the Canadian Constitution, in existence since 1867 and patriated in 1982.

Under the Canadian Constitution, “Indians, and Lands reserved for the Indians” falls under section 91(24) and under exclusive federal authority. Section 91 outlines the powers of the federal government as a whole, and section 92 delineates the areas reserved for the provinces to legislate. As the courts have pointed out, these are not watertight compartments, particularly when it comes to Indigenous Peoples in Canada, who receive many services in crucial areas such as health and education from provincial service providers, while being funded through Ottawa. In part, the iteration of powers under the *Constitution Act*, or, as it was known in 1867, the *British North America Act*, flows from the historical recognition of the relationship between Indigenous Peoples and the Crown. Specifically, this idea is also represented in the Royal Proclamation of 1763, which predated the *British North America Act*, and which said that the Crown, or British government, was responsible for protecting the lands of First Nations people, and ensuring their welfare and protection.

Until 1982, section 91(24) was the only articulation of the presence of Indigenous Peoples anywhere in Canada’s Constitution. And, when Pierre Elliot Trudeau took steps to patriate the Constitution to Canada in 1982, he had no intention of adding any more references. However, the addition of the *Canadian Charter of Rights and Freedoms* engaged many Indigenous organizations who fought for the inclusion and protection of collective Indigenous and Treaty rights. Part of the motivation behind the effort to entrench Aboriginal rights within the Constitution was the idea that any transfer of power from Britain, which still held constitutional authority in Canada, might jeopardize Aboriginal rights – at least the few that were recognized at the time. In addition, the fact that any rights held by First Nations, Métis, and Inuit were subject to extinguishment through legislation meant that there were few protections for the limited rights that had been gained by that time. Indigenous organizations felt that securing constitutional protection for their rights was the most sensible and safe route to make sure they wouldn’t lose any ground that had been gained so far.

“HUMAN RIGHTS DECISIONS INVOLVING FIRST NATIONS NEED TO RECOGNIZE ABORIGINAL AND TREATY RIGHTS. FOR COMPLAINTS ABOUT A FIRST NATION GOVERNMENT OR SERVICE ORGANIZATION, THE COMMISSION AND THE TRIBUNAL CAN CONSIDER THE CUSTOMARY LAW OF THE FIRST NATION. THEY NEED TO BALANCE COLLECTIVE AND INDIVIDUAL RIGHTS FROM A FIRST NATION PERSPECTIVE, WHILE RESPECTING GENDER EQUALITY.”

The Canadian Human Rights Commission



As a result of this resistance, the government acquiesced and included a section that “recognizes and affirms” Aboriginal and Treaty rights. As a result of lengthy campaigns by Indigenous women, the 1983 Constitutional Conference also agreed to amend the Constitution and add a clause declaring that Aboriginal and Treaty rights are “guaranteed equally to male and female persons.” However, aside from this new commitment to gender equality, little progress was made towards defining “Aboriginal rights.” Subsequent conferences throughout the 1980s likewise ended without agreement on the matter.



Her Majesty Queen Elizabeth II with Prime Minister The Rt. Hon. Pierre Elliott Trudeau signing the Proclamation of the Constitution Act, 1982. © Government of Canada. Reproduced with the permission of Library and Archives Canada (2019). Source: Library and Archives Canada/National Archives of Canada fonds/a141503.

As it was finally assented to, section 25 of the *Constitution Act* guarantees that no rights and freedoms within the Charter should be interpreted as taking away from any Aboriginal rights or Treaty rights flowing from the Royal Proclamation of 1763 and from land claims agreements. Section 35 affirms existing Aboriginal and Treaty rights for “Indians,” Métis, and Inuit, and specifies that “Treaty rights” include rights now existing in land claims agreements, or those that might be acquired in the future. Subsection 4 of this clause expressly guarantees these rights equally to male and to female persons.

In 1990, the Supreme Court of Canada (SCC) held, in *Sparrow*, that the federal government’s power under section 91(24) must be read together with section 35(1). Section 35(1) places obligations upon the federal government “to act in a fiduciary relationship with respect to aboriginal peoples” within a framework that is “trust-like, rather than adversarial.” However, while the Constitution recognized these Aboriginal and Treaty rights, it did not define them. Instead, it committed to holding a constitutional conference involving the prime minister, the provincial premiers, and Indigenous leaders to define the rights protected by the Constitution through the domestic courts.



As it has evolved, Canadian jurisprudence has articulated important legal doctrines, especially with regards to Aboriginal title, but also related to other Indigenous rights. These include the *sui generis* rights, the Honour of the Crown, and fiduciary duty. These legal principles, and the overall narrative they share, is dominated by the idea that the Rule of Law – the idea that even the Crown is subject to its own laws – must prevail when attempting to *reconcile* the pre-existence of Indigenous Nations and their legal and cultural systems with the assumed sovereignty of British settler society.⁷²

Sui Generis – A Unique Relationship

The Latin term *sui generis* (“of its own kind”) is used to characterize something that is unique. Within Aboriginal law as defined in the Supreme Court, judges apply this idea to point out the differences between Indigenous rights to property and the rights that come from the non-Indigenous common law. As lawyer Bruce Ziff explains, the idea of *sui generis* recognizes

pre-existing property rights of Aboriginal communities. Since sovereignty works only as a potential trump over prior claims, the previous landholders, the Aboriginal peoples of what is now Canada, retain their property until these are taken away by legitimate state action. Indeed, current Canadian law recognizes land rights that were in existence before colonial acquisition.⁷³

This means that Aboriginal and Treaty rights are set aside from other rights to acknowledge that they are unique; and, even though domestic law interpretation is paramount here, international law also recognizes the *sui generis* nature of Aboriginal title and many related rights. These rights don’t depend on non-Indigenous principles. Instead, the Supreme Court has established that even if inherent Aboriginal rights have never been affirmed by British or Canadian legislation, they are still constitutionally valid.⁷⁴



The James Bay and Northern Quebec Agreement and Economic Security

The James Bay and Northern Quebec Agreement (JBNQA) is the first “modern” Treaty in Canada. It was signed in 1975 by the Government of Canada, the Government of Quebec, and the Cree and Inuit of northern Quebec. Both Inuit and Cree sacrificed a great deal in exchange for promises of self-determination and community development. However, because federal and provincial governments failed to properly implement the agreement, it would be almost three decades before Cree in northern Quebec began to enjoy substantial community development on their terms. Failure to honour the commitments in the JBNQA in a timely manner exacerbated many of the problems behind the crisis of violence against Indigenous women in Quebec, including poverty, trauma, and access to government services.

Negotiations for the JBNQA were sparked by a conflict over hydroelectric development. In 1971, Quebec Premier Robert Bourassa announced a proposal for the James Bay Hydroelectric Project, a multi-stage mega-project that called for dams and reservoirs on all of the major river systems flowing into James Bay. Cree and Inuit groups resolved to stop the project. Because they were not consulted on the project, they were in no position to benefit from it, and it would have significant negative effects on their communities. When the Quebec government ignored Indigenous opposition, the Cree and Inuit took legal action to stop the project. However, the Cree and Inuit were under an enormous amount of pressure to reach a negotiated agreement with government. Construction of the project continued during legal proceedings, effectively compromising the ability of Indigenous groups to stop the project.ⁱ

In the agreement, the Cree and Inuit agreed to a scaled-down hydroelectric project on the La Grande River system, one that flooded vast swaths of Cree territory and damaged Cree waters. The agreement contained the now-infamous “extinguishment clause”

that claimed to extinguish Aboriginal rights to land in northern Quebec. In exchange, both groups received a one-time cash payment, as well as government commitments to community, economic, and political development in northern Quebec.ⁱⁱ

Both federal and provincial governments were reluctant to honour their commitments under the agreement. There were immediate disputes over which order of government should be funding community infrastructure and health services. While Canada and Quebec bickered, Cree communities were left without proper housing, public sanitation infrastructure, clean drinking water, and health services. Government inaction led to numerous lawsuits. The Cree reached an out-of-court settlement with the federal government in 1982. However, a change in government in 1984 resulted in major funding cuts to services in Cree communities, leading to further litigation.ⁱⁱⁱ

In the late 1980s, Quebec announced its intentions to expand the James Bay project into the Great Whale River system. Because of the negative impacts they



***The James Bay and Northern Quebec Agreement was signed at a late-night ceremony in Quebec City on Nov. '11, 1975, by Inuit leaders Charlie Watt and Zebedee Nungak, then-Quebec Premier Robert Bourassa, and late Cree Chief Billy Diamond (far right).
Source: Nunatsiaq News***

had already experienced from development on the La Grande River, as well as the failure of government to honour the JBNQA, the Cree sought to stop the project with a combination of court actions and public campaigns. Their campaign was successful and the Quebec government cancelled the project in 1994.^{IV}

Tensions between the Cree and the Government of Quebec continued into the late 1990s. By 2000, the Cree had initiated more than 30 lawsuits, alleging that the governments of Quebec and Canada had breached the JBNQA.^V Major conflicts in the late 1990s included disputes over logging and further hydroelectric development.^{VI}

With northern hydroelectric development at a standstill, and numerous issues related to the JBNQA before the courts, the Government of Quebec was under considerable pressure to negotiate with the Cree. In 2002, the Grand Council of the Crees and the Government of Quebec signed the Agreement Respecting a New Relationship Between the Cree Nation and the Government of Quebec (popularly known as the *Paix des Braves* or “Peace of the Braves”). This massive out-of-court settlement has been celebrated by Cree leaders as a breakthrough in honouring the spirit and intent of the JBNQA. For example, as former director of Quebec and international relations for the Grand Council of the Crees (Eeyou Istchee) of James Bay, Romeo Saganash wrote: “We believe that *Paix des Braves* ... is an agreement based upon the significant recognition of the rights of Indigenous Peoples to benefit meaningfully on a nation-to-nation basis from the natural resources and wealth of their own traditional lands.”^{VII}

While recent settlements like the *Paix des Braves* have resulted in improved service delivery and a more equitable sharing of the revenues produced by extractive industries, it took decades of litigation and public campaigning to have these commitments honoured. In the meantime, Cree communities paid the price with high levels of poverty, insufficient social services, and unresolved intergenerational trauma. The government’s failure to uphold its Treaty promises to the Cree have therefore exacerbated the problem of violence against Indigenous women, girls, and 2SLGBTQQIA people.

- I Feit, “Hunting and the Quest.”
- II Morantz, “Aboriginal Land Claims.”
- III Grand Council of the Crees, “Episode 2: Delivering the Promise.”
- IV Feit, “Hunting and the Quest.”
- V Tehan et al., “Sharing Lands and Resources,” in *Settling with Indigenous People*.
- VI Grand Council of the Crees, “Episode 3: We Rise up!”
- VII Saganash, “The *Paix de Braves*,” 205.



Honour of the Crown

Related to the idea of the unique nature of Aboriginal rights is the idea of the Honour of the Crown. In 1967, the Nisga'a Tribal Council brought an action to the British Columbia Supreme Court. Frank Calder and others (including the Nisga'a Tribal Council, Gitlakdamix Indian Band, Canyon City Indian Band, Laxgalts'ap [Greenville] Band, and Kincolith Indian Band) sought recognition of their Aboriginal title, comprising over 2,590 square kilometres (1,000 square miles) in northwestern British Columbia. The BC Supreme Court and the Court of Appeal rejected the Nisga'a claim. In response, the Nisga'a took their case to the Supreme Court of Canada, where it was finally decided in 1973.

While the Nisga'a did not technically win the case in the Supreme Court of Canada, the decision that was issued, named the *Calder* decision, broke new ground. The three justices who did affirm the Nisga'a's Aboriginal title maintained that Aboriginal title had existed at the time of the Royal Proclamation of 1763, before colonial law was imposed. As Justices Hall, Spence, and Laskin wrote: "The proposition accepted by the Courts below that after conquest or discovery the native peoples have no rights at all except those subsequently granted or recognized by the conqueror or discoverer was wholly wrong."⁷⁵

In this decision, the Supreme Court of Canada indicated that "in dealings between the government [that is, the "Crown"] and aboriginals the honour of the Crown is at stake."⁷⁶ Further, the Court noted, "The mandate to act with honour was brought to life the very instant that sovereignty over native people was asserted."⁷⁷ In other words, in claiming sovereignty over Indigenous Peoples, the nation-state also creates a duty to act honourably in all of the ways that it deals with them.

Thus, the legal notion of Honour of the Crown came into focus in Canadian Aboriginal law through *Calder*, and continued to be applied and refined in litigation that followed. Despite being a "split" decision, *Calder* marked a significant change in the relationship between the Crown and Indigenous Peoples in Canada, leading to negotiations that culminated in 1998, creating British Columbia's first modern Treaty, *The Nisga'a Final Agreement Act*.⁷⁸

The Honour of the Crown applies to the interpretation of legislation and to the application of Treaties.

"THE MANDATE TO ACT WITH HONOUR WAS BROUGHT TO LIFE THE VERY INSTANT THAT SOVEREIGNTY OVER NATIVE PEOPLE WAS ASSERTED."

The Supreme Court of Canada



Claiming Métis Rights: The “Forgotten People” Demand Recognition

For many Métis, the decades spent as the “forgotten people” include the fight to be recognized both as Aboriginal people, under the Constitution, as well as specific challenges related to rights that mean services and access for many Métis women, girls, and 2SLGBTQIA people long denied due to their identity.

The question of Métis rights was first put before the Supreme Court of Canada in the Powley case, decided in 2003. In 1993, Steve and Roddy Powley had killed a moose near Sault Ste. Marie, Ontario, without a licence, claiming that their right to hunt for food was protected by the *Constitution Act*, 1982, under section 35. In its decision, the Supreme Court ruled unanimously that Métis people who were members of a Métis community had the protected right to hunt for food under section 35. The Court found that the “test for Métis practices should focus on identifying those practices, customs and traditions that are integral to the Métis community’s distinctive existence and relationship to the land.”ⁱⁱ While the right was limited to Sault Ste. Marie and neighbouring areas, the case set an important precedent for understanding Métis rights within section 35. It also set out the “Powley test,” as it is known today, which is used to define Métis rights, in the same way as the *Van der Peet* test is used to define those rights applying to First Nations:

To sum it up, the characterization of the right must take into account the perspective of Métis people claiming the right; reflect the actual pattern of exercise of Métis hunting prior to effective control; characterize the practice in accordance with the highly mobile way of life of the Métis of the Northwest; give legal force to Métis people’s traditional relationship to the land they

lived on, used and occupied; and reconcile the hunting rights of Métis of the Northwest in a way that provides the basis for a just and lasting settlement of their Aboriginal claims.ⁱⁱⁱ

The next challenge before the SCC of significance to the Métis was in the *MMF v the Queen* decision of 2013.ⁱⁱⁱ The case concerned the fact that after Confederation, the first government of Canada engaged in attempts to manage the distribution of Métis lands, as a part of Manitoba’s entry into Confederation under the *Manitoba Act*, 1870. In that Act, Canada agreed to grant 1.4 million acres of land to the Métis children (section 31 of the *Manitoba Act*) and to recognize existing landholdings (section 32 of the *Manitoba Act*). The Canadian government began the process of implementing section 31 in early 1871. Although the land was set aside, a series of errors, delays, and mismanagement of the process interfered with dividing the land.^{iv}

The Métis, represented by the Manitoba Metis Federation and several interested individuals, sought a declaration “that a provision of the *Manitoba Act* – given constitutional authority by the *Constitution Act*, 1871 – was not implemented in accordance with the honour of the Crown.”^v In this case, the Métis were not seeking compensation or restoration of the lands. They were seeking only a declaration setting out that the government had not fulfilled its obligations ho-



nourably, with the express purpose of assisting them in their ongoing negotiations with the government of Canada.^{vi}

The Supreme Court of Canada delivered a split decision (5:2), and held that the “federal Crown failed to implement the [Métis] land grant provision set out in s. 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.”^{vii}

The obligations of the government to both Métis and non-Status people were also addressed in the Daniels decision of 2016, whose impacts are not yet fully known.^{viii} In the case, appellants sought three declarations: (1) that Métis and non-Status Indians are “Indians” under section 91(24) of the *Constitution Act, 1867*; (2) that the federal Crown owes a fiduciary duty to Métis and non-Status Indians; and (3) that Métis and non-Status Indians have the right to be consulted and negotiated with.

In its decision, the Supreme Court of Canada granted the first declaration: Métis and non-Status Indians are “Indians” under section 91(24). The Court did not grant the second and third declarations because the specific duty to negotiate exists when Aboriginal rights are engaged. Métis rights are not engaged by inclusion in section 91(24) but are engaged when they have a credible or established section 35 right. For this reason, the Court maintained that there was no need for the declaration because the rights already exist in law.^{ix}

Under this decision, the federal government will need to work on defining its obligations to non-Status people – those robbed of Status by the *Indian Act*, explored in the next chapter – as well as consider how its honour and its duty are engaged with respect to those groups for whom it has not traditionally accepted responsibility.

- I *R. v. Powley*, 2003 SCC 43, at para 37 [Powley].
- II Teillet, *Métis Law in Canada*, 2-25.
- III *Manitoba Métis Federation Inc. v Canada (Attorney General)* 2013 SCC 14 [MMF].
- IV *Ibid.*, at headnotes.
- V *Ibid.*, para 136.
- VI *Ibid.*, at para 136–37.
- VII *Ibid.*, at headnotes.
- VIII *Daniels v Canada (Indian Affairs and Northern Development)* 2016 SCC 12 [Daniels].
- IX *Ibid.*, para 56.



Fiduciary Duty

The principle of “fiduciary duty” is also key in understanding how the courts have defined Aboriginal rights that are constitutionally protected. It comes from the common law.

A fiduciary is someone who is trusted to manage and protect property or money. The relationship of a fiduciary is one in which that person is obligated to act in the other person’s interests. The duties of a fiduciary include to act with “the utmost of loyalty to [its] principal” and in the “best interests” of the principal or beneficiary.⁷⁹ It exists, and applies to Aboriginal Peoples in Canada, as a result of the important economic duties and social history between Indigenous Peoples and the state, as well as the idea of the “peculiar vulnerability of the beneficiary to the fiduciary.”⁸⁰ The concept of fiduciary duty isn’t fixed, and elements of the relationship evolve over time.

Sui generis (the unique nature of rights), the Honour of the Crown, and fiduciary duty are all inseparably linked, and have appeared in case law revolving mostly around title and resource rights – at least in Canada. At the same time, there is a growing recognition within the legal community that these concepts may apply to other areas, with lawyers working in the area of corporate law, for instance, considering how fiduciary duty may bind corporations with certain duties to employees. Considering how principles such as these can also engage governments in the protection of the rights of Indigenous women, girls, and 2SLGBTQQIA people, along with international covenants, declarations, and domestic human rights instruments, can present an important new way to look at the potential legal paths towards justice.

Indigenous Rights and Human Rights: A Complicated Relationship

While there is potential in all international and national human rights instruments to help end violence against Indigenous women, girls, and 2SLGBTQQIA people, the National Inquiry maintains that it is important to consider both Indigenous and human rights as representative of linked, but distinct, ideas. This is important, because the solutions pursued must not harm Indigenous women by violating some rights while trying to uphold others. For example, debates about Indigenous rights in the 1960s show how appeals to human rights have been used to justify the violation of Indigenous rights. The opposite is also true: in some cases, appeals to Indigenous rights, specifically in the case of gender, have been used to justify the violation of the human rights of Indigenous women.

In the first case, in 1969, Pierre Elliott Trudeau’s Liberal government released a White Paper proposing to dismantle Indian Affairs. In the Canadian legislature, a policy paper is called a “White Paper.” For many Indigenous Peoples, the term ironically implies a reference to racial politics and the non-Indigenous majority.⁸¹



The White Paper proposed eliminating Indigenous Peoples' collective rights in the name of "equality." The federal government's intention, as described in the White Paper, was to achieve equality among all Canadians by eliminating "Indian" as a distinct legal status and by regarding Indigenous Peoples simply as citizens with the same rights, opportunities, and responsibilities as other Canadians. In keeping with Trudeau's vision of a "just society," the government proposed to repeal legislation that it considered discriminatory, or that would place any one group above any other – regardless of the foundation upon which each group then stood. The White Paper stated that removing these kinds of distinctions would "enable the Indian people to be free – free to develop Indian cultures in an environment of legal, social and economic equality with other Canadians."⁸²

To achieve its goal, the White Paper proposed to eliminate Indian Status, dissolve the Department of Indian Affairs within five years, abolish the *Indian Act*, convert reserve land to private property that could be sold by the band or its members, transfer responsibility for Indian Affairs from the federal government to the provinces, and integrate services provided to First Nations into those provided to other Canadian citizens. In addition, the government proposed funding for economic development and the appointment of a commissioner to address outstanding land claims and gradually terminate existing Treaties.⁸³

Though the White Paper acknowledged the social inequality of Indigenous Peoples in Canada and, to a lesser degree, the history of poor federal policy choices, many First Nations people viewed the new policy statement as the culmination of Canada's long-standing goal to assimilate "Indians" into mainstream Canadian society rather than recognize their unique rights as the original inhabitants of this land.

Trudeau's political philosophy was based on the idea of one Canada, and linked to his rejection of Quebec nationalism. Speaking in 1969, he argued:

We won't recognize aboriginal rights. We can go on adding bricks of discrimination around the ghetto in which Indians live, and at the same time helping them preserve certain cultural traits and certain ancestral rights. Or we can say you are at a cross roads – the time is now to decide whether the Indians will be a race apart in Canada, or whether they will be Canadians of full status.... Indians should become Canadians as all other Canadians. This is the only basis on which I see our society can develop as equals. But aboriginal rights, this really means saying, "We were here before you. You came and cheated us, by giving us some worthless things in return for vast expanses of land, and we want to reopen this question. We want you to preserve our aboriginal rights and to restore them to us." And our answer – our answer is "no." – We can't recognize aboriginal rights because no society can be built on historical "might-have-beens."⁸⁴

The legislative and policy changes proposed in the White Paper were not implemented.



First Nations across Canada responded to the document with spirited and ceaseless resistance. Harold Cardinal's *Unjust Society* – the book's title is a play on Trudeau's idea of the "just society" – called the policy proposal "a thinly disguised programme of extermination through assimilation. For the Indian to survive, says the government in effect, he must become a good little brown white man."⁸⁵ In 1970, Cardinal and the Indian Association of Alberta published another rejection, *Citizens Plus*, which became known as the "Red Paper" and which drew from Cardinal's *Unjust Society* arguments. The Union of British Columbia Indian Chiefs issued its own document, "A Declaration of Indian Rights: The B.C. Indian Position Paper," or "Brown Paper," of 1970, which rejected the 1969 White Paper's proposals and asserted that Indigenous Peoples continued to hold Indigenous title to the land.⁸⁶

The debate over the White Paper illustrates the tension that can exist between universal human rights and particular Indigenous rights. Although Trudeau explained that he saw individual human rights as basic, rather than substantive, equality as a way to move forward, this approach ignored the important collective nature of Indigenous rights, and the ways in which the rights, opportunities, and security of Indigenous Peoples were historically, and in many respects still are, tied to land.

The opposite has also occurred in Canadian history, where appeals to Indigenous rights have also been used to dismiss Indigenous women's human rights.

In the early 1970s, Jeannette Corbiere Lavell and Yvonne Bédard's cases were heard in the Supreme Court of Canada. Lavell charged that the *Indian Act's* subsection 12(1)(b) violated the *Canadian Bill of Rights* of 1960, because of discrimination on the grounds of sex. Bédard had attempted to return to live on-reserve with her children after separating from her husband, and was ordered by the band to sell her property within one year, as she had lost her Status by marrying a non-Indian in 1964 and could no longer live on-reserve.

For the male-dominated leadership within the National Indian Brotherhood (NIB), the precursor to the Assembly of First Nations (AFN), the threat that the case posed to invalidate the entire *Indian Act* and, with it, the way to access Treaty rights and Aboriginal rights, was too great. The NIB intervened in the case, siding with the Government of Canada and against Lavell and Bedard, drawing the women into a "lengthy, bitter confrontation over the nature of 'Indian rights' and 'women's rights,' asserting that women's rights must not be obtained at the expense of self-government powers."⁸⁷ The Supreme Court ruled against Lavell and Bedard in 1973. In the decision, however, Justice Bora Laskin deemed this "statutory excommunication."⁸⁸

Later, in the constitutional debates of the 1980s, the Assembly of First Nations argued that the *Charter of Rights and Freedoms* should not apply to Indigenous governments, because its individualistic conception of human rights was at odds with the collective rights of Indigenous Peoples.⁸⁹ This led to a political backlash from Indigenous women, represented by the Native Women's Association of Canada (NWAC). NWAC insisted that the Charter, or other similar mechanisms to protect Indigenous women's rights to gender equality, be applied to Indigenous governments. NWAC, and the Indigenous women it represents, were looking to human rights to protect them from discrimination and violence in their communities.⁹⁰



Later, in 1981, Sandra Lovelace, along with other women from the Tobique First Nation, took the issue to the United Nations Human Rights Committee in *Lovelace v. Canada*. Internationally, the United Nations ruled in Lovelace’s favour, stating that Canada was in violation of the *International Covenant on Civil and Political Rights*.⁹¹

Conclusion: Understanding the Need for Self-Determined Solutions

As these examples demonstrate, a one-dimensional approach to rights can serve to perpetuate violence. Indigenous women’s rights include both individual human rights and collective Indigenous rights – with overlap between these two categories, where collective rights are also human rights and Indigenous rights also belong to individuals. As a result, solutions do not rest only within human or within Indigenous rights instruments, and neither do they rest only in governments. Addressing violence against Indigenous women, girls, and 2SLGBTQQIA people requires new solutions as conceived, driven, and managed by those affected. This is why it is important to stress that the realization of these rights, both within Indigenous contexts and within the framework of human rights, requires self-determined solutions. As Brenda Gunn told the National Inquiry, “It’s really important that we realize that in order to fully realize all rights and self-determination, that they all need to work together and that they’re on the same field with that same end goal.”⁹² In short, she says, “self-determination is really a starting point for the realization of human rights.”⁹³ Dalee Sambo Dorough agreed: “[Self-determination] is required in order for Indigenous Peoples, either individually or collectively, to benefit from the exercise of the right of self-determination of Indigenous Peoples.”⁹⁴

Within the Truth-Gathering Process, many people testified about the need to consider context, and to promote self-determined solutions appropriate for each Nation or community, according to their own standards and needs. As Brenda Gunn testified, a national, step-by-step process is not appropriate to apply to all. A good plan would account for the diversity among Nations, creating frameworks and steps to ensure that implementation is appropriate to specific regions and issues. In addressing the challenges of *Indian Act* band governance, or self-government agreements among other Indigenous Peoples, which will be explored in the next chapter, some witnesses also suggested that human rights standards should also be operational within communities and for Indigenous governments, urging those governments to take the initiative on adopting legislation reflective of these instruments. Brenda Gunn explained: “We may need to have moments where we also reflect to make sure that our own legal traditions are upholding current standards of international human rights law in a way that’s appropriate for our traditions.”⁹⁵

Jean Leclair considers it essential that Indigenous governments undertake the adoption of human rights principles, founded upon their own Indigenous laws, particularly with respect to UNDRIP: “For many of them, federal and provincial law suffers from a lack of legitimacy. But since the declaration is the product of their own collaboration, they can certainly be inspired by it. They are governments, after all.”⁹⁶



Through the respect for these instruments, including both collective and individual rights, Indigenous women, girls, and 2SLGBTQQIA people can work to hold all governments accountable for the measures they are taking, or are not taking, to address the crisis of violence.

But, as the testimonies before the National Inquiry assert, the state itself can't guarantee the safety of all Indigenous women, girls, and 2SLGBTQQIA people. However, it can enact and enforce laws and put greater emphasis on catching perpetrators; contribute to changing the perspective of those who would see the lives of Indigenous women, girls, and 2SLGBTQQIA people as somehow of less value than the lives of non-Indigenous people; and refine its own values and service standards to honour Indigenous women, girls, and 2SLGBTQQIA people. Halie B. pointed out:

I'm a lawyer. I'm educated. I speak to huge conferences of people about child protection, about Gladue, about prisoners' rights, about Aboriginal offenders, about the structural racism and systemic racism that our people have suffered, and the laws, and policies, and practices that have impacted our people over multiple generations.... And, I couldn't even get an RCMP officer to listen to me with any dignity and pride. And, I understood even more profoundly the racism that my mother experienced throughout her life, from the '50s to now, to today.⁹⁷

Barriers to rights happen in the everyday situations that women, girls, and 2SLGBTQQIA face in trying to obtain services and to get help. For this reason, changes must go beyond law, towards new relationships. As Anni P. said:

It's all about building relationships, you know? Our family systems have been fractured, so I got to learn how to build relationships again with my family. Healthy relationships. And, I have to learn how to build relationships with non-Indigenous people.... It's all about building relationships. And so, we heal in our Indigenous community, and then the non-Indigenous community is learning the truth, and then how do we come together? How can we come together in a healthy and safe way to start to build relationships, to start to heal all those lies that all sides have been told about each other? We need to heal of that.⁹⁸

“[SELF-DETERMINATION] IS REQUIRED IN ORDER FOR INDIGENOUS PEOPLES, EITHER INDIVIDUALLY OR COLLECTIVELY, TO BENEFIT FROM THE EXERCISE OF THE RIGHT OF SELF-DETERMINATION OF INDIGENOUS PEOPLES.”

Dalee Sambo Dorough



Chief Commissioner Buller addresses the group in Ottawa, Ontario.

Examples that emerged through the testimonies included how changing the way that the health system interacts with Indigenous Peoples could contribute to safety by creating a new level of comfort in communication that could improve outcomes both at the individual and institutional levels – as driven by Indigenous Peoples. Improving the way that the child welfare system deals with Indigenous families, or transforming the way it operates, could help keep more families together and ultimately improve safety – as understood by Indigenous people. Training law enforcement personnel who need it to understand Indigenous realities and perspectives could help improve access to, and trust in, the police, so that Indigenous women, girls, and 2SLGBTQQIA people in danger feel they have somewhere to go. In short, states must uphold their obligations, but the people acting within these parameters must also create new relationships from the ground up.

“I’M A LAWYER. I’M EDUCATED. I SPEAK TO HUGE CONFERENCES OF PEOPLE ABOUT CHILD PROTECTION, ABOUT GLADUE, ABOUT PRISONERS’ RIGHTS, ABOUT ABORIGINAL OFFENDERS, ABOUT THE STRUCTURAL RACISM AND SYSTEMIC RACISM THAT OUR PEOPLE HAVE SUFFERED, AND THE LAWS, AND POLICIES, AND PRACTICES THAT HAVE IMPACTED OUR PEOPLE OVER MULTIPLE GENERATIONS.... AND, I COULDN’T EVEN GET AN RCMP OFFICER TO LISTEN TO ME WITH ANY DIGNITY AND PRIDE. AND, I UNDERSTOOD EVEN MORE PROFOUNDLY THE RACISM THAT MY MOTHER EXPERIENCED THROUGHOUT HER LIFE, FROM THE ’50S TO NOW, TO TODAY.”

Halie B.



Human rights frameworks, as interpreted within the spirit and context of Indigenous laws, are important tools to begin to change the conversation about Indigenous roles, responsibilities, rights, and, ultimately, self-determination. In this, we all have a role to play. We can restructure our own relationships and transform our own encounters, all the while contributing to the protection and restoration of Indigenous women's and gender-diverse people's power and place through respect for Indigenous laws and principles, and human and Indigenous rights. When Indigenous and human rights are respected fully, then Indigenous women and girls will be safer. We can transform encounters that endanger women, girls, and 2SLGBTQQIA people into ones that can protect them.

Understanding the context of Indigenous and human rights is also important in understanding the roots of violence against Indigenous women, girls, and 2SLGBTQQIA people – a crisis that is not, as some might suggest, a recent phenomenon, but that is centuries in the making. The next chapter will begin to tell a different story of colonization, one that understands that all Indigenous Peoples were and are affected by colonization, but that the experience of Indigenous women, girls, and gender-diverse people were distinct, with important implications into the present.

To look forward, we must first look back.



Notes

- 1 Timothy Argetsinger (Inupiaq), Part 3, Public Volume 5, Quebec City, QC, p. 173.
- 2 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 10.
- 3 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 11.
- 4 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 55.
- 5 Eversole, McNeish, and Cimadamor, cited in Green, *Indivisible*, 4.
- 6 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 11.
- 7 Gladys R. (Gitksan/Wet'suwet'en), Part 1, Public Volume 4, Smithers, BC, p. 154.
- 8 Smith, "Human Rights and Decolonization," 83.
- 9 Relevant declaratory instruments to which Canada is party include the foundational *United Nations Declaration on Human Rights*; the *Vienna Declaration and Programme of Action*; the *Declaration on the Elimination of Violence Against Women*; the *Beijing Declaration and Platform for Action*; and the *United Nations Declaration on the Rights of Indigenous Peoples*. Conventions that Canada has ratified include the *Convention on the Prevention and Punishment of the Crime of Genocide*, in 1948, the *International Covenant on Civil and Political Rights* and its related Optional Protocol, both ratified in 1976; the *International Covenant on Economic, Social and Cultural Rights*, ratified in 1976, and its related Optional Protocol, ratified in 1984; the *Convention on the Elimination of All Forms of Discrimination Against Women*, ratified in 1980 and 1981, and its Optional Protocol, ratified in 2002; the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ratified by Canada in 1985 and in 1987; the *Convention on the Rights of the Child*, ratified in 1990 and 1991, and its Optional Protocol, ratified in 2000 and 2002; and the *International Convention on the Elimination of All Forms of Racial Discrimination*, ratified in 1966 and in 1971.
- 10 United Nations, "United Nations Human Rights System."
- 11 Office of the High Commissioner for Human Rights, "Other United Nations Bodies."
- 12 Delores S. (Saulteaux, Yellow Quill First Nation), Part 1, Public Volume 26, Saskatoon, SK, p. 27.
- 13 Office of the High Commissioner for Human Rights, "Frequently Asked Questions."
- 14 Virginia C. (Métis), Part 1, Statement Volume 117, Saskatoon, SK, p. 26.
- 15 Office of the High Commissioner for Human Rights, "Convention on the Elimination of All Forms of Discrimination against Women."
- 16 Crystal F. (Yellow Quill First Nation) Part 1, Public Volume 28, Saskatoon, SK, p. 43.
- 17 Lorraine S. (Thunderchild First Nation and Mosquito First Nation), Part 1, Statement Volume 112, Saskatoon, SK, p. 36.
- 18 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 43.
- 19 Dr. Dalee Sambo Dorough (Inuit, Alaska), Part 3, Public Volume 6, Quebec City, QC, p. 266.
- 20 Dr. Dalee Sambo Dorough (Inuit, Alaska), Part 3, Public Volume 6, Quebec City, QC, p. 254.
- 21 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 14.
- 22 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 13.
- 23 See *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817.
- 24 United Nations, *Universal Declaration of Human Rights*.
- 25 United Nations General Assembly, Resolution 48/104, Article 1.
- 26 *Ibid.*, Article 4(k).
- 27 United Nations General Assembly, Resolution 66/290.
- 28 Office of the High Commissioner for Human Rights, "Vienna Declaration."
- 29 *Ibid.*
- 30 *Ibid.*
- 31 United Nations, *Beijing Declaration*.
- 32 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 39.



- 33 Henderson, *Indigenous Diplomacy*, 70.
- 34 Ibid.
- 35 The abstentions were: Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, the Russian Federation, Samoa, and Ukraine.
- 36 Khandaker, “Canada adopts UN Declaration.”
- 37 Indigenous Foundations, “UN Declaration on the Rights.”
- 38 Canada, “Canada, Indigenous and Northern Affairs Canada, Canada’s Statement of Support.”
- 39 United Nations General Assembly, Resolution 61/295.
- 40 Ibid.
- 41 Ibid.
- 42 Ibid.
- 43 Ibid.
- 44 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 40.
- 45 Dr. Dalee Sambo Dorough (Inuit, Alaska), Part 3, Public Volume 6, Quebec City, QC, pp. 300-301.
- 46 Champagne, “Human, Civil and Indigenous Rights,” 11.
- 47 Bernie W. (Haida/Nuu-chah-nulth/Coast Salish), Part 1, Public Volume 115, Vancouver, BC, p. 32.
- 48 Translation ours. Jean Leclair, Part 3, Public Volume 6, Quebec City, QC, p. 222.
- 49 Dr. Dalee Sambo Dorough (Inuit, Alaska), Part 3, Public Volume 6, Quebec City, QC, p. 272.
- 50 Dr. Dalee Sambo Dorough (Inuit, Alaska), Part 3, Public Volume 6, Quebec City, QC, p. 257.
- 51 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 16.
- 52 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 49.
- 53 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 16.
- 54 Corey O’Soup (Métis/First Nations, from the Key First Nation), Part 3, Public Volume 6, Quebec City, QC, pp. 114-115.
- 55 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 20.
- 56 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC.
- 57 McConnell, “Canadian Bill of Rights.”
- 58 Ibid.
- 59 *The Constitution Act*, 1867, 30 & 31 Vict, c 3.
- 60 *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, version of Section 13 from 2002-12-31 to 2014-06-25.
- 61 *Canadian Human Rights Act*.
- 62 First Nations Child and Family Caring Society of Canada, “Canadian Human Rights Tribunal Decisions.”
- 63 Ibid.
- 64 2016 CHRT 2, File No.: T1340, 7008, *First Nations Child and Family Caring Society of Canada v. Canada*, 2016 CHRT 2, File No.: T1340, 7008. For a useful timeline of the case and all related documents, see First Nations Child and Family Caring Society, “Jordan’s Timeline,” <https://fncaringociety.com/jordans-timeline>.
- 65 The commission may extend the deadline in extenuating circumstances. This is, however, the exception rather than the rule.
- 66 Wendy L. (Squamish Nation), Part 1, Statement Volume 370, Richmond, BC, pp. 20-21.
- 67 Viola Thomas (Kamloops Tk’emlups te Secwepemc), Part 1, Public Volume 104, Vancouver, BC, p. 14.
- 68 Viola Thomas (Kamloops Tk’emlups te Secwepemc), Part 1, Public Volume 104, Vancouver, BC, pp. 7-8.
- 69 Canadian Human Rights Commission, *Now a Matter of Rights*.
- 70 Canadian Human Rights Commission, *Your Guide to Understanding the Canadian Human Rights Act*, 1.
- 71 Henderson and Bell, “Rights of Indigenous Peoples.” The term “Aboriginal” is used in this section to reflect the wording of the Canadian Constitution, which protects ““Aboriginal and Treaty rights.” “Aboriginal” is also the term used within the Constitution that refers to First Nations, Métis, and Inuit people.
- 72 See Justice Ian Binnie in *Mikisew Cree First Nation v. Canada* (Minister of Canadian Heritage).
- 73 Ziff, *Principles of Property Law*, 73.
- 74 Henderson, “Interpreting Sui Generis.”
- 75 Ibid.



- 76 See *R. v. Marshall* [1999] 3 SCR 456 at paras 49-52.
- 77 *Mitchell v. M.N.R.* 2001 SCC 33, 2001 SCR 911 at para 9.
- 78 *Nisga'a Final Agreement Act*, RSBC 1999, c2c 2.
- 79 *Guerin v. The Queen* [1984] 2 SCR 335, p. 337.
- 80 *Ibid.*, 942, with reference to Frankel, "Fiduciary Law."
- 81 Lagace and Sinclair, "The White Paper, 1969."
- 82 Canada, Indigenous and Northern Affairs Canada, "Statement of the Government of Canada on Indian Policy."
- 83 *Ibid.*
- 84 Prime Minister Pierre Trudeau, speaking to the Liberal Association of Vancouver, Seaforth Armories, Vancouver, 1969. "Transcript of the Prime Minister's Remarks at the Vancouver Liberal Association Dinner," Seaforth Armories, Vancouver, BC, 1969, 11-12. http://publications.gc.ca/collections/collection_2018/aan-inac/R32-429-1969-eng.pdf
- 85 Cardinal, *The Unjust Society*, 1.
- 86 Lagace and Sinclair, "The White Paper, 1969."
- 87 Shaw, "Creating/Negotiating Interstices," 176.
- 88 *Attorney General of Canada v. Lavell, Isaac et al. v. Bédard*, 1974 SCR 1386.
- 89 Rafoss, "The Application of the Canadian Charter," 17-18. See also Romanow, Leeson and Whyte, *Canada – Notwithstanding*.
- 90 For a more detailed account of NWAC's views, including those related to Bill C-31, see NWAC, "Aboriginal Women's Rights are Human Rights."
- 91 Conn, "Sandra Lovelace Nicholas."
- 92 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 52.
- 93 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 57.
- 94 Dr. Dalee Sambo Dorough (Inuit, Alaska), Part 3, Public Volume 6, Quebec City, QC, p. 259.
- 95 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 73.
- 96 Translation ours. Jean Leclair, Part 3, Public Volume 6, Quebec City, QC, p. 173.
- 97 Halie B. (Namgis/Kwa'kwa'kawakw/Tlingit/Scottish), Part 1, Public Volume 111(a), Vancouver, BC, p. 33.
- 98 Anni P. (Cree), Part 1, Public Volume 80, Vancouver, BC, pp. 30-31.



Colonization as Gendered Oppression

Introduction: The Context of Colonization for Indigenous Women, Girls, and 2SLGBTQQIA People

For many of those who spoke about experiences of violence in their own lives or the lives of their loved ones, an essential and ultimately empowering part of making meaning and of healing came with learning about the broader historical forces and policies that shaped their individual experiences. For many people, the shame and secrecy that colonialism bred among Indigenous families meant that talking about their own personal histories never took place. Even less well-known or talked about is the way that these historical forces shaped the lives of women, girls, and 2SLGBTQQIA people in distinct ways that ultimately are at the root of the crisis of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people today.

As Chief Judy Wilson, of the Secwépemc Nation, explained, the heart of addressing the crisis today begins with “lifting the veil”:

The statement from our family today and our experience of how our sister was murdered at a young age is one of many thousands and thousands of stories across Canada. The National Inquiry is a hearing, is only a fraction of these survivor and family stories. There are many voices that will remain unheard, sadly. Our family will continue to advocate and support the many issues our women and girls continue to experience. Regrettably, change will only come by lifting the veil of colonialism and our recognition of our people's title and rights, so that we can reaffirm our identities and our way of life.¹



In this section, we provide a brief overview of some of the historical events and contexts that are at the root of violence against Indigenous women, girls, and 2SLGBTQQIA people. We identify a number of factors as foundational in the ongoing violation of cultural, health, security, and justice-related rights. But the violation of these rights also has deep historical roots.

In the area of culture, for instance, some of the most egregious rights violations include the early logic of discovery and the assertion of Canadian sovereignty, the regulation of Indigenous identities and governance, and the attempt to assimilate Indigenous Peoples in the context of residential schools and, later on, within the Sixties Scoop and child welfare systems.

In the area of health, the impact of colonization in northern communities is particularly important, as it is connected to relocations and the lack of food security. Other examples include forced sterilization, lack of access to mental health services and addictions treatment, and overall interference with existing Indigenous health systems.

Within the context of the right to security, a basic lack of opportunity in areas such as education, employment, and the failure to provide a basic standard of living are rooted, in particular, in colonial interventions in ways of life and in removal from ancestral or home lands.

In the area of justice, persistent harmful beliefs, as rooted in colonization regarding Indigenous women and girls, and the policing of them through legislation and through law enforcement, have important implications for justice – or the lack thereof – that we see today.

The gendered lens we apply to these contexts is important; while Indigenous men and boys suffered enormously under colonization, with respect to land and governance in particular, Indigenous women, girls, and 2SLGBTQQIA people were impacted in distinct, though related, ways. As Kwagiulth (Kwakwaka'wakw) scholar Sarah Hunt explains:

Colonialism relies on the widespread dehumanization of all Indigenous people – our children, two-spirits, men and women – so colonial violence could be understood to impact all of us at the level of our denied humanity. Yet this dehumanization is felt most acutely in the bodies of Indigenous girls, women, two-spirit and transgender people, as physical and sexual violence against us continues to be accepted as normal.²

In addition, the distinct and intersectional experiences of women and girls in remote and urban centres, or from First Nations, Inuit, or Métis perspectives, are an important part of examining the gendered history of colonization. From policies oriented toward assimilation of First Nations through the *Indian Act* and the residential school system, to those targeting Métis families through the denial of key services and rights, the structures and institutions of colonization set up the crisis of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people we understand today. In the case of Inuit communities, the relatively later arrival of colonization to Inuit Nunangat continues to leave important scars on communities and on families who were often forcibly relocated from their lands and targeted by the residential school system as well, within a relatively recent time period. How different systems of oppression impacted different



groups of Indigenous women, girls, and 2SLGBTQQIA people with respect to their basic human and inherent Indigenous rights is an important part of many of the life stories we heard within the National Inquiry, particularly those dealing with the root cause of intergenerational trauma. This trauma is enforced by the lack of basic economic, social, and political rights, by the lack of institutional will for change – then and now – and by the failure to recognize the expertise and capacity of women in their own lives in historical and contemporary perspective.

In short, the history of colonization is gendered, and must be considered in relation to the crisis of missing and murdered Indigenous women and girls as a series of encounters that has ultimately rendered Indigenous women, girls, and 2SLGBTQQIA people as targets. This chapter does not provide an exhaustive account of colonization; rather, it seeks to reposition the experiences of women, girls, and 2SLGBTQQIA people within the larger context of colonization to argue that the very structures and attitudes that inspired historical abuses of human and Indigenous rights continue today. As a result, the ongoing crisis of violence against Indigenous women, girls, and 2SLGBTQQIA people is a crisis centuries in the making, and continues into the present.

Understanding Colonization as a Structure

“Colonization” refers to the processes by which Indigenous Peoples were dispossessed of their lands and resources, subjected to external control, and targeted for assimilation and, in some cases, extermination. As defined by Mohawk scholar Gerald Taiaiake Alfred, colonialism represents the process of building a new reality for Europeans and Indigenous Peoples in North America, through the development of institutions and policies toward Indigenous Peoples by European imperial or settler governments. This involved both actual policies and legislation, as well as the creation of larger religious and secular justifications, or reasons, for enacting them.³ It also includes policies, practices, and institutions that targeted Indigenous people, and women in particular, in ways that knowingly discriminated against them. The processes of colonization – its very structure, as this chapter will explore – live on and are replicated in the present, through different means.

Within the First Nations context, for instance, this meant identifying who was and was not considered an “Indian” – which involved the process of excluding Métis from Treaties and from the services – albeit meagre – provided to First Nations.⁴ Within an Inuit context, this also included the process of assigning numbered tags to Inuit in order to keep track of people, and renaming them to make it easier for government officials to monitor them, therefore denying important naming traditions.⁵ Broadly seen, colonial processes were often set up around what genocide scholar Patrick Wolfe has called “the organizing grammar of race.”⁶ In other words, only by categorizing Indigenous Peoples through legislation and other means could colonial forces begin to control them, as well as to dispossess them. As Wolfe maintains, “Settler colonizers come to stay: invasion is a structure, not an event.”⁷



In Windy River, Northwest Territories, a government official takes census information from Inuit families. © Government of Canada. Reproduced with the permission of Library and Archives Canada (2019). Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/a102695.

The structures of colonialism are important to begin to identify, especially as they relate to the issue of violence against Indigenous women, girls, and 2SLGBTQQIA people. On the one hand, they include the idea of categorizing people, as described above. They also include processes related to the supervision and containment of people, such as those seen in moving people to reserves or to centralized communities. But, on the other hand, structures of colonialism also dehumanize people – reducing individuals to stereotypes to make them less than human and therefore easier to dismiss. Other physical dimensions include segregating people to eliminate the bloodline or genetic strain, and the practices associated with physically removing markers of identity, such as in cutting hair, changing clothing style, or removing or impeding important skills like trapping, hunting, or other practices that would allow people to maintain their way of life.

Colonial structures go beyond the physical, though, and also include assaults on ways of knowing and understanding. This includes, for example, the targeted elimination of Indigenous languages; the dehumanization of Indigenous Peoples and especially women as animals, or as without worth, through rape and sexualized violence; and the removal of structures that determine identity or ways of organizing society that are specific to Indigenous Peoples and that help ensure the life of the community. As Françoise R. shared:

My parents, the fact that they've been through this is like ... it's like they do not have a life inside of them. It's like they're ... they've been treated like animals. That's how they treated my parents: "We have the right to take your children as we want." They are taken to the boarding school and then taken to the hospital. You know, it's them who decided. It's not up to them to decide. We have lives. My parents have feelings and then they have emotions, and then I want there to be justice to that.⁸

These structures also impact alternative constructions of gender, the survival of ceremonies and cultural practices, and the education of the younger generation.



As these brief examples show, and as this chapter will develop, the structures of settler colonialism engage in the destruction of existing cultures and peoples, both physically and structurally, and seek to replace existing structures with their own. Violent colonial encounters were not one-off events, but were part of a larger strategy of conquest. In Canada, this process meant undermining the position of Indigenous women, girls, and gender-diverse people, in particular, as well as impacting whole communities, including men and boys, in an attempt to eradicate, replace, and destroy Indigenous Peoples and cultures.

This point is important because it provides links with the present and still-existing structures that contribute to targeting Indigenous women, girls, and 2SLGBTQQIA people. These aren't just things that happened in the past. Viewing colonization as a structure means that we can't dismiss events as parts of the past, or as elements of someone else's history. If viewed as a structure, these colonial pieces aren't things people can just "get over," because many of these ideas – these structures – still exist. We see them in the failure to properly consult with Indigenous groups over environmental or land issues, or in the lack of services in remote communities. We see these structures at play in interactions women, girls, and 2SLGBTQQIA people have with justice systems or with child welfare. We see these structures in the ongoing poverty and lack of resources for addressing violence. Seeing colonization as a structure makes plain the connections between structures of the past – both physical and ideological – and the structures of today. Through this lens, we can see how these structures still play a role in controlling which services people can access and which laws communities can make, and in creating conditions that are unsafe.

Combatting these structures requires understanding the foundation upon which they have been built, and an understanding of who built them and why. Viewing settler colonialism as a structure includes many different events – all created under the same destructive logic. In short, as Wolfe says, "settler colonialism destroys to replace."⁹ Where colonizers sought to create a new nation in North America, they first set out to destroy the old ones that were already here.

As we heard in testimony from Robert C.:

Canada is quite uncomfortable with the word "genocide." But genocide is what has happened in Canada and the United States for First Nations people. What else can you call it when you attack and diminish a people based upon their colour of their skin, their language, their traditions, remove them from their lands, target their children, break up the family? How is that not genocide? And that's the uncomfortable truth that Canada, I believe, is on the cusp of coming to terms with. And it's going to take a lot of uncomfortable dialogue to get there.¹⁰

As a structural process, and under its various systems, colonization targeted whole communities through policies designed to undermine and challenge what people knew and who they were. Contrary to the rights and responsibilities illustrated in the stories and testimonies we heard, the impacts of colonization historically, and of continued colonial attitudes, structures, and systems today, directly contribute to the rights violations of Indigenous women, girls, and 2SLGBTQQIA people.



The Logic of Discovery: Early European Exploration among First Nations and Impacts on Gender Relations

In the 16th century, “explorers” commissioned by European states arrived in what is now Canada to claim newly “discovered” lands for their benefactors, with the purpose of drawing out its resources for their funders in Europe. They were looking for resources – loot – and hoped to find them in the Americas. While the term “explorer” may suggest a kind of harmless searching or wandering, these voyages were anything but that. Instead, they set the stage for a full-scale assault on Indigenous Nations and communities that has lasted nearly 500 years.

During these early encounters between explorers and Indigenous Peoples, it was not uncommon for explorers to kidnap Indigenous people, including Indigenous women and children, and forcibly take them back to Europe as objects of curiosity or as evidence of newly “discovered” lands. This was part of categorizing people as “exotic” or as “primitive” in ways that dehumanized them as objects to be examined. For example, although a permanent colonizing presence in the North wasn’t established until the mid-19th century, Martin Frobisher kidnapped an Inuit man, woman, and child and brought them to England in 1577, where they soon succumbed to disease and injuries.¹¹

In what would later become the province of Quebec, between 1534 and 1542, Jacques Cartier made three separate voyages across the Atlantic Ocean to claim the land he found for King Francis of France. Samuel de Champlain followed in suit for the French, establishing Port-Royal by 1605. British explorers came, too, but failed to establish a permanent settlement in North America by the start of the 17th century.

“CANADA IS QUITE UNCOMFORTABLE WITH THE WORD ‘GENOCIDE.’ BUT GENOCIDE IS WHAT HAS HAPPENED IN CANADA AND THE UNITED STATES FOR FIRST NATIONS PEOPLE. WHAT ELSE CAN YOU CALL IT WHEN YOU ATTACK AND DIMINISH A PEOPLE BASED UPON THEIR COLOUR OF THEIR SKIN, THEIR LANGUAGE, THEIR TRADITIONS, REMOVE THEM FROM THEIR LANDS, TARGET THEIR CHILDREN, BREAK UP THE FAMILY? HOW IS THAT NOT GENOCIDE? AND THAT’S THE UNCOMFORTABLE TRUTH THAT CANADA, I BELIEVE, IS ON THE CUSP OF COMING TO TERMS WITH. AND IT’S GOING TO TAKE A LOT OF UNCOMFORTABLE DIALOGUE TO GET THERE.”

Robert C.

Early on, some First Nations, including both men and women, assisted the newcomers, but not without qualification. The concept among First Nations of land stewardship, and the notion of rights conveyed by virtue of a relationship with the Creator, was very different from land tenure in Europe at this time. Principles governing land use and occupancy among First Nations were robust, complex, and concrete. They were very different, however, from how land ownership, or tenure, was perceived in Europe. In Cartier’s home country of France, for instance, the feudal system set rigid structures for the distribution of land in return for rent or services. Within this



system, landowners became very powerful, living from the labour of their tenants. With the help of the church, whose hierarchical or top-down structure in some ways mirrored that of the feudal order, social order was maintained through a system of those who had, and those who had not.

Europe's own stories were full of tales of the conquering of other peoples, within the context of the expansion of the Holy Roman Empire, beginning in the ninth century. In order to be able to lay claim or ownership to newly "discovered" land, European explorers used a legal doctrine called *terra nullius* – meaning "nobody's land" or "empty land," discounting those whom they found there already as mere "barbarians" or "savages," like those they believed had been defeated on the European continent before that.



French colonist Samuel de Champlain's first detailed map of the territory he claimed for New France, 1612.

Even though Canadian law has held that the *terra nullius* doctrine never applied in Canada,¹² the legal argument was required: at that time, it was against international law to occupy a territory if it was already occupied by other peoples or nations. Wolfe argues:

Through all the diversity among the theorists of discovery, a constant theme is the clear distinction between dominion, which inhered in European sovereigns alone, and natives' right of occupancy, also expressed in terms of possession or usufruct, which entitled natives to pragmatic use (understood as hunting and gathering rather than agriculture) of a territory Europeans had discovered. The distinction between dominion and occupancy illuminates the settler-colonial project's reliance in the elimination of native societies.¹³

In simpler terms, European explorers made various claims that bolstered their desired control of the land, including the idea that Indigenous Peoples living on the lands were simply using them, but not occupying them, within the context of a European view of title. These claims were supported by European kings and queens, whose ideas about their own divine appointments created a partnership between church and state, which worked hand in hand within the project of colonization.



This argument about so-called empty lands, along with the Papal Bull “Inter Caetera,” issued by Pope Alexander VI on May 4, 1493, provided even more justification for aggressive colonization. This Bull, popularly known as the “Doctrine of Discovery,” stated that any land not inhabited by Christians could be “discovered” and claimed by Christian rulers. It claimed ownership over all of it, regardless of the claims of those already living there, based on the idea that they were “barbarians.” The Bull further decreed that barbarian nations should be overthrown and Christianity spread everywhere. Such ethnocentric views centred Christianity as the cornerstone of humanity, so that to be without a Christian god was to be considered less than human.¹⁴

Explorers also retained these religious ideas. For example, Samuel de Champlain, who, in 1608, established a fortress at what is now Quebec City, described Indigenous people as “savages” or “barbarians.” He commented further: “I believe that they would quickly be brought round to being good Christians, if their lands were colonized.”¹⁵ In the eyes of European colonizers, this was enough of a justification to declare terra nullius and, within the Doctrine of Discovery, to engage in an aggressive policy of colonization that included the exploitation of resources for international trade and the eventual deployment of European settlers to occupy the newly claimed lands.

Europeans also used colonization to seize the power of pre-emption, which said that: “Through being the first European to visit and properly claim a given territory, a discoverer acquired the right, on behalf of his sovereign and *vis-à-vis* other Europeans who came after him, to buy land from the natives.”¹⁶ Simply, it meant that Indigenous Peoples could deal only with the Crown that had, at any given time, claimed sovereignty over discovered territory, which left very little room for appeal or justice in that respect. This directly went against the right of those communities to determine their own futures, based on their rights to the lands, and was one of the first steps in establishing the structures of colonial violence linked with denying culture, health, security, and justice.

A Religious Enterprise: Early Colonization among First Nations and Métis

Claiming land for European monarchs was also tied to the practice of claiming souls for God. In the case of Christianity, and, in particular, early Catholicism, core beliefs brought to communities by missionaries challenged Indigenous notions of gender and relationships between men, women and gender-diverse people, as well as their leadership, as well as women’s leadership within communities. They directly impacted the rights to culture, as well as associated political and social rights as enjoyed by women and gender-diverse people within their communities prior to colonization.



The content of Christianity itself during this period, with specific reference to women, generated even more dangerous encounters. Early Christian ideals included explicit gendered violence that placed women squarely in separate and lesser spheres. For example, Jesuit missionaries in the 17th century laid the foundation for how Europeans would encounter traditional female Indigenous medical practices. In the eyes of the Jesuits, both male and female healers were seen as evil and corrupt. In 1632, Paul Le Jeune wrote that it was “strange that the Savages have so much faith in these charlatans! I do not know why falsehood is worshipped more than truth.”¹⁷ For Le Jeune and other Jesuits, these sorcerers and sorceresses represented the work of the devil.¹⁸ In 1635, Jean de Brébeuf described one such female healer as performing the work of the devil through pyromancy and other superstitions.¹⁹ Similarly, Paul Ragueneau, in 1646, described a female healer as deceitful in her attempts to take advantage of a mother whose son was an invalid. In his account, though the mother was tempted, her faith gave her resolve to resist the “sorceress.”²⁰



Mr. and Mrs. Dam, Moravian missionaries, in Hopedale, Labrador, 1886. Source: Library and Archives Canada/Newfoundland and Labrador album of photographs by Simeon H. Parsons/a139015.

Conversion thus went hand in hand with displacing the traditional role of women healers and replacing Indigenous medicine practices with European medical knowledge. The descriptions offered by Jesuits like Le Jeune were based primarily in the stark differences between how women lived in Europe as compared with the Indigenous societies they would encounter in North America. Briefly summarized, the role of women in Europe in the late 16th century and well into the 19th century was one of subjugation. The Catholic Church interpreted the Bible as saying that the first human created was a man, Adam, and that Adam was made in the image of God, implying that God was a man as well. Woman was created second, to be a partner to man. Eve was made from Adam’s rib, and in this way owed her very existence to a man. Furthermore, Eve was first to eat the fruit from the Garden of Eden, which created the Christian doctrine of “original sin.” As the *Malleus Maleficarum*, regarded as the standard book on witchcraft, first published in 1487, asserted:



All wickedness is but little to the wickedness of a woman.... What else is woman but a foe to friendship, an unescapable punishment, a necessary evil, a natural temptation, a desirable calamity, domestic danger, a delectable detriment, an evil nature, painted with fair colours.... When a woman thinks alone, she thinks evil.... Women are by nature the instruments of Satan – they are by nature carnal, a structural defect rooted in the original creation.²¹

In Europe, these foundational principles were already used to justify the oppression of women in a variety of ways. For instance, European women could not own property because they were actually considered property – belonging first to their fathers and eventually to their husbands. A woman’s virginity (as modelled by the Virgin Mary) was an indicator of her honour, and should a woman be accused of not being “pure,” her punishment could be as severe as death. This was true even if her virginity was compromised by rape.²²

The imposition of patriarchal European values meant that exerting control and dominance over Indigenous women was an important aspect of colonization. The freedom and self-determination exercised by Indigenous women was seen as contrary to Christian values and a “great obstacle to the faith of Jesus Christ.”²³

In order to fully execute the goal of assimilation, colonization required that Indigenous women’s roles be devalued not only in the colonies, but also within First Nations themselves. As a part of their mission and work, then, many missionaries often undertook projects to teach First Nations societies how to treat their women as they “should,” according to European ways. There is evidence that Jesuit priests held public gatherings to teach Indigenous men how to beat Indigenous women and children.²⁴ Some accounts tell of women being “deprived of food, humiliated, tied to posts in the centre of the village and publicly whipped,”²⁵ and various priests cast women’s roles as midwives and healers as “evil and superstitious.”²⁶

The impact of these early missionaries was to work both externally, in their communications abroad, and internally, within communities, to devalue and dehumanize women who had, to that point, represented central parts of how community life operated and how order was maintained.



The Early Colonial Context of Violence against Gender-Diverse People

In addition to different and harmful ideas about the roles of women, early Christianity vehemently rejected alternative conceptions of gender, or alternative gender relationships. Yet, in many First Nations societies, these existed along a continuum, or as part of a much larger circle of identity. As Sto:lo writer Lee Maracle writes,

For a very long time prior to the colonial and postcolonial periods (this little blip on the trajectory of our history), Indigenous peoples brought into being and practiced a social organization that viewed gender in the same continuum, with the same sense of circularity and integral interrelations which we attached to everything in life... However, there is also a reality among all humanity, that for various, quite intimate reasons, sometimes an individual does not strictly adhere to this thing called man or woman; they feel neither completely, yet are made of both, and maybe something more.²⁷

Maracle characterizes this alternative gender identity as a gift from the grandmothers, whether from birth or by revelation. Maracle also directly cites the length of colonial contact and the length of the imposition of the church, as well as proximity to non-Indigenous settlements, as reasons why gender-diverse people were driven “underground,” even within communities’ own understandings of themselves.²⁸

Within the historical context, those considered to hold special gifts were dismissed and reduced by observers – mostly explorers and anthropologists – as “berdaches,” drawing from the Persian *bardaj*, a “slave,” especially a boy slave kept for sexual purposes. The use – or misuse, as is more accurate – of this term is important, because it represents a limited understanding of gender – a simple two-sided conception – that fails to capture all of the different identities that existed within some First Nations. In many communities, these individuals were accepted into the gender roles that they manifested, including in building their own family relationships and entering into marriage, and were celebrated for these gifts. This identity was who you were in a larger sense, and not limited to sexual preference.²⁹

Those deemed “berdaches” were similarly dismissed and rejected by religious authorities – perhaps partially because of the influence they showed, as in the case of women in matrilineal and matrilocal communities. The belief that there were only two genders – therefore erasing an entire spectrum of people who had lived in communities since time immemorial – was racist, colonial, and incredibly harmful. As Jesuit Joseph Francois Lafitau saw it, in commenting on gender relations observed among First Nations people between 1711 and 1717, “If there were women with manly courage who prided themselves upon the profession of warrior, which seems to become men alone, there were also men cowardly enough to live as women... They believe they are honoured by debasing themselves to all of women's occupations; they never marry.”³⁰ As Jacques Marquette, working in Lower Canada in the mid- to late 17th century, commented,



I know not through what superstition some Illinois, as well as some Nadouessi, while still young, assume the garb of women, and retain it throughout their lives. There is some mystery in this, for they never marry and glory in demeaning themselves to do everything that the women do. They go to war, however, but can use only clubs, and not bows and arrows, which are the weapons proper to men. They are present at all the juggleries, and at the solemn dances in honor of the Calumet; at these they sing, but must not dance. They are summoned to the Councils, and nothing can be decided without their advice. Finally, through their profession of leading an Extraordinary life, they pass for Manitous, – That is to say, for Spirits, – or persons of Consequence.³¹

In particular, missionaries denounced people demonstrating non-binary gendered identities, including, later, within residential or mission schools, where those in charge punished children for inappropriate gender behaviour. As it became more and more dangerous, and even illegal under the prosecution of the crime of “buggery,” to show these characteristics, and due to government and missionary intervention, many families intervened to prevent their own members from showing them, or because they had converted themselves.

Canada itself admitted in its own LGBTQ formal apology:

Since arriving on these shores, settlers to this land brought with them foreign standards of right and wrong – of acceptable and unacceptable behaviour.... They brought rigid gender norms – norms that manifested in homophobia and transphobia. Norms that saw the near-destruction of Indigenous LGBTQ and two-spirit identities. People who were once revered for their identities found themselves shamed for who they were. They were rejected and left vulnerable to violence.³²

As Cree Two-Spirit advocate Harlan Pruden notes, efforts to raise awareness and understanding around these issues today are “part of remembering and reclaiming our place of honour, respect and dignity for our two-spirit relatives back with their respective nations. We have to do that education.”³³ As Pruden notes, in Cree there are no pronouns like “he” or “she”; this is reflective of many Indigenous languages, where the determinative aspect of gender pronouns is not a historic feature.

“FOR A VERY LONG TIME PRIOR TO THE COLONIAL AND POSTCOLONIAL PERIODS (THIS LITTLE BLIP ON THE TRAJECTORY OF OUR HISTORY), INDIGENOUS PEOPLES BROUGHT INTO BEING AND PRACTICED A SOCIAL ORGANIZATION THAT VIEWED GENDER IN THE SAME CONTINUUM, WITH THE SAME SENSE OF CIRCULARITY AND INTEGRAL INTERRELATIONS WHICH WE ATTACHED TO EVERYTHING IN LIFE HOWEVER, THERE IS ALSO A REALITY AMONG ALL HUMANITY, THAT FOR VARIOUS, QUITE INTIMATE REASONS, SOMETIMES AN INDIVIDUAL DOES NOT STRICTLY ADHERE TO THIS THING CALLED MAN OR WOMAN; THEY FEEL NEITHER COMPLETELY, YET ARE MADE OF BOTH, AND MAYBE SOMETHING MORE.”

Lee Maracle



Complex Relationships in Fur Trade Country

The colonization of what would become Canada didn't happen only for religious purposes, however, and missionaries' access to communities was enabled by the development of trade, as well. As scholar Taiaiake Alfred maintains, the processes of colonization were inseparable from those of mercantile capitalism, and industrial capitalism later on. And, as he observes, capitalist growth and expansion depends on the dispossession of Indigenous lands.³⁴ In other words, the economy that developed in Canada was dependent on removing Indigenous Peoples from their lands.

In 1670, King Charles II of England granted the Hudson's Bay Company exclusive trading rights over a huge part of the continent, which required the labour of First Nations living on the territory as trappers, hunters, guides, and as providers for the various trading forts and posts. By the end of the 17th century, the demand for the broad-rimmed beaver hat, made from beaver pelts, fundamentally changed the trading landscape in Canada.

In this respect, it was also not lost on early colonizers that building alliances with First Nations was an essential part of settlement. In his work, historian Richard White discusses the "middle ground" from 1650 to 1815 as a period and a place of mutual accommodation, in the *pays d'en haut* of the Great Lakes region. His work demonstrates how encounters among Algonquian-speaking First Nations, French, British, and Americans were forged within the context of a weak state authority and a fairly even distribution of power relationships – economic and military – that helped to ensure roughly equitable relations and respect among groups.³⁵

Within White's "middle ground," the encounters between First Nations women and European men were important. First Nations women were not unaccustomed to being ambassadors, translators, representatives, and diplomats for their own Nations. For their home communities, they could be symbols of friendship and alliance. These women were key to building strong trade relationships.



Indigenous women packing out on Camsell portage, Northwest Territories, 1926. Source: Library and Archives Canada/Natural Resources Canada fonds/a020008.



First Nations women, along with Métis women, whose roles will be explored further on in this chapter, had several important roles in the trade. They literally supplied the trade and worked as traders themselves. First Nations women were active in day-to-day tasks such as producing food, clothing, and staples like wild rice and maple syrup, and in snaring game. Many First Nations women also worked as traders themselves, working with their husbands or on their own. Nonetheless, despite the contributions First Nations women made to ensuring the health and well-being of settlers, a similar willingness to respect and value this wisdom of First Nations women was not being built into or reflected in the institutions and relationships taking shape during this period. In fact, as Cree grassroots organizer and scholar Michelle Good explains, some First Nations women were held hostage as ransom and used as sex slaves within the trade, in a male-dominated and resource-dependent economy.³⁶



Gwichya Gwich'in woman preparing caribou hide, Tsiigehtchic, Northwest Territories, ca. 1921. Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/a102639.

As trade became entrenched into the economy for many First Nations, one of the ways in which First Nations women became involved was marriage. Within the context of both trade and religion, and because the first explorers and settlers were predominantly crews of men, marriages of fur traders to First Nations women were seen as a viable method of diplomacy, and First Nations women, whose responsibilities might include care for her family or community, could also find the arrangement to be of value. The church approved of these marriages “as long as brides first converted to Catholicism.”³⁷

European expectations of marriage were different from those already existing in First Nations communities. Both marriages by choice and arranged marriages existed in First Nations communities, whose traditions were diverse. In some Nations, polygamy was acceptable. In others, marriage was relatively easy to end. In others still, marriage was mostly an economic arrangement divorced from rules about fidelity, which meant that partners were free to engage in models of relationships that met their needs. In Plains society, for example, and as historian Sarah Carter explains, marriages were much more flexible: “People could be either monogamous or polygamous, and the choice was theirs. The ease with which divorce was acquired precluded



coercion... Once married either party could terminate a marriage.”³⁸ As a general rule, however, and as part of a family unit, Indigenous women were interdependent, retaining autonomy as individuals within the unit.³⁹ Carter notes that among the Huron, in particular, an overwhelming commitment to individual freedom meant no expectation to “obey” the husband, as in the Christian tradition.⁴⁰

As they developed in fur-trade country, and in the wake of the 1670 charter, the quality and longevity of marriages – especially those not sanctioned by the church – varied across time and space. These were known as marriages “à la façon du pays,” and they blended Indigenous and European traditions. Although these marriages were not as confining as the church-sanctioned marriages that came later, many European husbands came with expectations of a monogamous and Christian-inspired relationship that was difficult for First Nations women to leave, but which many men left at will, rendering their country wives vulnerable. This was especially true within the shifting policies of the Hudson’s Bay Company (HBC) and of the North West Company (NWC). The HBC actively discouraged women from the forts, without much success, from the 1740s to the 1760s. Still, HBC traders continued to marry First Nations women, and some even married several. On the other hand, within the NWC, marriage was encouraged, and could in fact be used as a tool to keep traders renewing their contracts to stay close to wives and children. By 1806, though, the policy had worked too well: since the NWC fed and clothed employees’ families, and competition was reaching a pitch, it declared that NWC employees should not marry First Nations women.

Before priests sanctioned marriages in the Northwest, beginning in 1818, marriages *à la façon du pays* had important implications for women, especially in terms of setting out treatment different from those that would be afforded in traditional European marriages. From the perspective of traders themselves, the impermanence of their posting often led to the idea of marriages as temporary arrangements. Daniel Williams Harmon, a NWC trader, described his acceptance of a new “country wife” in the following way:

In case we can live in harmony together, my intentions are now to keep her as long as I remain in this uncivilized part of the world, but when I return to my native land shall endeavor to place her into the hands of some good honest Man, with whom she can pass the remainder of her Days in this Country much more agreeable, than it would be possible for her to do, were she to be taken down into the civilized world, where she would be a stranger to the People, their manners, customs and Language.⁴¹

These marriages, in some respects, also worried officials and missionaries. Colonizers reconceived these sorts of arrangements, in time, as representing a real threat to women themselves, and used this to justify the establishment of increasingly restrictive definitions of marriage. For women, this could serve to separate them from the safety offered by their own kinship systems, through patriarchal conceptions of marriage.



For Queen and Country: Shifting First Nations Experiences within the Context of Canada

As the early history of exploration and trade demonstrates, while First Nations and Métis Peoples, along with Inuit, share some common experiences of colonization, it is important to distinguish the experiences of each group within its own historical context. This is because the same laws, policies, and regulations were not applied to each group, although the overarching logic of assimilation and destruction inherent in colonization was common to all groups.

The transition from colonies to country changed how colonial authorities would manage First Nations people, and women in particular, because destroying existing Nations was a precursor to forming new ones. In this project, women were an important focus through a variety of measures designed to reduce and eventually eliminate First Nations.

In 1867, Canada established itself as a nation through the enactment of a constitution called the *British North America Act*.⁴² Confederation federally united the British North American colonies of Nova Scotia, New Brunswick, and the Province of Canada to form the Dominion of Canada as a new country. At its creation in 1867, the Dominion of Canada included four provinces: Nova Scotia, New Brunswick, Quebec, and Ontario. Between then and 1999, six more provinces and three territories joined Confederation.

As explained briefly in a previous chapter, within the new Confederation, the responsibility for “Indians and lands reserved for Indians” was delegated to the federal government in section 91(24) of the *Constitution Act, 1867*. If it had been at all unclear prior to Confederation, it was now constitutionally entrenched that Indians were considered wards of the Canadian state.



First Nations men receive their Treaty annuity, 1930. Source: Library and Archives Canada/Canadian National Railway Company fonds/e010861493.



Understanding the True Spirit and Intent of Treaty Relationships

While not all First Nations in Canada have historical treaties with the Government of Canada, those who do have long insisted that the way that Treaties are interpreted today are not in accordance with the intent and the spirit of the agreements as they were made. The connection to the tragedy of missing and murdered Indigenous women, girls, and 2SLGBTQIA people lies in the way that Treaty provisions intended to secure a good, safe and healthy way of life for future generations. Instead, they have been interpreted so narrowly that they have served to further dispossess First Nations, and to place their membership in further jeopardy. Understanding the true spirit and intent of historical Treaties, then, is an important way to see First Nations women, girls, and 2SLGBTQIA people as rights holders whose ancestors sought to protect them through the true spirit and intent of Treaty.

According to Anishinaabe Elder Harry Bone, understanding the original spirit and intent of Treaty includes understanding who First Nations were at the time Treaties were negotiated, and the relationships these First Nations had to settlers and to the land.¹ Elder Bone of the Keeseekoowenin Ojibway First Nation in Manitoba argues that First Nations are “the first owners and occupants of the land; they protect their languages, beliefs, and teachings and honour the Creator. Treaties are part of the first law — the constitution of First Nations — that involves the idea of entering into peaceful arrangements with newcomers on an equal, nation-to-nation basis.”¹¹ The idea of protecting languages, beliefs and teachings is not a static idea, stuck at a historical point in time; instead, protecting these vitally important resources is a project that is dynamic, and that is about today and about the future, as well.

The original spirit and intent of Treaties is not rooted in some unknowable past; it is actually concrete, in many agreements that First Nations made with each other, prior to European contact. For instance, the Dish with One Spoon Treaty, negotiated between the Anishinaabe and the Haudenosaunee, was an agree-

ment about sharing resources and making sure the “dish” – the land – would always provide for both parties, for generations to come. It was an agreement about sharing the land, and taking care of it – and in turn, through the values of reciprocity, respect and interconnectedness – the land would also take care of the people. These dynamic agreements weren’t set for a year, or several years – they represented principles that would be re-articulated, re-understood, and respected from one generation to the next.

When the historical Treaties between the Crown and First Nations were negotiated, this kind of relationship is what First Nations sought. The act of making Treaty was an act of accepting these new people – as Nihiyaw (Cree) legal scholar Harold Johnson calls them, *kiciwamanawak*, or cousins – who became new relatives through Treaty. The obligations on new relatives and around kinship were based on protection, care, and mutual aid. As Johnson explains, “no one thought you would try to take everything for yourselves, and that we would have to beg for leftovers.... The Treaties that gave your family the right to occupy this territory were also an opportunity for you to learn how to live in this territory.”¹¹¹



When Treaty rights are interpreted narrowly, these rights are not respected in the way signatories intended. Extinguishing rights means taking them away, or surrendering them, but many First Nations who signed Treaty insist that a surrender was never intended. All courts have recognized the power of Parliament to extinguish Aboriginal rights and title up to 1982, and while this hasn't been done, it remains a looming threat. The Supreme Court has not ruled out extinguishment after 1982, despite section 35 of the *Constitution Act*.^{IV} In some cases, it has also held that that delay in bringing a court action is sufficient to defeat a claim to Aboriginal title.^V Aboriginal rights to hunt and fish have also been limited by constitutional amendment, federal legislation, and in some instances by provincial laws.^{VI}

The true spirit and intent of Treaties, for those Nations who signed them, is not about limits; it is about the possibility that lies within them for framing a new relationship based in mutual aid, respect, and a good life for future generations. This is the obligation that continues to First Nations as rights holders. If properly interpreted, Treaties can also support the obligations of governments to implement measures to address violence against Indigenous women, girls, and 2SLGBTQIA people.

As Johnson explains, "To get to the future, we need a vision, then we must imagine the steps we must take to get to that vision.... We cannot ignore our vision because it seems utopian, too grand, unachievable. Neither can we refuse to take the first steps because they are too small, too inconsequential.... We will both be part of whatever future we create, kiciwamanawak."^{VII}



Governor General Vanier paying Treaty money to Indigenous Peoples at Cold Lake, Alberta, 1961.
Source: Library and Archives Canada/National Film Board of Canada fonds/e010976122.

I Treaty Relations Commission of Manitoba, "Let's Talk Treaty, Episode 2: The Spirit and Intent of Treaties with Elder Harry Bone."

II Duhamel, "Gakina Gidagwi'igoomin Anishinaabewiyang."

III Johnson, *Two Families*, p. 21.

IV Beaudoin, "Delgamuukw Case"; *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010.

V *Ontario (Attorney General) v. Bear Island Foundation*, [1991] 2 SCR 570; *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344.

VI See, for example, *R. v. Sparrow*, [1990] 1 SCR 1075.

VII Johnson, *Two Families*, p. 85.



The justification for this status of wardship was pursued by officials on many fronts, using some of the problems they themselves had prompted to blame First Nations for their own hardship. In reality, the reasons were both administrative and economic. Under the Royal Proclamation of 1763, the government was duty-bound to respect Aboriginal title through the making of Treaty, and having various First Nations groups scattered across a huge expanse was seen as an administrative and financial burden. In other ways, though, a changing way of life for many First Nations meant that the government thought they would soon disappear. On the Plains, for instance, the elimination of the bison contributed to poverty and to dispossession, due to the reliance of many groups on its trade and products. While the reliance on bison was not static or uniform across all Plains groups, its position as a primary source of livelihood, and its uses in almost all realms of life including food, lodging, clothing, and the like, meant that the loss of this resource would have grave consequences, including on the health and lifespan of First Nations in these areas.⁴³ The killing of bison in mass numbers also fed a growing focus on building an agrarian or farming economy, which required the removal of the bison, the people who depended on it, and the redivision of the land.⁴⁴ As survivor Paula P. told the National Inquiry:

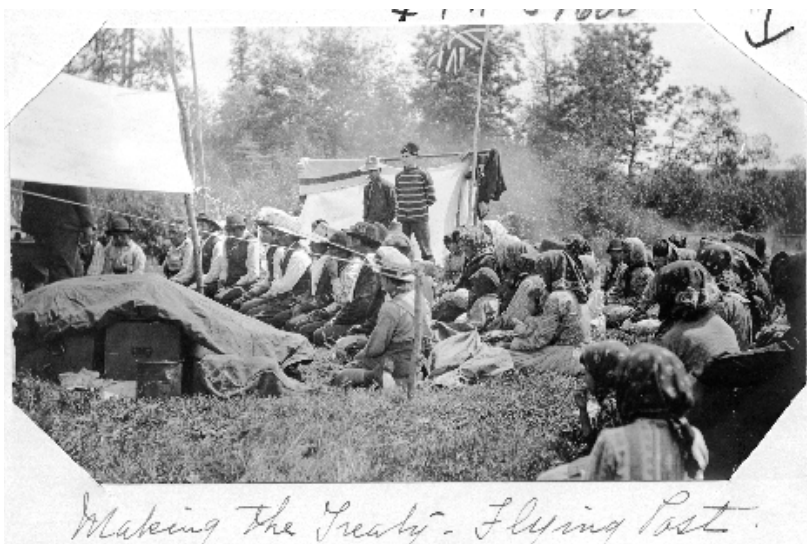
Us First Nations carry pain ... the land was taken away from us, our way of life. We used to follow the buffalo, and the buffalo was taken. We can no longer just go nomadically around because of the fences that were put up. We had freedom to go whenever we wanted on Turtle Island, and they took that away.⁴⁵

Encouraging immigration through policies directed by the federal government was one way that First Nations were displaced from their lands. Settlement and railway building went hand in hand within the larger project of nation building. For instance, the promise of a railway had been a guarantee that pushed British Columbia to join Confederation in 1871. Between 1896 and 1914, the federal government, led by Minister of Immigration Clifford Sifton, also marketed the land under the slogan “The Last Best West!” and took out full-page ads in the United States and parts of Europe to attract farming immigrants.⁴⁶

To clear the land for these projects, the government was bound by the Crown’s promise, contained in the 1763 Royal Proclamation, which had established the need to make Treaty with First Nations to deal with their pre-existing title to the lands. There were some pre-Confederation Treaties dealing with land, notably the Robinson Treaties, signed by the Crown and First Nations around Lake Superior in 1850, which represented huge tracts of land much larger than those covered by the 27 signed between 1764 and 1836 in Upper Canada.⁴⁷ The Robinson Treaties laid the groundwork for the Numbered Treaties, signed as a way to open up lands for settlement, particularly on the Prairies.



Eleven numbered Treaties were negotiated in western Canada between 1871 and 1921. According to government, these Treaties extinguished Indigenous ownership of land. However, like their cousins in southern Ontario, Indigenous Nations in western Canada maintain that they agreed to share, not sell, their lands. Moreover, the rights contained in these Treaties are disputed, in large part because government negotiators made oral promises that were not always reflected in written versions. Generally, the Numbered Treaties included rights to hunting/fishing, reserve lands, annual cash payments, education, and, in some cases, health care. The federal government ceased these particular Treaty negotiations in 1921, so that most of British Columbia, the Northern Territories, Quebec, and the Maritimes was not covered by these historic agreements.



*Community members gather to negotiate Treaty in Flying Post, Ontario, 1906.
Source: Library and Archives Canada/National Photography collection/e003894500.*

These have been interpreted narrowly by government. For instance, the five-dollar annuity promised in early agreements continues to be paid at five dollars every year. But First Nations insist this is not in keeping with the spirit and intent of the Treaties, which were meant to provide security and a future in uncertain and changing times, and were promises of mutual aid and respect. Recently, signatories representing descendants of the Robinson Huron Treaty, whose annuities were set at four dollars over 140 years ago, have won a court case against the federal and provincial governments to reopen negotiations.⁴⁸

“US FIRST NATIONS CARRY PAIN ... THE LAND WAS TAKEN AWAY FROM US, OUR WAY OF LIFE. WE USED TO FOLLOW THE BUFFALO, AND THE BUFFALO WAS TAKEN. WE CAN NO LONGER JUST GO NOMADICALLY AROUND BECAUSE OF THE FENCES THAT WERE PUT UP. WE HAD FREEDOM TO GO WHENEVER WE WANTED ON TURTLE ISLAND, AND THEY TOOK THAT AWAY.”

Paula P.



Within our Truth-Gathering Process, one witness explained how the failure to respect Treaty rights can contribute to a lack of safety for First Nations communities, particularly women. As Cheryl M. explained,

Unfortunately ... in the Mi'kmaq territory, the failure of the Government of Canada to implement the 1999 Supreme Court of Canada decision of Marshall to allow access to fishery resources, especially for women, Mi'kmaw women, is one such example of historic and continued denial of economic opportunities. The denial of our resources and our rights in this country keeps Aboriginal women and Peoples in poverty. We are worth less over and over again because of governments' policies, laws, and inaction.⁴⁹

Overall, the government pursued Treaties when and where it needed to, based on a combination of policies geared toward industrial development (for example, railroads) as well as agriculture (for example, needs of immigrant settlers). In many cases, Treaty negotiations were opened after pressure from the bands, who had heard about these agreements in other communities. This resulted in government's pursuing Treaties with certain First Nations, while ignoring others.

In this context, colonial management became geared toward removing First Nations and Métis from their lands to make way for settlement and to ensure segregation. Building on the history of the fur trade and trade relationships, policy makers began to insist on even greater separation between Europeans and First Nations, and new modes of control were implemented to further separate Indigenous Peoples by perceived racial or cultural groupings. They included laws and policies targeting First Nations and Métis people, enforced by a close relationship between administrative and judicial forces. Both First Nations and Métis were particular targets of early colonial policing, and women in particular.

The *Indian Act*: A Tool of Exclusion for First Nations Women, Girls, and 2SLGBTQQIA People

Early pre-Confederation legislation included *An Act to Encourage the Gradual Civilization of Indian Tribes* of 1857, the *Management of Indian Lands and Properties Act* of 1860, and the *Gradual Enfranchisement Act* of 1869. The first, *An Act to Encourage the Gradual Civilization of Indian Tribes*, was a way to extend British citizenship to those people the government considered to be "Indians." Conditions of citizenship included being male, over the age of 21, literate in English or French, free of debt, and of good moral character. Successful applicants would receive 20 hectares of reserve land in individual freehold, taken from the band's communal allotment, but would be required to surrender their "Indian Status."⁵⁰ *The Management of Indian Lands and Properties Act* transferred responsibility for Indian lands from the British colonial office to the Province of Canada, and transferred all authority for Indians and lands reserved for Indians to the Chief Superintendent, in a move that failed to account for the direct relationship between the



“IN THE MI’KMAQ TERRITORY, THE FAILURE OF THE GOVERNMENT OF CANADA TO IMPLEMENT THE 1999 SUPREME COURT OF CANADA DECISION OF MARSHALL TO ALLOW ACCESS TO FISHERY RESOURCES, ESPECIALLY FOR WOMEN, MI’KMAW WOMEN, IS ONE SUCH EXAMPLE OF HISTORIC AND CONTINUED DENIAL OF ECONOMIC OPPORTUNITIES. THE DENIAL OF OUR RESOURCES AND OUR RIGHTS IN THIS COUNTRY KEEPS ABORIGINAL WOMEN AND PEOPLES IN POVERTY. WE ARE WORTH LESS OVER AND OVER AGAIN BECAUSE OF GOVERNMENTS’ POLICIES, LAWS AND INACTION.”

Cheryl M.

Crown and Indigenous Peoples as guaranteed by the Royal Proclamation of 1763.⁵¹ *The Gradual Enfranchisement Act* of 1869 was a reaction to the almost complete failure of 1857’s *Gradual Civilization Act*, and aimed to speed up assimilation. This Act restricted the definition of who was to be considered “Indian” and established the elective band council system that sought to replace existing First Nations governance systems.⁵²

Upon Confederation in 1867, the *Constitution Act* included section 91(24), which would empower the federal government to enact its most comprehensive Indian legislation to date. *An Act to amend and consolidate the laws respecting Indians* – commonly known as the *Indian Act*⁵³ – would have lasting, sweeping effects on Indigenous Peoples for generations to come. And, like the pre-Confederation legislation before it, the *Indian Act* legislated differential treatment for women in ways that were clearly sexist and demeaning.

The 1876 *Indian Act* included the 1851 definition of “Indian” that had become tied to a male bloodline, even though many Nations traced lineage through the mother, or through both bloodlines. Its definition of “Indian” maintained that the Status of an Indian woman depended on the Status of her husband. So, if her husband was an Indian, she would maintain her Indian Status. If her husband was enfranchised (or was a Canadian subject), she, too, would become a Canadian subject. At the same time, if a non-Indigenous woman married a Status Indian man, she would acquire Indian Status. These laws ensured that encounters between First Nations women and “Canadians” resulted in dramatically reducing the number of people for whom the government claimed responsibility.

For those who became “non-Status” through this process, the dangers of being expelled from their communities often compounded existing dangers. As a result of this legislation and its application over a century, there is today a vast number of people in Canada (roughly one-third of First Nations) who are considered to be “non-Status” and who have deep ties to their historic communities and Indigenous identities, or, conversely, who may have been alienated from them through the deliberate actions of the state. In many of these cases, “Status” varies within the same family, regardless of the family tree. This issue, and contemporary developments related to it, are explored in a later chapter.



Although early legislation was presented as being for the “protection of the Indians,” the underlying belief that Indigenous Peoples were in need of protection from the very states that were oppressing them is both patronizing and paternalistic. Furthermore, the legislating of “Indian lands” implies that Indigenous Peoples did not always have access to *all* of the land in the colonies. This acted to normalize a system of segregation that eventually became formalized as reserves. In addition, these first early laws defined who was or wasn’t considered Indian. The act of defining the identity of individuals and Peoples was a gross demonstration of colonial power that completely ignored inherent Indigenous rights to self-determination.

The *Indian Act* also undermined women and girls, and placed them into dangerous situations. For instance, the Act’s Status provisions, otherwise known as the “disenfranchisement provisions,” evicted a woman and her children from her community, forcing her to commute or essentially sell off her rights if she married a man who did not also hold Status under the *Indian Act*. Even if a woman did marry a First Nations man with Status in another band, she was automatically transferred, along with all of her children, to the husband’s band list. White women who married First Nations men, by contrast, would be able to marry into the band.

If a First Nations woman with Status did choose to leave her community for marriage to an outsider, her annuities for life could be commuted into a one-time \$50 payment, whereby she would lose all rights to her share of community lands and resources and, under the law, be considered non-Indian.

It is not difficult to see a similarity between these experiences and those of Indigenous women today who are forced to leave their community with no money or resources. The economic and social marginalization that the National Inquiry heard clearly about as a root cause of violence in the lives of Indigenous women and girls today is the inevitable next step and reality of early colonial policies of control, such as the *Indian Act*, that set out to target Indigenous women by limiting their social and economic independence.

As Elder Miigam'agan pointed out, the Status provisions within the *Indian Act*, and the rules around them that persist to this day, were the equivalent of “banishing” women – a traditional form of capital punishment that opened them up to many other forms of abuse.

When we deny a woman and her children through the *Indian Act* legislation, you are banishing, we are banishing our family members. When you look at that in our language and in our understanding, that banishment is equivalent to capital punishment ... when you banish a person they cease to exist. And in 1985, '86 I stood next to my sister who, at the age of 17, married a non-Native man and ... we stood in front of the Chief and Council, and witnessed by community members in Esgenoopetitj village, and they said that my sister and my aunts ceased to exist. They were not recognized in my community.

And so when you disregard a person, a human being, and they cease to exist, that opens the door for the rest of the people to violate those individuals. So we’re back to square one where the women and their children are not entitled to the same quality of life, same identity. And they’re ... susceptible to all the forms of acts that’s been enacted on them.⁵³



In addition to expelling women and their children from communities, the *Indian Act*, along with Treaty agreements, set out reserves for band members only. The *Indian Act* granted government administrators a great deal of power with respect to the reserve lands allotted, as evident in its definition of the term “reserves”:⁵⁴

Reserves are held by Her Majesty for the use and benefit of the respective bands for which they were set apart, and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve area are used or are to be used is for the use and benefit of the band.⁵⁵

Further, the Act and its successive amendments – most notably the *Oliver Act* of 1911 – set out ways in which land allotted under the reserve system could be clawed back. The *Oliver Act*, for instance, allowed municipalities and companies to expropriate portions of reserves, without surrender, for roads, railways, and other public works, and it was also further amended to allow for an entire reserve to be moved away from a municipality if that was deemed “expedient.”

While officials frequently stated the system was created to encourage First Nations settlement and agriculture, many reserves were located on the poorest agricultural lands, contributing to economic jeopardy for the entire community and especially for women, who were largely placed on the sidelines within a peasant farming context. For women, the imposition of these kinds of agrarian policies contributed to their devaluation at an economic level, where the work they used to perform within the community to contribute to the economic health of the group was placed in jeopardy by the gendered norms of the farming system. In other words, the work women performed prior to being forced onto reserves, either with medicines, on the land, or within the context of trade, was directly threatened under the gendered assumptions of the *Indian Act* and of the reserve system.⁵⁶

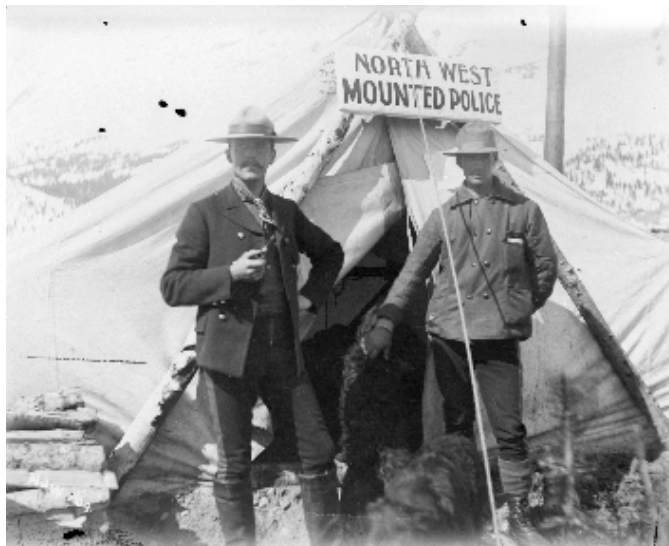
In addition, some reserves were created entirely outside of the First Nation’s traditional territories, placing in jeopardy the work of community members on those traditional lands according to their way of life. The restructuring of homelands and lifestyles often separated communities from each other, disrupting clans, houses, and familial systems that had promoted safety and community well-being for generations. Homes within reserves became nuclear ones, where extended families were encouraged to split up and to live in their own homes.

The *Indian Act* was enforced on two levels, by both police and Indian agents appointed to each reserve to oversee the policies and procedures of the Department of Indian Affairs. As the fur trade wound down in the early 19th century, the control and policing of First Nations and Métis women within the colonies became even more closely bound within the structures of the church and of the state, and the development of policing in what would become Canada took its lead from developments in other parts of the British Empire during the 18th and 19th centuries.⁵⁷ Indian agents varied in their views and practices, as documented by several historians,⁵⁸ but worked to enforce a system that was racist, patriarchal, and controlling – a primary tool of domination, dispossession, and genocide within First Nations communities.



A System of Total Control: Policing First Nations and Métis

Policing was established as another institution – like marriage – that worked to exert colonial control over Indigenous women and gender-diverse people through negatively transforming relationships between the genders, by intervening in intimate aspects of women’s lives, by enabling sexual abuse, and through the implementation and perpetuation of beliefs and policies at the root of the crisis of missing and murdered Indigenous women and girls. The physical and social re-organization of communities represents violence, both historic and ongoing, against Indigenous women, girls, and 2SLGBTQQIA people.



Northwest Mounted Police pose outside of their tent in 1898. Location unknown. Source: Library and Archives Canada/ Henry Joseph Woodside fonds/a016083.

As historian Greg Marquis explains, early British administrators saw a parallel in Canada with Irish society, as being harsh and rebellious and desperately in need of a strong police presence.⁵⁹ It was this model – that of the Royal Irish Constabulary – that was brought to the Northwest Territories after the federal government acquired Rupert’s Land from the Hudson’s Bay Company in 1870.⁶⁰ The land in Canada presented an important challenge to established ways of enforcing law and order with its lesser concentrations of populations. Toward this end, the North-West Mounted Police (NWMP) was a pan-Canadian police force, established in 1873 by Prime Minister Sir John A. Macdonald, to maintain order in these newly acquired lands – and to clear those still inhabited by Indigenous Peoples. It combined military, police, and judicial functions.

By the 1880s, the NWMP became even more involved in policing First Nations women, as attitudes had begun to harden toward Indigenous Peoples on the Prairies in particular. Sarah Carter explains, “Whereas before then they were regarded as ‘nuisances’ but relatively harmless, afterwards they were depicted as a distinct threat to the property and lives of white settlers.”⁶¹ A new influx of settlement, coupled with the federal government’s desire to build a fruitful agricultural basin in the Prairies, meant renewed calls for segregation of both First Nations and Métis women.



First Nations women, in particular, were cast by government and by society as a menace to the emerging non-Indigenous community.⁶² Métis women, whose distinctive experiences are discussed later in the chapter, also fared poorly – after the Red River and the North-West resistance movements, the Métis as a whole came to be viewed as a dangerous element. Like First Nations women, they were described as a threat to public security through accusations regarding their own health and contagion, and alleged sexual promiscuity.⁶³

Indian agents and police actively pursued the regulation of movement for Indigenous women, girls, and gender-diverse people, particularly in the wake of the 1886 panic over the idea of “Traffic in Indian Girls.”⁶⁴ When newspapers ran an article raising concerns over the trafficking of Indigenous girls, police blamed First Nations men for running an active racket on young women rather than investigate the crime. The police then used racist fears around “mixing races” to further drive a wedge between First Nations and European settlers.

In addition, police began to more actively enforce the prostitution clauses within the *Indian Act*, criminalizing First Nations women and girls. John A. Macdonald is on record as having said, “The depravity existing among the Indian women ... is greatly to be deplored. They repair, on arriving at years of puberty to the white centres and enter into lives of prostitution.”⁶⁵ Despite little to no evidence that Indigenous women were engaging in the sex trade more frequently than other women, the *Indian Act* was amended to directly criminalize Indigenous women and those who kept or frequented a “wigwam”⁶⁶ to purchase sex. The consolidation of the *Criminal Code* in 1892 further made it easier to convict First Nations women of the crime of prostitution.⁶⁷ This is because prior to 1892, the Dominion of Canada did not have its own consolidated criminal code, and prostitution laws were unevenly enforced. The laws governing prostitution were inherited from the English common law, although several provinces had passed statutes to criminalize the keeping of bawdy houses. In many places, prostitution was commonly dealt with under the crime of vagrancy. For many people, the belief was that because prostitution couldn’t be stamped out, it had to be tolerated. But, as a reflection of a focus on contagious disease, of “social purity” campaigns, and of the focus on Indigenous women as disruptive elements, the situation changed. After 1892, armed with the *Criminal Code*, as well as the realities of a growing population in growing settlements, the application of the law was made much clearer and more efficient.⁶⁸

For First Nations people of all genders, the NWMP also enforced the illegal pass system, which required all First Nations people to obtain a pass from their farm instructor or Indian agent before leaving the reserve. As one witness, Rande C., described of enforcement during this period:

I think about the early stories from that time when my gran said chiefs [were] dragged out of their homes and thrown on the ground and forced to shovel, like, pig shit and stuff like that, and beat, and RCMPs ... just like, standing around every day waiting for them to even just say one word in our language so they could beat them and throw them and haul them to jail or whatever. You know, never allowed to leave the reserve, never allowed to shop in the same stores, never allowed to do anything. And my gran said that was her reality of her whole life growing up.⁶⁹



Among other reasons, the pass system was partially justified by those who enforced it as the need to prevent the loitering of Indigenous women as threats to public safety.

If First Nations people were found in local towns without a valid pass, they could summarily be arrested and sent back to their reserves. But for many, including women, sometimes even worse repercussions followed. Reports from Battleford, Saskatchewan, in 1886 described the case of a woman who had refused to leave town. In response, the officers had taken her to their barracks and cut off some of her hair. The action apparently had important consequences. Two years later, the *Saskatchewan Herald* reported, “During the early part of the week the Mounted Police ordered out of town a number of squaws who had come in from time to time and settled here. The promise to take them to the barracks and cut off their hair had a wonderful effect in hastening their movements.”⁷⁰ Some women did work in towns in various jobs, as well as in prostitution, but the threat of physical harm and violence upon their bodies had the impact of driving many away.

As historian and health scholar Dr. James Daschuk has argued, the Canadian state’s growing presence on the Plains, in concert with a variety of measures as part of the effort to manage First Nations “as economically as possible,” including withholding rations and cutting off vaccinations, left many women with little choice in terms of trying to secure income to feed, clothe, and protect their families.⁷¹

“A Hindrance to the Advancement of Men”: The Hypersexualization of Indigenous Women

As a whole, these policies and laws endorsed the idea that settler encounters with Indigenous women should be viewed as suspicious and potentially immoral. They inscribed into Canadian law the objectification of Indigenous women as hypersexual and criminal, such as within the amendments to the *Criminal Code*. In addition, these stereotypes were often recorded in the House of Commons Sessional Papers, such as this one, in 1909:

The women, here, as on nearly every reserve, are a hindrance to the advancement of the men. No sooner do the men earn some money than the women want to go and visit their relations on some other reserve, or else give a feast or dance to their friends.... The majority of (the women) are discontented, dirty, lazy and slovenly.⁷²

In applying these stereotypes, late 19th-century settlers tended to blame First Nations people themselves for their economic difficulties, instead of poorly designed policies of assimilation such as agricultural programs and the confinement of First Nations on reserves. For instance, Indian agents and other instructors blamed the failure of agricultural reserves on the laziness of the people doing the work, rather than on the quality of the tools, the soil, or the instruction. First Nations women living on-reserve often had their mothering skills called into question, as well as their hygienic habits, by farm instructors or other outsiders to the community.⁷³



Blaming communities or family members was one of the many ways that police misconduct was ignored in the Northwest. Officers frequently attended community dances or gatherings, and many who engaged in relationships, consensual or non-consensual, insisted that the NWMP needed to promote an image of aggressive masculinity and virility.⁷⁴ However, the question of police impropriety had been raised by government officials early on in regards to officers of the NWMP. In 1878, David Laird, Lieutenant-Governor for the Northwest Territories, had written to NWMP Commissioner James Macleod regarding some allegations against officers:

I fear from what reports are brought me, that some of your officers at Fort Walsh are making rather free with the women around there. It is to be hoped that the good name of the Force will not be hurt through too open indulgence of that kind. And I sincerely hope that Indian women will not be treated in a way that hereafter may give trouble.⁷⁵

Within the year, further accusations were made against police at Fort Macleod for “seducing squaws,” among other acts.⁷⁶

As a whole, these stereotypes called upon the images of the so-called squaw-drudge and were used as justification for the invasion of lands and Nations.⁷⁷ As Carter points out, these negative stereotypes also served to justify the behaviour of those who would mistreat Indigenous women and girls, as well as to justify the policies deployed against them.⁷⁸ The images were deliberately promoted in the late 1800s. As a result, many responses to accusations by police, or by other non-Indigenous settlers, stressed that the injustices suffered were largely “due to the character of Aboriginal women, who behaved in an abandoned and wanton manner and, in their own society, were accustomed to being treated with contempt and to being bought and sold as commodities.”⁷⁹ In turn, these beliefs and discriminatory stereotypes relieved officials, police, and non-Indigenous settlers of all blame – or at least of any crime. Within this belief system, First Nations women and girls were targeted because they failed to live up to a normative standard that imposed non-Indigenous beliefs and expectations about women that came from very patriarchal and oppressive societies in Europe.

These expectations also served to discount allegations of violence or wrong-doing by the police or by settlers. A former member of the NWMP and editor of the *Macleod Gazette* pointed out in 1886: “Nothing is said about the fact that many of these women were prostitutes before they went to live with the white man, and that in the majority of cases the overtures for this so-called immorality come from the woman or Indians themselves.”⁸⁰ He was responding to accusations by a local missionary about white men living with, then abandoning, Indigenous women, and urging the formal Christian sanction of these marriages. The editor’s response to the situation spoke to a context within which white men were presented as bewitched and helpless victims of Indigenous women and girls themselves, and Plains Indigenous societies were characterized as guilty of human trafficking and worse, because of their supposed disregard for their own community members.



The following year, in 1880, Manitoba Member of Parliament (MP) Joseph Royal asserted that members of the NWMP were behaving with “disgraceful immorality” throughout the West, through early human trafficking of Indigenous women. In 1886, Liberal MP Malcolm Cameron delivered a speech in which he accused Indian agents and other agents of the government of acting to “humiliate, to lower, to degrade and debase the virgin daughters of the wards of the nation.”⁸¹ He also mused about why over 45% of officers within the NWMP were being treated for venereal disease.⁸² His comments echoed those of many others who accused the NWMP and its officers of abusing their authority. However, as Sarah Carter explains, in many of these cases, the NWMP were, in fact, policing themselves, and allegations of police misbehaviour against their own members were often dismissed.⁸³

Within formal allegations of police misconduct, there are few existing records in which First Nations women attempted to lay charges against officers for offences such as assault or rape. As Carter points out, in these cases, “the claims seem to have been dismissed as efforts to discredit or blackmail.”⁸⁴

The efficacy of police enforcement to prevent crimes against Indigenous women was also questionable. For instance, a *Manitoba Free Press* article from 1876 describes a case of rape in the village of Fort Macleod by a local trader. The article reports, “Though the Mounted Police were brought to the house by the cries of the Indian woman subjected to the outrage, the non-commissioned officer with them hesitated to break in the door to seize the offender.”⁸⁵

The 1888 murder of Mrs. Only Kill, described as a member of the Blood Tribe, was dismissed. The accused, Constable Alfred Symonds of the NWMP detachment at Stand Off, Alberta, was tried for giving Mrs. Only Kill a lethal dose of iodine. It was reported that she had also eaten some sour beans on the same day. Mrs. Only Kill died on Wednesday morning, but her body was not discovered or examined until Friday. By then, the heat had severely compromised the investigation and the body was too decomposed to conduct a proper post-mortem. The initial investigation decided that either the beans or the iodine had ultimately killed her, but Symonds was tried anyway. His supervisor, Superintendent P. R. Neale, informed superiors that he did not believe any jury in the West would convict Symonds.⁸⁶ They never got the chance. Appearing in August 1888 before the former commissioner of the NWMP, James F. Macleod, the Crown prosecutor made application not to prosecute, and it was granted. Symonds was immediately released.

Another case, in 1889, brought to light public attitudes toward Indigenous women in more urban centres. The Cree victim, identified only as “Rosalie,” had been working as a prostitute in Calgary and described as “only a squaw.”⁸⁷ The accused in her brutal murder, William “Jumbo” Fisk, was described by the prosecutor as a “genial, accomodating and upright young man”⁸⁸ from an upstanding family. Rosalie, a baptized Catholic, was refused burial in the mission graveyard because of her time spent in prostitution.



Fisk was supported by the vast majority of residents and by the popular press. He confessed to the crime and turned himself in, yet was found not guilty by the all-white jury. To his credit, the judge, Charles Rouleau, refused the jury's verdict and promptly ordered a retrial, giving specific instructions to that jury to forget the victim's race. At the second trial, Fisk was convicted of manslaughter and sentenced to 14 years' hard labour. This was better than expected: the judge, who wanted him to be sentenced for life, had received correspondence written by elected officials and people of influence urging him to convey a lighter sentence.

It is difficult to assess the extent of First Nations women's views on policing or police forces at this time, but, as Métis scholar and activist Howard Adams has explained:

Indians suffered brutality under the Mounties, who frequently paraded through native settlements in order to intimidate the people and remind the natives they had to "stay in their place." ... The Mounties were not ambassadors of goodwill or uniformed men sent to protect Indians; they were the colonizer's occupational forces and hence the oppressors of Indians and Métis.⁸⁹

This connects with what we heard in our testimonies. As Audrey Siegl expressed, "Safety and justice and peace are just words to us. Since its inception, we've never been safe in 'Canada.' The RCMP was created to quash the Indian rebellions. The police were created to protect and serve the colonial state."⁹⁰

The early tone set by the nature and extent of the policing of Indigenous women, including abuse by the police, continues to permeate modern encounters with a deep sense of suspicion and distrust.



A Strawberry Ceremony for missing and murdered Indigenous women and girls takes place outside Toronto police headquarters, February 2015. Credit: R. Jeanette Martin.



The Indian Residential School System: A Theatre of Abuse

A key piece of enforcing segregation and of promoting assimilation was the participation of First Nations, Métis and Inuit children in the Indian residential school system between 1883 and 1996. Throughout the testimonies offered to the National Inquiry, attendance within the school system, as well as the intergenerational trauma of family members who may have attended, was a key driver in the contributing causes to the crisis of violence against Indigenous women, girls, and 2SLGBTQIA people.



Morley Indian Residential School and McDougall orphanage wards in Morley, Alberta, ca. 1890-1895. Source: Library and Archives Canada/David Ewens collection/a182269.

Although residential schools were not a mandated part of the *Indian Act* until the 1880s, when officials threatened parents who failed to send their children to the schools with fines or jail time, the practice of “educating” Indigenous children began as early as the 1600s.⁹¹ In addition, before attendance was mandated through the Act, Indian agents on reserves, as well as police forces, delivered children to the church-run schools by applying pressure in the form of withholding rations or supplies, threatening members of the family, or straight-up seizure without consent.⁹² In a letter dated July 24, 1935, Indian agent, N. P. L’Heureux instructs a store clerk in Saddle Lake, Alberta, to have an Indigenous man’s monthly ration “cut off entirely,” since he had taken his children out of residential school. The Indian agent explained that the ration would be restored once the man, J. B. Gambler, brought his children back to the residential school in Wabasca, and presented his “amends” to the principal and magistrate there.⁹³

“SAFETY AND JUSTICE AND PEACE ARE JUST WORDS TO US. SINCE ITS INCEPTION, WE’VE NEVER BEEN SAFE IN ‘CANADA.’ THE RCMP WAS CREATED TO QUASH THE INDIAN REBELLIONS. THE POLICE WERE CREATED TO PROTECT AND SERVE THE COLONIAL STATE.”

Audrey Siegl



Understanding Indian Residential Schools in Quebec

Due to Quebec's unique socio-historical and political context, the history of Indian residential schools there has significant differences from that in the rest of Canada. One of the main distinctions is that the residential schools were established later than in the rest of the country. In Quebec, with the exception of two institutions, all opened their doors in the 1950s, coinciding with the period of their gradual closure in the rest of Canada.ⁱ

In Quebec, reserves were created in several waves, so that in some cases, the settlement of First Nations populations was later than elsewhere in the country. At the start of 20th century, most First Nations families were living in seasonal settlements and pursuing a traditional way of life.ⁱⁱ Few First Nations were enrolled in school, and those who were chose among mission schools, day schools, and sometimes Indian residential schools outside of Quebec.ⁱⁱⁱ In fact, the province of Quebec had long ignored the changes to the Indian Act that made school attendance of First Nations children mandatory. In Quebec, school attendance for all children between the ages of six and 14 became compulsory only in 1943, whereas these laws were already in place in many other provinces in Canada in the early 20th century.

The residential schools of Quebec, with the exception of two that were led by the Anglican Church, were led mainly by the Oblates of Mary Immaculate. According to the Indian Residential Schools Settlement Agreement, there were six residential schools and two non-denominational homes in Quebec, as well as four non-denominational federal homes for Inuit. A significant number of First Nations children also attended residential schools outside Quebec, including in Ontario and in Nova Scotia.^{iv} The boarding school of Pointe-Bleue^v was the last to close in 1991.^{vi} Approximately 13,000 children attended the

10 Indian residential schools and federal homes in Quebec.^{vii}

In comparison with the rest of Canada, there are few studies centring on the realities of residential school experiences in Quebec. As in the rest of Canada, residential schools had the purpose of “civilizing,” through rudimentary education, First Nations children. However, the Christianizing impulse that animated many of the schools in the rest of Canada wasn't as big a priority in Quebec, since most Indigenous children had already converted to Catholicism or Anglicanism by the time they opened. The teaching of French (for Catholic boarding schools) and English (for Anglican boarding schools) as well as the learning of the morals, values, and customs of Quebec society remained important goals,^{viii} however, conveyed in Eurocentric terms.

Although the educational project of the Oblates did not necessarily seek to eradicate Indigenous identity in First Nations children, the children still encountered various stereotypes that did not correspond to their cultural realities. Within the schools, the traditional lifestyle of their parents was often denigrated in favour of the values of Quebec, as articulated by the religious orders. Many First Nations people returned to their own communities after being in residential schools, rather than integrate into Quebec's non-Indigenous society.^{ix}



From the perspective of intergenerational trauma, the Quebec experience of residential schools is similar to that in the rest of Canada, but in fewer and more recent generations, given the timing of the residential schools' lifespan there. Given their relatively recent closures as a whole, at least two generations of residential school survivors are still alive, so these traumas are palpable within the communities.

We can't ignore the importance of the French language learned by many First Nations people in Quebec, which has served, in some cases, to erect language barriers to promoting solidarity with other First Nations across Canada. While this is not universally the case, the particular voices of francophone First Nations survivors from Quebec are heard in a very limited way, nationally. This reality means that more research is needed to better understand the context of these particular experiences.



Pointe-Bleue opened in 1960, and was the last of Quebec's residential schools to close, in 1991. The institution's relatively short life span reflects the reality in much of Quebec, where residential schools were established much later than in the rest of Canada.
No copyright infringement intended.

- I Bousquet, "L'histoire scolaire des Autochtones du Québec : un chantier à défricher," 117–23.
- II Bousquet, "L'histoire scolaire."
- III Ibid.
- IV Ibid.
- V Pointe-Bleue is known today as the community of Mashteuiatsh.
- VI Truth and Reconciliation Commission of Canada, *Summary Report*; see also Bousquet, "Êtres libres ou sauvages à civiliser?"
- VII There is some dispute regarding the number of schools operating in Quebec; see Bousquet, "Le projet des pensionnats autochtones du Québec."
- VIII Bousquet, "Le projet des pensionnats."
- IX Ibid.



Various incarnations of policies regarding “Indian” education exist in government records, and detailed descriptions and reports about the history and daily life at residential schools have been documented in the *Final Report* of the Truth and Reconciliation Commission. A gendered analysis here is not meant to discount the experiences of Indigenous boys and men or to imply that those experiences were any less impactful; the intent is to understand the specific ways in which the residential school system participated in the larger structures of imposing Western gender roles. The connection between residential school experiences and the internalization of abuse will also be addressed more specifically as it appears within our testimonies, in the contemporary discussions of gendered violence.

This brief examination also demonstrates the ways in which the lives of men and boys within communities were brought to bear on women, girls, and 2SLGBTQQIA people in legacies of abuse and shame that have directly contributed to the violence experienced by those who testified before us and by their loved ones.

The residential school system in Canada was a devastating, blunt tool aimed at assimilating the most vulnerable people in Indigenous Nations: the children. We examine the specific effects on women and girls, and 2SLGBTQQIA people in order to better understand how they have become the target of disproportionate violence today.

Although eventually legislated and funded by Canada, residential schools were initially run primarily by Christian churches, including the Anglican, Presbyterian, Methodist, and Catholic churches. Catholic orders such as the Jesuits and the Missionary Oblates of Mary Immaculate had a long history of working closely with British authorities to maintain social order,⁹⁴ and Protestant churches were often seen as supporting an Anglo-Canadian hierarchy.⁹⁵ In 1931, over half of all residential schools in Canada were administered by Catholic orders (55%). The next largest was the Church of England, which operated just over a quarter of all schools (26.25%). The United Church ran 16.25%, and the Presbyterian Church operated 2.5%.⁹⁶



Children and a nun in a classroom at Cross Lake Indian Residential School, Cross Lake, Manitoba, 1940. Source: Library and Archives Canada/ Department of Indian Affairs and Northern Development fonds/ e011080274.



Because federally funded residential schools operated on a per capita basis, from 1869, residential schools received an amount per child enrolled. It was therefore in the school's best interest to keep its roster full. Toward this aim, child apprehension for the purposes of residential schooling was an important part of the jobs of Indian agents and of police, which placed countless girls and gender-diverse children in danger and caused indescribable harm to their mothers.

The doctrines of Christianity were central to the curriculum of the schools, guiding not only what was taught, but also the manner in which it was taught. Like the first early attempts of colonial religious conversion, Christian dogma reinforced a patriarchal system that envisioned God as male and women as a secondary creation meant to keep the company of men. The education of girls was focused mostly on domestic duties: cleaning, sewing, gardening, and cooking.⁹⁷ While boys might be encouraged to continue school until they were 16 or older, girls were often encouraged to leave school early to participate in domestic “apprenticeships.”⁹⁸ Even after spending many years at residential schools, students would learn that they had obtained little more than an elementary education.⁹⁹ This result failed to equip all students for jobs beyond any kind of low-level employment; for women, it ensured that their choices would be limited to working within the home, or to few and low-paying opportunities in the outside world, after they were released from the schools.



Female children are taught to sew at residential school in Resolution, Northwest Territories, n.d. Source: Library and Archives Canada/Department of the Interior fonds/a043181.

Overwhelmingly, schools were separated by the sexes – boys and girls had different dormitories, entrances, classes, chores, recesses, and playgrounds. This separation had many effects. Families were separated – brothers, sisters, and male and female cousins were forbidden from interacting with each other. Not only were children taken from their parents, extended families, and communities to attend school, but they were then forbidden from finding comfort with their relatives of other genders while they were there. This practice was completely foreign to Indigenous children's experiences at home, and it undermined the development of basic skills for maintaining healthy multigendered relationships.



In addition, residential schools also entrenched the Christian and Western gender binary for gender-diverse students. There is little documentation about the experience of queer or Two-Spirit people in residential schools, but homosexuality was considered a sin by the churches and would have been punished. In particular, the concepts of “sin” and “Hell” were used to shame and coerce all students, but had particularly poignant effects on Two-Spirit students.

As Expert Witness Albert McLeod explained in his testimony:

The inherited homophobia and transphobia in these churches has resulted in the continuing silencing, shaming and alienation of Two-Spirit people. The fact that some of this church staff were secretly sexually abusing the children created another level of silencing and shame that has lasted for generations.... [In] the last 150 years generally in Canadian society, the existence of queer settler people [and] queer Indigenous people has ultimately been erased within this construction of Christianity and how government saw itself as patriarchal.¹⁰⁰

Children were also denied the spiritual and cultural teachings that would have traditionally accompanied their coming of age and would have emphasized the importance of respectful relationships and encounters. By denying children these essential community encounters, residential school robbed them of their right to find a meaningful place in their communities and in the world. For example, instead of being taught by loving mothers, aunties, and grandmothers about the power of women’s bodies, girls at school became scared and ashamed when they experienced their first menstruation: “I told one of the older girls, ‘Sister is gonna really spank me now.’ I said, ‘I don’t know, I must have cut myself down there because I’m bleeding now. My pyjamas is full of blood, and my sheets, and I was so scared. I thought this time they’re gonna kill me.’”¹⁰¹

In this example, the importance of what some First Nations know as “moon time” – a time of purification, of great power, connectivity, and strength – was reduced to something dirty and shameful.

The natural sexual curiosity that accompanies puberty was also shunned by Christian dogma, and the staff at schools accused and punished female students for being “boy crazy”¹⁰² if they were caught talking to boys. Former students spoke about not having a basic understanding of their own bodies and not knowing “the facts of life.”¹⁰³

Despite the intentional repression of students’ sexuality, an astounding hypocrisy and tragic reality of residential schools was the rampant sexual abuse that took place. Students were victimized not only by staff and clergy, but also by other students. The abuse of girls by women and of boys by men contributed to a sentiment of homophobia and to the association of same-sex relationships with pedophilia and abuse. A culture of silence and helplessness further entrenched widespread self-hatred and shame. Many of the families and survivors we heard from pointed to these early



inculcations of shame and worthlessness as something that normalized violence for the rest of their lives. Some of them directly connected the abuse they experienced in these schools to the sexual violence they experienced later in life. As Elaine D. remembered:

The priest in the school was making us, my sister and I, go into this canteen and touch his penis for candy. So when I didn't want to because I didn't want it to smell, then my sister would take over. It was like – it was like they set pace for myself to know what to do when I was ten years old and on the highway hitchhiking that when the men would pick me up, Caucasian men, and want to have sex with me, well, eventually I learned to ask for money or food or lodging or something because this is what the priest had taught us in this little store at the residential school. “You do this to me, I'll give you that.” So it set the pace for our life.¹⁰⁴

There is another devastating effect of residential school connected to missing and murdered women. After Indigenous women went missing or were murdered, their children were much more likely to be sent to residential or foster care than the children of non-Indigenous women, creating even more trauma and abuse as a result. As Shaun L., whose mother was murdered, explains:

In 1970 my mom, Jane [D.], was violently taken from her five children and the outcomes were devastating for us. We were 2, 4, 6, 8, and 10 years old. My grandparents were forced, under threat of jail, to send my three oldest siblings to residential school at Lower Post. My brother Terry and I were in foster care.

The theory behind interfering with our family was it was for the best interests of the child. Was it best for my siblings and I to endure years of separation and isolation? Collectively we have experienced the following: mental health issues, alcoholism, drug addiction, homelessness, limited education, family violence, fetal alcohol spectrum children, children in care, a sense of dislocation, criminal activity, shortened lifespan, suicidal ideations and attempts, jail and prison time, chronic illness, limited social connections, limited employment opportunities, sexual abuse, physical abuse, mental abuse, emotional abuse, loss of traditional knowledge, loss of language, loss of culture, loss of history.

How is having five people endure that list in the best interests of them?¹⁰⁵

Many survivors kept their experiences of abuse a secret from their friends and families. Not only were children expected to cope with the violent removal from their homes and the breakdown of familial relationships when they were forcefully sent away, but they later emerged from residential schools further alienated from their communities because of the pain and stigma of abuse. For many, the opportunity and capacity to rebuild those relationships were placed in jeopardy.



As Rande C., raised by grandparents and an aunt after the murder of his mother, said:

My grandpa did [drink], he drank a lot. And it was to the point where I was actually the one who would go get him beer. And I liked doing it because I got to sit with him.... And it would get into the evening at times where he would start talking about residential school and the abuse that he suffered and went through.... And I never seen my grandpa cry until one time that he said, you know, he would wake up in the morning and they were forced to eat their porridge with maggots. And they were forced. And they were hit and they were whipped every day.

And he could hear his friends getting dragged out in the hallways at night and raped throughout the evenings. And he said, you know, it was hard seeing his friends in the morning all bruised and sitting there trembling, crying.¹⁰⁶

The difficulty in forging connections within a space of trauma, as well as shame, is an experience documented by many of the witnesses who appeared before the National Inquiry.

Forced Sterilization

In the eyes of the colonizer, the long-standing, misguided, and racist view of First Nations and Métis women as promiscuous, un-Christian, and uncivilized justified the policy of eugenics. Indeed, sterilization was viewed as a way to eventually eliminate the Indigenous population entirely. Emily Murphy, a settler suffragette who became the first female magistrate court judge in Canada, wrote about the intended effects of sterilization.

One hardly knows whether to take the Indian as a problem, a nuisance, or a possibility.... Regarding his future we may give ourselves little uneasiness. This question is solving itself. A few years hence there will be no Indians. They will exist for posterity only in waxwork figures and in a few scant pages of history.¹⁰⁷

In addition to trying to assimilate First Nations through residential schools, governments also took other active measures to eliminate them physically, in accordance with self-serving pseudo-scientific principles of the time. The word “eugenics” was coined in the late 19th century to describe a philosophy that believed in selective breeding in order to rid the human population of “undesirable qualities” that were passed on from one generation to the next.¹⁰⁸

Policies of sterilization came to exist in Canada under the banner of public health in the 1920s. Alberta’s 1928 *Sexual Sterilization Act* created a Eugenics Board empowered to recommend sterilization as a condition for release from a mental health institution, targeted at those considered “mentally defective.” An amendment in 1937 permitted the sterilization of “mental defectives” without their consent.



As sociology professor Dr. Dominique Clément explains, “Between 1928 and 1972, the Alberta Eugenics Board approved 99 percent of its 4,785 cases. Over time, increasing numbers of its decisions involved people who did not give their consent.”¹⁰⁹ The Act was clearly biased, says Clément, against young adults, women, and First Nations and Métis.¹¹⁰ The people targeted for sterilization were labelled “feeble-minded” or “mentally defective.”¹¹¹ Although, on its face, the Act and its amendment applied to both the male and female sexes and did not explicitly target “Indians,” their effects were disproportionately visited on women and Indigenous Peoples. For example, in Alberta, First Nations women were the most likely to be sterilized, in relation to their per capita population in the province.¹¹²

Although only Alberta and British Columbia passed formal legislation regarding sterilization, it was practised across the country. Both official provincial sterilization acts were repealed in 1972 (Alberta) and 1973 (British Columbia). However, Indigenous women across the country tell stories of “coerced sterilization” that continues even today.¹¹³ For example, although Saskatchewan never officially legislated sterilization, the province is nevertheless facing a class action lawsuit on behalf of Indigenous women who have provided evidence that they were sterilized without consent.¹¹⁴

The forced sterilization of women represents directed state violence against Indigenous women, and contributes to the dehumanization and objectification of Indigenous women, girls, and 2SLGBTQQIA people.



Indian Hospitals and Social Dislocation

During the 20th century, Canada also developed a segregated system of health care in the form of Indian hospitals for many First Nations women, girls, and 2SLGBTQIA people, as well as Inuit, many of whom were removed from their communities in the name of public health. While there is no single experience of Indian hospitals in Canada, the common features of some experiences, including fear, boredom, and physical and psychological harm, are linked to the crisis of missing and murdered women, girls, and 2SLGBTQIA people. In our testimonies, many witnesses spoke about the challenges of medical relocation and about the questions left unanswered when mothers, aunties, sisters, or children were removed, and never returned.

The system of Indian hospitals arose from missionary efforts to provide at least a basic level of hospital care on some reserves in the late 1800s and early 1900s. These hospitals were part of the assimilation project and part of missionary efforts to stamp out Indigenous ways of healing, especially when those healers were women.

Indian hospitals focused on biomedicine – that is, on non-Indigenous medicine. By the 1930s, though, the need for more concentrated care arose because of fears about tuberculosis spreading to non-Indigenous

communities. Dr. David Stewart, superintendent of the Ninette sanatorium in Manitoba, asserted that reserves were not “disease-tight compartments” and that tuberculosis spread in non-Indigenous communities through Indigenous trade goods. Further, he characterized First Nations as careless and ignorant, and as “soaked with tuberculosis.”¹ As a result of Dr. Stewart’s and others’ anxieties, including those from communities near First Nations reserves, these hospitals and facilities were intended to address the threat to public health and to provide “limited care to a dying race.”¹¹



*Dr. Peter Bryce was Chief Medical Officer for the federal government starting in 1904. In 1907, he raised a number of issues related to the deadly conditions of residential schools and, in 1922, after leaving the public service, published *The Story of a National Crime: An Appeal for Justice to the Indians of Canada*, documenting the government’s role in the crisis and its refusal to act on his previous reports. Source: Library and Archives Canada/National Film Board of Canada fonds/e002265633.*



Canada had 22 Indian hospitals by 1960, operated by the Indian Health Service. Most were not in ideal condition, having been erected in borrowed facilities and abandoned military installations, like in North Battleford in Saskatchewan, Miller Bay near Prince Rupert in British Columbia, and Nanaimo on Vancouver Island, also in British Columbia. They operated at approximately half the cost of care as non-Indian hospitals.

Hospital staff saw themselves largely as agents of progress. As Brooke Claxton, minister of National Health and Welfare, put it in 1946:

Neither law nor treaty impose an obligation on the Dominion government to establish a health service for the Indians and Eskimos ... however, for humanitarian reasons and as very necessary protection to the rest of the population of Canada, it is essential to do everything possible to stamp out disease at its source, wherever it may be within the confines of the country.ⁱⁱⁱ

The idea that Indian hospitals, administered by the Indian Health Service within the new department of National Health and Welfare and not by Indian Affairs, were agents of humanity and progress was, for many First Nations, simply an articulation of a Treaty promise made decades prior. But for non-Indigenous communities, the hospitals served as reassurance that their own access to modern medical care need not be shared with Indigenous patients.^{iv}

Some communities wanted the facilities. The Siksika, for instance, established the Blackfoot Hospital on its reserve with funds from the sale of some reserve lands to provide in-community care, on the condition that Indigenous healers and midwives be allowed to attend patients, alongside other forms of care offered there. Historian Maureen Lux points out, “Many communities saw nothing necessarily incompatible in incorporating Western biomedicine into their indigenous healing practices. Indeed, medical plurality is the norm in much of the world.”^v In many of these places, First Nations workers – though underpaid and often poorly treated by non-Indigenous staff – provided some level



A child undergoes physiotherapy at Charles Camsell Hospital in Edmonton Alberta, 1958.
Source: Library and Archives Canada/National Film Board of Canada fonds/a111429.

of comfort to patients by acting as interpreters and speaking the patient’s language.^{vi} The hospital built by the Siksika in the 1920s became a target for government takeover in the 1940s and 1950s, partially due to its policies, which included generous visiting hours and the ability of Elders or children to accompany ill parents to the hospital and stay with them.^{vii}

For many First Nations who were transferred between residential schools and Indian hospitals – and there were many, due to the poor conditions in many residential schools that fed disease – Indian hospitals felt a lot like residential school, in both impact and structure. For instance, Minnie Freeman, a former patient and later, employee, notes the experience of a child patient at the St. Boniface Hospital in 1957 who had completely forgotten his language and would be



unable to communicate with his own family upon returning home.^{viii} The National Inquiry also heard similar stories, including this one from Lina G.:

I was put in the hospital. And my leg was swollen right up, and I was hospitalized because – I think they had to operate on my leg, but I don't even know if I have – if I have my two kidneys. I think I just have only one, because I got to go [to the] washroom, and I was put in Shaw Council Hospital for operation when I was young. In five years of being in Fort Smith school, I come back here in 1970s not knowing any Dogrib language. I lost it in the hospital, being put in the hospital in Fort Smith and lost my language, but I fought to get it back.^{ix}

Others noted systems for keeping patients “in line,” including special privileges that could be withdrawn in cases of non-cooperation, or, as a former nurse who worked at Camsell Indian Hospital in the 1950s described it, “despairing resignation” not unlike the residential school experience.^x

Extended absences from home, especially at any distance from their community, also left many patients to worry about the impact on loved ones. These fears were compounded by fears of arrest, if treatment was refused or abandoned: in 1951, the *Indian Act's* section 72(1) was amended to allow for warrants to be issued for “compulsory treatment of venereal disease and tuberculosis, including detention in a sanatorium, and the compulsory return of patients who left against medical advice.”^{xi} Further regulations in 1953 also provided for this measure if a province was deemed unable or unwilling to take appropriate action.^{xii} That it was the Royal Canadian Mounted Police (RCMP) who served the warrants further contributed to the relationship of distrust and animosity that already existed due to their other involvement in communities, particularly in the context of residential schools and of policing women.

In 1946, a patient dubbed “George Hamilton” left the Dynevor Indian Hospital in Manitoba to attend to family matters. When he didn't return, a warrant was issued and local RCMP arrested him to bring him back. The family he had gone to tend to had no other source



Girls gather in their dormitory at Shingwauk Residential School, n.d. © Government of Canada. Reproduced with the permission of Library and Archives Canada (2019). Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/a185528.

of support, but, as Lux reports, only after his two children had died did the Department of Indian Affairs arrange for a monthly ration and wood supply to ensure the rest of the family wouldn't perish while “Hamilton” was in treatment.^{xiii} This particular situation was not the same for everyone, but RCMP records demonstrate that the enforcement provision for compulsory medical care was one they attended to, especially in Manitoba, for sentences generally of one year.^{xiv}

In 1952, for example, two Inuuk women walked out of the Parc Savard Hospital in Quebec City in February, dressed only in their bathrobes and slippers. Parc Savard was known by the Health Service as a rat- and mouse-infested hospital with crumbling infrastructure and limited medical care. The women were quickly returned to the hospital, but, as Maureen Lux points out, for the women, who had been at Parc Savard for four years without interpretation services,



"it is not clear where [they] hoped to go ... but they could be forgiven for thinking they would be better off elsewhere."^{xv}

Among Inuit, the annual patrol ship known as "Matavik," or "where you strip," also inspired fear and uncertainty. Inuit were treated like cattle as they moved through the various stages of examination, only to be marked with a serial number on their hand that indicated which tests they had undergone. Without proper interpretation, those marked with "TB" on their hand often had no idea why they were being evacuated to the South, with no chance to say goodbye.^{xvi}

At the hospital, as former patient and interpreter Minnie Aodla Freeman recounts, "it was very sad to see

all these Inuit. Some had children in the North from whom they had not heard since they arrived. So many worries..."^{xvii} In addition, the lack of interpretation or cultural understanding on behalf of southern medical staff was often used against Inuit patients. Minnie said that, as she waited for weeks for treatment, "my culture told me not to ask, that in this situation I might cause the people who were taking care of me to alter their behavior completely, that I should accept what was happening and not force the hands that held my destiny. I figured they would tell me when they were ready."^{xviii} This type of reaction was used by medical staff as representing consent, and led to many instances where patients were treated without understanding why, or where procedures were performed to which they would not necessarily have agreed.^{xix}

I As chronicled in Lux, *Separate Beds*, 9.

II Ibid., 18.

III Ibid., 47.

IV Ibid., 4.

V Ibid., 5.

VI Ibid., 4.

VII Ibid., 139.

VIII Ibid., 119.

IX Lina G. (Dene Nation, Fort Rae Behchokò), Part 1, Statement Volume 197, Yellowknife, NWT, pp. 2-3.

X Lux, *Separate Beds*, 109.

XI Cited in *ibid.*, 45.

XII Ibid., 116.

XIII Ibid., 114.

XIV Ibid.

XV Ibid., 115-16.

XVI Ibid., 99-100.

XVII Cited in *ibid.*, 72.

XVIII Ibid., 111.

XIX Ibid., 111.



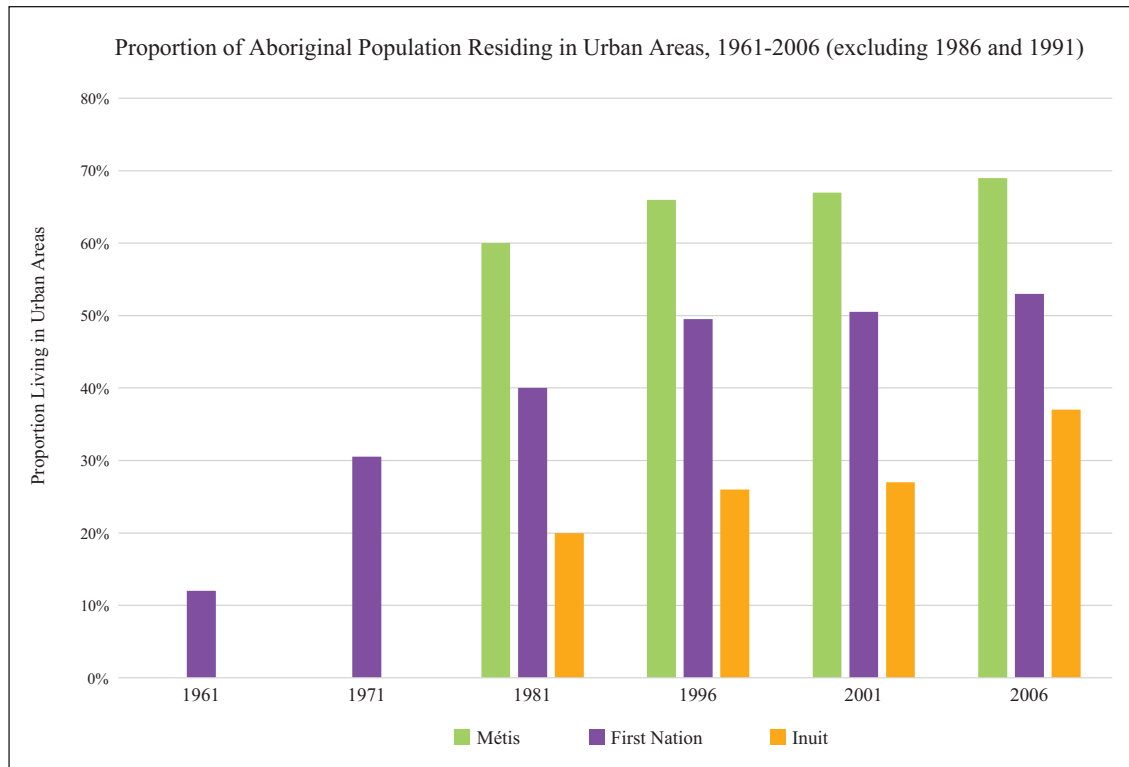
Urbanization and Criminalization

The relocation of Indigenous women to cities can be understood in the context of the harsh encounters with the Canadian state that resulted in dire social, economic, and political realities. The establishment of reserves in the 19th century and the forced relocation to lands that were unfit for agriculture, combined with a pass system that limited traditional hunting and harvesting practices, contributed to impoverished conditions and a reliance on state welfare.

The populations of several urban areas posted increases of over 50% between 1951 and 1961, and by 1971, seven urban areas had more than 2,000 Indigenous residents. These cities included Winnipeg (4,940), Edmonton (4,260), Montreal (3,215), Vancouver (3,000), Toronto (2,990), Regina (2,860), and Calgary (2,265).¹¹⁵ In a study of patterns between 1961 and 2006, Mary Jane Norris and Steward Clatworthy note that between 1961 and 2006, Canada's urban Indigenous population increased from 13% to 51%.¹¹⁶ However, as their report notes, "Contrary to popular belief, which claims that reserves are emptying to the benefit of cities, the net migration rates of registered Indians on reserves were always positive, which means that the number of in-migrants exceeded the number of out-migrants." While the net migration rates of Status First Nations people living in metropolitan areas varied between the 1960s and the 2000s, their study asserts that "migration cannot be the sole explanation to the growth of First Nations in metropolitan areas."¹¹⁷ Increases must be understood within the context of what they term "ethnic mobility," or the reclaiming or restoration of Indigenous ties, as well as natural increases in populations among Indigenous people in key urban areas. It is also linked to the restoration of Indian Status under Bill C-31 in 1985, which resulted in a dramatic increase in the off-reserve population. For instance, the off-reserve population increased from 147,424 in 1987 to 256,505 in 1996 alone.¹¹⁸



Women and children of Brunswick House First Nation at the feast during the Treaty 9 payment ceremony at the Hudson's Bay Company Post called New Brunswick House, Ontario. Source: Library and Archives Canada/National Photography collection/a059589.



This is not to suggest, however, that the identity and connection of these relocatees were any less “authentic,” as scholars Evelyn Peters and Chris Andersen point out. Rather, as Peters and Andersen argue:

A focus on (non-urban) tribal homelands as the source of urban Indigenous identities also ignores the ways many urban Indigenous people have created organizations and communities across cultural and tribal groupings.... Viewing non-urban tribal communities as the primary influence on Indigenous peoples’ lives in cities misses the complex ways in and through which Indigenous peoples selectively interact with urban societies to create meaningful lives in cities.¹¹⁹

Regardless of the source of increase, and as family members' and survivors' testimonies demonstrated, the breakdown of familial relationships caused by residential schools and enfranchisement policies meant that Indigenous women could find themselves alienated from their home communities, sometimes as single parents and sole providers for their children. In some of these cases, cities provided economic opportunities that were not available on reserves. Indigenous women did create new lives in cities – but were not always faced with the opportunities they may have been promised.

As First Nations women began seeking employment in Canadian cities, they were met with many challenges. They were often hundreds of kilometres from their homes and social support systems, navigating racist barriers deeply embedded in urban services and experiences. While it



is true that these factors affected both Indigenous men and women who moved to urban centres, sexism in the mid-20th century played a particular role in women’s experiences. As historian Mary Jane McCallum states:

Native women workers, like all women workers, were subject to common understandings about space which determined that the city – and thus also working in cities – was “bad” for women. Also, Native women worked in occupational fields such as domestic service that were racialized and gendered in a variety of ways. However, labour was also part of a colonial apparatus meant to, among other things, extinguish Aboriginal title and status. In regards to Aboriginal women, employment has been popularly paired with notions of cultural decline and integration.¹²⁰

It was common practice that Indigenous women were paid less for their labour than their non-Indigenous counterparts, and their living conditions directly contributed to placing them in harm’s way.



In the Home Economics class at the Central School on the St. Regis Reserve, Lucy Benedict (left) and Dorothy Bush learn how to knit. © Government of Canada. Reproduced with the permission of Library and Archives Canada (2019). Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/e010788128.

As historians Heidi Bohaker and Franca Iacovetta explore, Canada created specific programs to encourage the relocation of Indigenous people to cities in an effort to assimilate and integrate Indigenous people into Canadian society, which varied in success in enticing people to relocate.¹²¹ Specifically, these programs included vocational training for adults and education for children. The Indian Placement and Relocation Program, for instance, was run by the Department of Indian Affairs beginning in 1957, and built on the goals of the state for full integration. The program was extended to men as well, but in different fields. In general, it promoted “social” and “vocational” adjustment in professions like hairdressing, for instance, or clerical support.¹²²

Regardless of the programs’ actual rates of success, “success stories” were often features in the branch’s periodical, the *Indian News*, where stories like “Miss Hoff Proves Valuable Clerk” or “Domestic Services Proves Useful Step” celebrated those who had relocated.¹²³ These stories were celebrations of a perceived anomaly between where Indigenous women “should” be, and



Indigenous women work in a crab canning factory in Masset, B.C., sometime between 1930 and 1960. Library and Archives Canada/Department of Employment and Immigration fonds/e011051620.

where they were. As historian Mary Jane McCallum noted, “In many ways, Native women workers styling hair in beauty parlours or moving through the ranks of the nursing profession exist as ‘unexpected labour,’ revealing not their incapacity to be hairdressers or nurses, but the broader assumptions

about Indianness that make Indian hairdressers and nurses seem so anomalous.”¹²⁴

On the heels of these kinds of programs, as well as relocation incentives, relocation was also prompted by the relative lack of services available in many communities, or by women looking for a new start. As Rande C. shared:

When I think about everything, I think about misplacement. For us as Aboriginal people, it’s about misplacement. We were stripped of everything that we know. We’ve been misplaced this entire time. Urban settings such as the Eastside where my mom ended up, it’s because she was misplaced, identity stripped away from her, everything, the essence of who we are as Aboriginal people taken.¹²⁵

As a result of low-paying work, many women were forced into specific neighbourhoods that were targeted and overpoliced because they were inhabited by Indigenous people. It naturally followed that urban Indigenous people were disproportionately harassed and profiled by police and the justice system. Nuisance and zoning laws created ghettos in specific areas of cities,¹²⁶ and normalized a public perception of Indigenous people and communities as criminal and dangerous.¹²⁷ Building on the criminalization of Indigenous women and 2SLGBTQQA people through the NWMP and the *Indian Act*, as well as the *Criminal Code*, these “zones” contributed – and still contribute – to the criminalization of Indigenous populations. As the United Nations Permanent Forum on Indigenous Issues noted in April 2018, in many countries, both physical violence and legal prosecution are used against Indigenous people to criminalize them, particularly in reference to those defending land and water rights, but also as related to the protection of families and communities.¹²⁸



Indigenous women graduate from the practical nursing program at the Vancouver Vocational Institute. Here, they are pictured with Mr. Ratcliffe, an Indian Affairs Branch employee. © Government of Canada. Reproduced with the permission of Library and Archives Canada (2019). Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/e007140515.

The naturalization of some spaces as violent contributed to the devaluation of the lives of the people who inhabited those spaces.¹²⁹ That is, there was (and still is) a presumption that people who live in these spaces should not be surprised when violence occurs in their neighbourhood or when they are victims of violence. This kind of victim blaming ignores the complicated history of colonization that has consistently relegated Indigenous people to the margins of society. However, this logic is often used to justify the overrepresentation of Indigenous people in the justice system. It is also used to minimize the impact of crimes committed against Indigenous women, girls, and 2SLGBTQQIA people, by reducing their identities to criminalized labels (for example, “prostitute,” “runaway,” “addict”). These labels focus on individuals and the violence they face, instead of focusing on the systems that perpetuate danger and represent larger violations of the rights of Indigenous women, girls, and 2SLGBTQQIA people.

“WHEN I THINK ABOUT EVERYTHING, I THINK ABOUT MISPLACEMENT. FOR US AS ABORIGINAL PEOPLE, IT’S ABOUT MISPLACEMENT. WE WERE STRIPPED OF EVERYTHING THAT WE KNOW. WE’VE BEEN MISPLACED THIS ENTIRE TIME. URBAN SETTINGS SUCH AS THE EASTSIDE WHERE MY MOM ENDED UP, IT’S BECAUSE SHE WAS MISPLACED, IDENTITY STRIPPED AWAY FROM HER, EVERYTHING, THE ESSENCE OF WHO WE ARE AS ABORIGINAL PEOPLE TAKEN.”

Rande C.

Their movements to and from the city, on the one hand, mark their self-identification with their birthplaces despite their settlement in urban areas, suggesting that the development in cities is not altogether disconnected from communities in rural areas. On the other hand, high mobility reflects a push-pull effect or “conflict with the city,” whereby movement is due in part to the numerous challenges they face, such as securing their cultural identity, finding culturally appropriate services, facing discrimination and violence, and acquiring stable housing. These issues lead to a constant daily restructuring of their lives that can lead others to target them for violence.



First Nations Relocations: The Case of Eskasoni

The Royal Commission on Aboriginal Peoples (RCAP) identified two different types of relocations imposed on Indigenous communities in the post-Confederation period: administrative and development-related. As the RCAP report explains, administrative relocations were intended to facilitate government access to and control of Indigenous communities. The second type, development relocations, were often carried out as a way to open up land for settler agriculture, therefore displacing those who lived there.

In Nova Scotia in the 1940s, the government undertook a centralization process – a relocation – of several Mi'kmaq communities to Eskasoni, in an effort “to cut the administrative costs of government services to Aboriginal people.”ⁱ As relocatee Blaire Paul said, “Racism is discrimination. Racism is assimilation. Racism is centralization. Racism is telling the person where to live, what language you have to speak, and this is how you’re going to live.”ⁱⁱ

In Nova Scotia, the Mi'kmaq had formed 40 smaller reserves by the mid-20th century. The growing dependence on wage labour within the whole of the Canadian economy disrupted the way of life of the Mi'kmaq, like many others, and made life financially precarious in many cases. The Great Depression also impacted these communities, and many residents turned to the federal government for help. As RCAP explains, “As the cost of supporting the Mi'kmaq began to rise, Indian Affairs looked for ways to reduce expenditures;”ⁱⁱⁱ eventually finding a solution in a report by a local Indian agent, written in 1941, who recommended centralizing the Mi'kmaq into two larger communities: Eskasoni, on Cape Breton Island; and Shubenacadie, on mainland Nova Scotia. The agent felt that regrouping people in larger communities would improve their economic lot, reduce costs for the government, and encourage more efficient administration of services to the Mi'kmaq.

Eskasoni was already a reserve at this time. First charted by the Surveyor General of Cape Breton in

1832, there were few families living there at that time. In 1834, Eskasoni became a reserve including about 2,800 acres (1,133 hectares) of land.^{iv}

The government began centralizing people to Eskasoni in 1942. Between 1942 and 1949, 2,100 Mi'kmaq were “pressured to relocate to Eskasoni or to Shubenacadie.”^v Further, and as RCAP points out, “relocation affected the life of the Mi'kmaq in Nova Scotia more than any other post-Confederation event, and its social, economic, and political effects are still felt today.”^{vi} The government convinced the Grand Chief to sign a letter in support of the plan. The government took this letter as evidence of relocation, despite the fact that interviews conducted with residents later on clearly demonstrated how the community had not been properly consulted, and had not consented to the moves.^{vii}

For relocatees, conditions at Eskasoni and at Shubenacadie were overcrowded and, in many cases, unsafe. In addition, although the Department of Indian Affairs had promised benefits such as new jobs, homes, and better schooling for the children, along with medical services and other opportunities, this was not what many people found, due in large part to simply not having enough space or resources in place for them.^{viii} For example, “flawed construction plans, incompetent supervision and delayed supplies of materials resulted in only ten houses being built on each reserve by 1944.”^{ix} What is worse, those people who wanted to return to their home communities after being relocated sometimes



couldn't: the community's own history documents that "Indian Agents would often destroy Native homes once they had been relocated to Eskasoni."^x

Conditions at Eskasoni were dire. As Marie Battiste describes, many families lived in overcrowded situations, including her. Her parents moved in with her mother's cousin, and the two families, combined, had eight children. Two or three families living in one house created issues because many of the homes were built only as shells, without insulation or any interiors.^{xi}

The economies of scale envisioned at Eskasoni didn't materialize, and efforts to expand agriculture were stymied by poor decisions on the part of officials, who, for instance, replaced cows with goats that ate the fruit trees, and sprinkled the potatoes with kerosene to keep people from eating them.^{xii}

For women who had worked to manage their small-scale but successful farms prior to relocation, or who had participated in seasonal berry harvesting in Maine, the relocation also placed them in a vulnerable position. Dependent on their partner's wage labour, or on government assistance, many women were forced into unsafe situations created by government intervention.

Today, Eskasoni continues to face problems. In 2017, APTN National News ran a story featuring Kiara Denny Julian, 18 at the time, who reported how a passerby in a truck harassed and scared her on her way home from work. Fellow Eskasoni resident Sasha Doucette explained that these incidents were not uncommon, and hoped the Royal Canadian Mounted Police would take them more seriously. She said, "I just don't know what is being done about them. They are trying their best to pick up little girls and lord knows what they want them for."^{xiii} A recent rise in drug and sex trafficking in the community was cited as a possible reason for the harassment.

Eskasoni also struggles with housing, which places many women in precarious situations. In 2017, Suzanne Patles, a Mi'kmaw anti-fracking activist and member of Eskasoni First Nation, was evicted from the apartment she had lived in for over 11 years,



A Mi'kmaw family is pictured in Elmsdale, Nova Scotia, 1891. Source: Library and Archives Canada/Natural Resources Canada fonds/ a039851.

along with her partner and three children. Though the landlord explained that the eviction was linked to a noise complaint, Patles said she never got any warning. In addition, Patles was not able to obtain any official or written reason for the eviction. She explained how the eviction would have serious impacts for both her and her children: "I'm an indigenous woman who is being ostracized from my community because I have nowhere to go.... One of my kids is in the [Mi'kmaq] immersion program; a program that is not offered anywhere else in the entire world."^{xiv} Ultimately, Patles had to leave her oldest children with her siblings so that they wouldn't be ripped from a community they knew and loved so much.

Youth suicide has also been a problem at Eskasoni, as in many communities. In 2010, the *Cape Breton Post* reported that there had been four confirmed suicides and another five drug- and alcohol-related deaths from 2008 to early 2010, based on the statistics available. But band administrators added that the actual numbers might be much higher, based on the number of deaths ruled accidental. Maxine Stevens, then the communications officer for Eskasoni, explained:



“When something like this happens in the community, it doesn't only affect a family, it affects everybody around that family as well because it's such a close-knit community. Everybody knows everyone.”^{xv} The deaths were prevalent mostly among young people in their late teenage years until their early 30s, with a reported average age at Eskasoni of 21. Jaime Battiste commented, “I'd say it's more frequent than car accidents. It's either overdose or suicide. That's the norm in the community, unfortunately.”^{xvi}

At the time, the unemployment rate in Eskasoni was 25%, and no crisis shelter existed. The community received capital funds to build the facility, but it did not receive any operational funds – meaning that while the community might be able to build the shelter, it could not pay anyone to work there or to operate it. In 2018, the *Chronicle Herald* reported two suicides in two weeks at Eskasoni.

The income levels for residents remain among the lowest average in the province.^{xvii} In addition, the 2016 “Report Card on Child and Family Poverty in Nova Scotia” reported that the poverty rate for

children in Eskasoni was as high as 75.6%.^{xviii} As Eskasoni resident Elizabeth Marshall explained, “I'm not shocked. I see the unemployment here, I see the poverty, I see the people coming to ask for help. I don't like to talk about these things because it's painful to see people suffering.” She added that many people in Eskasoni, including herself, were surviving on welfare – a reflection of the poor planning behind centralization that took people from more secure circumstances, in many cases. As Marshall noted, “You see the malnutrition. You see children in poor health. For my culture, where we always had an overabundance of food and where we share an abundance of food, it's very strange that we have to be so poor.”^{xix}

As this case study has shown, many of the challenges engendered by centralization continue to haunt communities like Eskasoni today, and directly contribute to placing Indigenous women, girls, and 2SLGBTQIA people in danger in these communities. But the issues go beyond interpersonal violence to engage colonization, institutional inaction, and ongoing social, economic, and political marginalization that reinforces, rather than addresses, these barriers to basic human rights.

I RCAP, *Looking Forward Looking Back*, 397–98.

II Ibid., 400.

III Ibid., 401.

IV Eskasoni Mi'kmaw Nation, “History.”

V RCAP, *Looking Forward Looking Back*, 401.

VI Ibid.

VII Ibid., 402.

VIII Eskasoni Mi'kmaw Nation, “History.”

IX RCAP, *Looking Forward Looking Back*, 402.

X Eskasoni Mi'kmaw Nation, “History.”

XI Marie Battiste, quoted in Richardson, *People of Terra Nullius*, 67-68. Also cited in RCAP, *Looking Forward Looking Back*, 403.

XII RCAP, *Looking Forward Looking Back*, 403.

XIII Moore, “Precious ones.”

XIV Roach, “Prominent Mi'kmaq warrior evicted.”

XV Pottie, “Eskasoni struggling.”

XVI Ibid.

XVII Census Profile, 2016 Census, Eskasoni 3, Indian Reserve (Census subdivision), Nova Scotia.

XVIII Frank, “2016 Report Card,” 12-13.

XIX Palmett and Tattrie, “Child poverty numbers.”



The Sixties Scoop and Child Welfare Policies in the First Nations Context

In the 1950s and 1960s, the higher visibility of Indigenous poverty in urban centres, coupled with the growth of the social sciences as a professional field, resulted in new child welfare policies directed at both First Nations and Métis women. However, these were also rooted in the same colonial, racist philosophies that were aimed at dismantling Indigenous relationships, families, and communities. As the residential school system waned, at least outside Quebec and the North, government measures aimed at the apprehension of First Nations and Métis children shifted to child welfare – with many of the same results.



Alice Semple, Alfred Greenland (in tub), with Ruth and Georgina Greenland, take a walk in Aklavik, Northwest Territories, 1956. © Library and Archives Canada. Reproduced with the permission of Library and Archives Canada. Source: Library and Archives Canada/Rosemary Gilliat Eaton fonds/e010869059.

The 1951 amendments to the *Indian Act* included a new section that allowed for provincial laws of general application to apply to Indians. As a result, intergovernmental agreements were signed to allow for the provision of education and child welfare by the provinces. Suddenly, the numbers of Indigenous children in care increased as much as 50-fold, and soon Indigenous children represented a third of all children in care.¹³⁰

The increase of children in care was motivated by several factors, including the closures of several residential schools during this period. The child welfare system quickly became a new way of stealing children, based on assumptions about Indigenous women as unfit mothers – including those who were seeking help in fleeing from violence in their own communities. In addition, state-imposed poverty due to underdevelopment on reserves, in education and in employment services, meant that many families – and women in particular – were stigmatized, not as a result of their own actions, but of those structural factors that bound them in impossible situations.



An unidentified Indigenous woman is pictured in her home with her child in Fort Smith, Northwest Territories, 1947. Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/e010750216.

The Sixties Scoop, as it is known now, marks a period from the late 1950s until 1990 during which, it is estimated, more than 20,000 Indigenous children were taken from their mothers, families, and communities.¹³¹ During this time, children were apprehended by the thousands, swiftly, and with little to no regard for culture (both in assessing children’s situations and in their placement with non-Indigenous families) and no regard for the children’s well-being, or the well-being of their families and communities. The process of apprehending children varied across jurisdictions. Some mothers were told their baby was stillborn,¹³² some were coerced into signing adoption papers while medicated.¹³³ As we heard in many testimonies, Indigenous mothers were convinced or tricked into believing that the welfare of their newborn babies was better managed by the Canadian state.

In Saskatchewan, the process was formalized into programs such as the Adopt Indian Métis program, from 1967 to 1969, as a targeted program to increase adoptions of First Nations and Métis children already overrepresented in the child welfare system. Initially funded by the Government of Canada’s Department of Health and Welfare – which had, in the 1940s, expressed strong opinions regarding the need for Indigenous Peoples to assimilate – it included advertisements of First Nations and Métis children “on television, radio and newspapers across southeastern Saskatchewan [that] would induce families to investigate transracial adoption.”¹³⁴ The program ignored underlying social and economic factors contributing to the inflated number of children in care, and, instead, placed blame on Indigenous families as failing to provide loving homes.¹³⁵

Many adoptees were told that their families no longer wanted them. Bonnie F. testified:

I recently received a file from child welfare, and I have been researching myself and trying to make sense of the whole ordeal. I am still dealing with some of the issues I endured during this time. I was saddened to read about my mother fighting for me in a letter she wrote to get me back. On the other hand, I was so happy she did because the



letters proved her love for me after all these years I had been told that she hated me and that she wanted me dead. I grew up fearing a monster and having my nightmares in my younger years. My foster home completely brainwashed me that my mother was truly evil and wanted to kill me, and I believed them.¹³⁶

In this case, Bonnie also became subject to years of abuse within the foster home environment that served to continued to impact her later in life.

In tandem with the residential school system, the child welfare system, therefore, became a site of assimilation and colonization by forcibly removing children from their homes and placing them with non-Indigenous families. Foster and adoptive families were consistently found out-of-province, and often out-of-country. Out-of-province or out-of-country adoptions made it extremely challenging for adoptees to be repatriated by their families and communities.



A nurse's aide feeds a baby at the Aklavik Anglican Hospital in Aklavik, Northwest Territories, n.d. © Library and Archives Canada. Reproduced with the permission of Library and Archives Canada. Source: Library and Archives Canada/Rosemary Gilliat Eatofonds/e010799871.

Many of our testimonies cite the direct connection between the Sixties Scoop and child apprehension and the violence they suffered as Indigenous women, girls, and 2SLGBTQQIA people. As Cynthia C. shared about herself and her siblings, “We were all part of the Sixties Scoop, so after suffering abuse in foster homes, we all ran away and grew up on the streets, the same streets our mother grew up on.”¹³⁷ A form of violence in itself, as well as leading to more violence, these systems caused many of our witnesses to lose loved ones – both historically and today. As Shaun L. explained:

The Sixties Scoop hurt my brother Terry and me. When it takes almost 50 years to heal by someone else’s actions, that’s a steep price. To start living and enjoying life at 50 years of age, it’s a bit of a rip-off.... I don’t have any stories of my mom and me. I don’t have any sense of her in my life. There is a gap inside [me] that nothing will fill. I think it is meant for her love.¹³⁸



The events surrounding the Sixties Scoop and its effects are much less documented in Quebec than in the rest of Canada because of Quebec's different socio-political context. Indian residential schools began to open in Quebec around the same time that the Sixties Scoop gained momentum in the rest of Canada. Moreover, religious authorities still present in First Nations communities held considerable power within the context of child welfare, and, until the early 1970s, several hospitals were also administered by religious orders.¹³⁹ In addition, the deployment of child welfare and protection services came slightly later, with the *Loi sur la protection de la jeunesse* coming into force in 1979.¹⁴⁰

As a result of a combination of these factors, the Sixties Scoop was administered differently in Quebec, and in much closer cooperation with representatives of the church, in communities and in hospitals. Hospitals also denied parents the opportunity to see their children and to recover their bodies if they were told they had passed away, and some families have never even received a death certificate.¹⁴¹

As in the rest of Canada, the Sixties Scoop as manifested in Quebec has led to an overrepresentation of First Nations children in child welfare systems. Indeed, when the *Loi sur la protection de la jeunesse* came into force in 1979, 6% of children in provincial care were First Nations while they represented only 0.7% of children of Quebec.¹⁴² This overrepresentation has worsened over time, and, as of 2016, stood at 17%, according to the 2016 census. While the rate is still lower than in the rest of Canada, proportionally it is high, as it is all over the country.

Colonial Encounter: Distinctive Métis Experiences

Métis experiences in the context of colonization share much in common with those of First Nations, with some notable exceptions. Linked through marriage to their First Nations parentage, the Métis arose during the fur trade, when Métis women and girls suffered their own experiences that were both similar, and distinctive, to those of their First Nations relatives. Primarily, the distinctiveness of Métis experiences concerns the lack of services and supports offered to Métis populations, as well as concerted efforts to separate them from First Nations relatives through the apparatus of the state. In addition, the history of colonization has further generated a hierarchy of identity, resulting in conflicts within the Métis community and drawing attention away from the ongoing marginalization that Métis women, girls, and 2SLGBTQIA people face.

Métis Women, the Fur Trade, and Early Settlement Life

Historians Sylvia Van Kirk and Jennifer Brown have explored how the process of becoming a distinct Nation was, for Métis, structured around women's roles in the fur trade. Throughout the 17th and 18th centuries, as the fur trade expanded across central and western North America, many unions were formed between European traders and Indigenous women. The children born to these encounters were often raised with cultural knowledge of both their Indigenous and



European parents, but it was the kin connections of their mothers that led to the emergence of distinct Métis communities, and eventually a distinct Métis Nation, which coalesced at Red River and other points in the Northwest.

Métis women were present in the fur trade, which was a social and cultural system with women at its very core. Like First Nations women, Métis women produced trade goods such as clothing, which included their beaded designs. They also produced other staples such as pemmican. Pemmican was a form of dried meat that was easy to transport and an important source of protein. The labour of Métis women was essential to pemmican production and, by extension, the profitability of the fur trade overall, as well as the viability of distinct Métis communities such as Red River. Métis women would travel between the trading posts in Red River and the bison hunting grounds on the open prairie, performing critical labour in pursuit of the hunt. While Métis bison hunting brigades were organized around male captains, the role of women, as wives but also as partners, was recognized and valued.¹⁴³



Métis people pictured with red river carts on the prairie, ca. 1872-1873. Source: Library and Archives Canada/National Photography collection/e011156506.

Métis women eventually replaced First Nations women as fur traders' wives, due to their fathers' tendency to educate them in the European way and as a direct result of the NWC policy that banned marriage to First Nations women for its employees as of 1806. Still, within the context of "country marriages," Métis women remained vulnerable.

As more European women began to come to Canada, husbands could simply abandon their country marriages, and many did, as in the case of Governor George Simpson, governor of the Hudson's Bay Company at the height of its power. Simpson fathered thirteen children with at least eight different women, many of whom were Indigenous.¹⁴⁴ Betsy Sinclair, a Métis woman, was given to an accountant within the company, whom Simpson promoted. He also had children with Margaret (Marguerite) Taylor, a Métis woman, whom he left shortly thereafter to marry Frances Ramsay Simpson, a European cousin who arrived in Red River in 1830. He failed to notify Margaret Taylor of his new marriage to Frances, or to make any arrangements for his sons by



her, George Stewart and John Mackenzie. Frances, George Simpson's new wife, was the harbinger of things to come. After 1830, more European women started to arrive in the Northwest, and the social status of Métis women as wives declined, leaving them vulnerable to abandonment and poverty.¹⁴⁵ However, European women remained a small minority in the Northwest until the 1880s and were mostly concentrated at Red River.

As Métis communities such as those at Red River developed unique social and political cultures, they faced constant pressure from European institutions, such as the HBC and Christian churches, to conform to patriarchal land tenure and economic systems, as well as social relations. As the power of the Canadian state formed and increased during the 19th century, friction arose between this European paternalistic world view and the traditional practices of Métis rooted in their maternal knowledge. The imposition of a Euro-Canadian system of race and gender happened in different places at different times. People at Red River had a longer and more direct connection to European institutions than those further west.

The first clergy arrived in 1818, and the HBC had established itself at Fort Garry in 1822. By 1820, Catholic and Protestant churches had been established at Red River. As Métis were increasingly settled into agricultural communities, often centred on a Christian parish, the clergy exerted more influence over their lives and restricted the influence of Métis women. Christian doctrine was instrumental in forcing Métis women into roles defined by gendered European expectations. Church fathers saw the husband as the head of the family and expected women to adhere to masculine authority. Catholic priests, in particular, related women to biblical Eve and constructed a view of them as naturally sinful.¹⁴⁶

These gendered ideas would have a negative impact on the position of women in Métis society.¹⁴⁷ In this world view, the position of women was domestic: they belonged in the home and in a marriage. Priests often counselled women to remain subservient in a marriage, no matter the conditions of the marriage, including abusive relationships.¹⁴⁸ The emphasis on masculine authority, as well as the racist attitudes associated with their First Nations or Métis mothers, led many Métis families to assert the “male” heritage of their European ancestors and to hide the origins of their Indigenous grandmothers.¹⁴⁹

In part, colonial perspectives regarding the danger posed by Métis women were often wrapped up in fears of miscegenation, or “race mixing,” overall, and were related to the idea of hiding one's heritage. Colonial authorities, particularly after 1840, used the fears surrounding miscegenation and mixed marriages to promote a higher degree of segregation, or separation, between First Nations and surrounding non-Indigenous communities, as well as between Métis settlements and non-Indigenous communities.¹⁵⁰

As Sarah Carter explains, miscegenation in this context, as well as in other colonial contexts, was seen as an important source of degenerative behaviour and moral decay, and a threat to a model Euro-normative way of life. Practically speaking, and in reference to the Métis, “Race-mixing also potentially jeopardized Euro-Canadian efforts to acquire Indigenous land,” as seen in the *Manitoba Act* of 1870 and in the scrip commissions' works, examined in greater detail later in this chapter.¹⁵¹ For some people, it also contributed to generations of shame and guilt about their identity.



Displacement and Danger: Métis Resistance and Government Assault

During the 19th century, the Canadian government twice violently confronted Métis societies on the Prairies to impose its own racial and gendered world view, as well as to remove them from their lands.

As the Canadian state developed and expanded its authority in the wake of Confederation in 1867, it sought to acquire new lands to populate with European immigrants. In 1869, Canada bought Rupert's Land from the HBC, a transaction conducted without the consultation of Indigenous Peoples who inhabited the territory. Concerned about recognition of their title to land, the Métis, led by Louis Riel, established a provisional government and demanded Canada address their concerns. While the actual Métis Resistance of 1869 resulted in little direct conflict, the arrival of Canadian soldiers in 1870 at Red River introduced a new era for Métis and Canadian relations, one defined by lies and violence. The Canadian soldiers sent to Red River to oversee the new province of Manitoba's admission to Confederation were bent on abusing and harassing the Métis population, and drunken soldiers targeted Métis women with insults and abuse.¹⁵²

In reaction to this abuse, in 1870, many Métis families simply moved further west to join other communities in what would become Saskatchewan and Alberta. The reprieve these families sought from Canadian intervention proved to be short-lived as the government continued encroaching into Métis territories.



A Métis family stands in front of a log house in Buffalo Narrows, Saskatchewan, ca. 1900. Source: Library and Archives Canada/ Department of the Interior fonds/a044552.

In 1885, Louis Riel returned from exile to lead another resistance against increasing Canadian domination. As historians like Jesse Thistle have demonstrated, Métis women were not silent at this moment. Instead, they were at the heart of the resistance.¹⁵³ Thistle's own ancestor, Marianne Morrisette, was present during the Battle of Batoche and assisted Métis forces. She would have



died from Canadian artillery fire had Riel not intervened.¹⁵⁴ Others, including Marguerite Caron and Josephite Tourond, actively participated in military planning and coordination of the resistance.¹⁵⁵ The violence perpetrated against the Métis both during the battle and in its aftermath would stay with women such as Morrissette for their entire lives.¹⁵⁶

For many Métis families, the violence of Canadian military intervention created a distrust of Canadian institutions, and also increased prejudice against Métis.¹⁵⁷ Defeat, and the subsequent destitution, had the result of legitimizing sexist Canadian perceptions of Métis women and dehumanizing them further.¹⁵⁸ The memories of this violence and the perceptions within Canadian society have led to intergenerational trauma that has negatively affected many Métis women and their families.



A group of Métis and First Nations prisoners are photographed during the North-West resistance, 1885. Source: Library and Archives Canada/Gilbert Bagnani collection/a118760k.

The Gendered Dimensions of Métis Scrip

These violent dispersals would be codified into the process of scrip commissions, which had implications for all Métis and for Métis women specifically. Métis scrip, which lasted from 1870 to 1924, was created by the federal government as a way to extinguish the Aboriginal title of Métis communities throughout the Northwest.¹⁵⁹ Scrip came in the form of a federally issued document that entitled the recipient to either land or a cash payment, usually in the form of 80 to 240 acres, or \$20 to \$240.¹⁶⁰ Scrip commissions were set up to treat only with the Métis of Manitoba. However, as Canada pushed further into the Prairies, it became apparent that it would have to deal with Métis living throughout the region.

Even though women could apply for scrip, it was often issued in the name of their father or a brother if they were not married. Those in marriages were not viewed by Canada as heads of households and were thus dependent on their husbands in this patriarchal system. Scrip thus became a means to corral Métis women into easily controlled bureaucratic categories, such as wives without full property rights, that defined identity and gender expectations.¹⁶¹



Historians have shown how the process of assigning scrip was intentionally prolonged and unnecessarily complex.¹⁶² The federal government also frequently and unilaterally changed the rules of scrip regulations.¹⁶³ Ultimately, these rule changes, as well as government delays in implementing scrip proceedings, meant that most of the land promised to the Métis ended up in the hands of speculators who then sold the land to new immigrants.¹⁶⁴ Instead of providing a solid economic foundation for the Métis, the scrip commissions further eroded Métis rights, destabilized communities, and pushed Métis families further into poverty and marginalization.¹⁶⁵

Despite these challenges, the life of Mary Norris provides an example of how Métis women used scrip in times of constraint.¹⁶⁶ A prominent fur-trade figure, Norris had married an important European trader. However, as the fur trade diminished, she was cast out by her husband, leaving her with few options. Scrip became a vehicle for Norris to survive (albeit meagerly) in difficult circumstances.

Many Métis women also used the distinctions between the *Indian Act* and Métis scrip to survive in a changing world, since they were able to use both identities. While Métis women found scrip a useful category to navigate, the Canadian state became increasingly concerned with women “taking advantage” of the system.¹⁶⁷ Canada was especially concerned with those who, walking the sometimes permeable line between Métis and First Nations, applied for scrip while in Treaty. Many of those whom the government targeted for dispossession from scrip, labelling them as frauds or as leechers, were women who had married non-Status (both Métis and white) men and had lost their Status. One of the main goals of Canadian settler colonialism was to fully diverge Métis and First Nations communities.¹⁶⁸ Scholars have shown how groups such as the Edmonton Stragglers – “women who received treaty annuity but left for scrip” – were predominantly targeted by these administrative categorizations.¹⁶⁹ This “stragglers’ list” specifically targeted mixed-race women to police the boundaries of racial categories in Canada.¹⁷⁰ Scrip thus became a mechanism to enforce racial and gender boundaries on Métis women, while simultaneously severing Métis families from their lands.

Métis Girls and Residential Schools

Like thousands of First Nations, many Métis also attended residential schools or day schools designated for “Indians.” In some cases, the failure of their parents to pay property tax (as so-called squatters, in Métis settlements adjacent or near to reserves) disqualified Métis children from attending regular school. In other cases, the fact that Métis settlements had been created near reserve communities meant that Métis students would also attend Indian residential schools. As Métis historian Tricia Logan says, because schools were funded per student,

Métis children were used to manipulate this per capita system and secure more funding for schools with low attendance. Métis children were the first to be removed or added to attendance lists in order for churches to increase their schools’ attendance and therefore access more funding from the federal government.¹⁷¹



Logan points out that school officials arguing to accept more Métis students reminded the federal governments that “such schools were established not to meet treaty obligations towards Indians, but as a means of preventing, in the public interest, a race of wild men growing up whose hands would be against all men and all men’s hands against them.”¹⁷²

In attempt to save money, the Department of Indian Affairs created a three-tiered social class hierarchy of “half-breeds,” to determine which ones should be prioritized to attend residential school. In general, the more “Indian” children looked visually, and the more closely their families were “living an Indian mode of life,” the more likely it was that they would be accepted into residential school.¹⁷³

Residential school staff contributed to further divisions between Métis children and between Métis and other First Nations children. Some nuns openly favoured the “better” Métis (from families with money) over the “poor” Métis (who lived off the land). In another example, Elaine D. shared how having European ancestry, along with Indigenous ancestry, made her a target for the teachers at her residential school.

Because I was Métis, in their school, I should know a little more because I have white blood in me. So when I got in trouble, they would use me as – as an example and I would have to kneel in front of the classroom on my knees at age six, seven, and balance books and they would put three books on my hands and the teacher would slam his – his yardstick on the desk and I would shake and my ears would hurt and then I would cry and I’d tell him I need to go pee and all he would do is put the yardstick under my hand and tell me my hands are unbalanced. So I need to go pee and I need to go poo and he wouldn’t let me, so I would just kneel in front of the class in my feces and in my urine all day. All day I was an example.¹⁷⁴

Métis children also suffered significant shame and abuse. Some Métis children were called “*le chien*,” meaning “dog” or “mutt.” These students remember “being spoken to, fed, and disciplined as dogs.”¹⁷⁵ Elaine D. recalled:

First, we went to the [day] residential school and every day we were beaten. When recess came, all of us four little Métis kids would run and hide in any crevice we could find. I got caught – like, I don’t know about my sister, but when I got caught, the boys would molest me. They’d pinch my nipples, knee me in the crotch, pull my pants down. All I know is a lot of times I had wet panties and it wasn’t from peeing myself. So the boys would do whatever they wanted.¹⁷⁶

After the children left residential school, Indian agents were tasked with writing follow-up reports on the former students. Logan writes, “Female students were reported as doing well if they were married to a white man and doing poorly if they were married to a Métis man.”¹⁷⁷ As many Métis Elders and community members who survived residential school shared with Logan, Métis students felt as though they were outsiders, and were taught to judge each other and internalize their oppression.¹⁷⁸



Métis Economic and Political Marginalization

Even before the financial crash known as the Great Depression, many Métis women and their families were living in poverty on the margins of Canadian society. Despite all the issues with scrip, it had served as a source of much-needed cash for Métis women and their families during hard times.

After 1924, the federal government ended the work of scrip commissions, as it felt it had adequately dealt with Métis Aboriginal title. Since Métis were not covered by the *Indian Act*, the federal government believed it had no further obligations with respect to Métis rights. This belief was further engrained as Canada began to transfer jurisdiction over lands and resources in the three prairie provinces to their respective governments. The federal government thought that any remaining responsibility to the Métis would pass to the provinces with rights to lands. However, Alberta, Saskatchewan, and Manitoba refused to accept that they inherited any responsibility for the Métis, especially if it entailed an additional financial burden.¹⁷⁹

During the lean years of the Great Depression, both levels of government would take any opportunity to reduce their budgets.¹⁸⁰ In the political negotiations over what would become the *Natural Resources Act*,¹⁸¹ which transferred responsibility to the provinces, the Métis became a convenient group to ignore. It was at this time that the Métis became lost in the gap between federal and provincial governments. Both levels of government were still aware of the plight of Métis, but neither wanted to take responsibility for the financial obligations. This neglect structured the relationship Canadian governments had with Métis women, girls, and 2SLGBTQQIA people. As Métis were further marginalized, their communities were increasingly targeted by alcohol dealers who preyed on poverty and misery,¹⁸² conditions that exacerbated the abuse of women and girls.¹⁸³

“FIRST, WE WENT TO THE [DAY] RESIDENTIAL SCHOOL AND EVERY DAY WE WERE BEATEN. WHEN RECESS CAME, ALL OF US FOUR LITTLE MÉTIS KIDS WOULD RUN AND HIDE IN ANY CREVICE WE COULD FIND. I GOT CAUGHT – LIKE, I DON’T KNOW ABOUT MY SISTER, BUT WHEN I GOT CAUGHT, THE BOYS WOULD MOLEST ME. THEY’D PINCH MY NIPPLES, KNEE ME IN THE CROTCH, PULL MY PANTS DOWN. ALL I KNOW IS A LOT OF TIMES I HAD WET PANTIES AND IT WASN’T FROM PEEING MYSELF. SO THE BOYS WOULD DO WHATEVER THEY WANTED.”

Elaine D.

By the 1950s and 1960s, many Métis were living either on the urban fringes of cities in what were condemned as shantytowns, such as Rooster Town in Winnipeg,¹⁸⁴ or in rural communities along government road allotments known as “road allowances.” Those living in the marginal spaces at the edge of Canadian society became known as the “Road Allowance People.” Road allowance communities were established by Métis in the aftermath of the failure of many families to receive their lands guaranteed by the *Manitoba Act*, as well as within the context of the



persecution of the Métis after 1885. They were set up on road allowances, lands claimed by the government for future public works – roads – where Métis were considered squatters. Many communities were destroyed by the RCMP – in fact, some Métis Elders vividly recall the day their community was burned to the ground, and when people escaped with little more than the clothes on their backs.

For those communities not destroyed in this way, life was still hard, particularly when government intervened with schemes designed by non-Métis to address Métis realities. This life is most vividly documented by Métis author, playwright, broadcaster, filmmaker, and Elder Maria Campbell in her 1976 memoir, *Halfbreed*. Campbell's story recounts how her family and her community circled further into poverty as the Co-operative Commonwealth Federation (CCF) government of Saskatchewan attempted to solve the "Métis problem" through social reform. The poverty that many Métis lived in – especially the southern Saskatchewan Métis, who were more visible than those in the more remote northern communities – was viewed by North America's first socialist government as a public issue that could be solved through social planning. Building off a previous Liberal experiment at Green Lake, the CCF, under Tommy Douglas, elected in 1944, set up several Métis colonies, which were designed as model farms in which Métis heads of families would learn skills to maintain a modern farm under the supervision of white instructors. These colonies were seen as a rehabilitation scheme inspired by Christian humanitarianism, and, as such, would be closely managed in conjunction with the Catholic Church. Each colony would maintain a school, which functioned as a means to integrate Métis into the modern workforce.



Ronnie and Frank Cardinal of Rooster Town, Manitoba, get ready to walk a full mile to get a can of water, 1951. University of Manitoba Archives & Special Collections, Winnipeg Tribune fonds, PC 18 (A1981-012), Box 59, Folder 5784, Item 3.



However, by the 1960s, the colony scheme had failed, partially because many Métis found them to be “alienating and unworkable,” but also because many people within the government continued to blame the Métis for their own poverty. Despite the professed intentions of the CCF, many officials continued to view the Métis within racial stereotypes that affected the expectations of the project. These officials saw continued Métis failure to integrate into mainstream Canadian society as due to an inherent flaw of the Métis character, and not due to the failures of government social planning. The solutions that Tommy Douglas’s government attempted did not consider a Métis perspective, and amounted to little more than a high-handed attempt to restructure Métis life according to Canadian racial and gender expectations.¹⁸⁵

The social, political, and economic marginalization of Métis women and girls created circumstances in which police mistrust and, in some cases, police abuse, took place. Maria Campbell’s original version of *Halfbreed* included a description of a critical incident in Campbell’s life. As she described it, at the age of 14, RCMP arrived at her home to question her family about poaching. During this visit, Campbell was dragged by an RCMP officer into her grandmother’s bedroom and raped. As she recounts, her grandmother found her and helped her to cover it up, insisting that she not tell her father:

She told me not to tell Daddy what had happened, that if he knew he would kill those Mounties for sure and be hung and we would all be placed in an orphanage. She said that no one ever believed Halfbreeds in court; they would say that I had been fooling around with some boys and tried to blame the Mounties instead.¹⁸⁶

Many Métis women living in smaller communities, like First Nations women, migrated to different Canadian centres, looking for better futures. As Maria Campbell describes of her arrival to Vancouver:

The city was beyond my wildest imagination! It seemed to go on without end. As we drove along in the cab, I pressed my face against the window and drank in everything around me.... The people all looked rich and well-fed. The store windows were full of beautiful displays, lots of food, clothes, and all the things a person could possibly need to be happy.¹⁸⁷

Yet, this is not the outcome of Campbell’s story, and her hopes for the city were soon replaced by the need to engage in the sex industry as a means for survival and to provide for herself and her children.

As this example demonstrates, the promise of the city wasn’t necessarily what many Métis women encountered, and the anonymity and size of urban centres could often lead to the exploitation of Métis women, girls, and 2SLGBTQQIA people. The resulting isolation, from both family and community, could result in a greater likelihood of violence, without access to certain services or supports that would have been provided by programs oriented toward urban First Nations women.



Métis People, the Sixties Scoop, and Child Welfare Today

As was explained within the context of First Nations experiences, the “Sixties Scoop” refers to the wholesale removal of children from their families, beginning in the 1960s and up to 1990. The ongoing apprehension of Métis children within the child welfare system today also contributes to violence against Métis women, girls, and 2SLGBTQQIA people.

In Logan's report, “A Métis Perspective on Reconciliation,” Michif Elder Rita Flamand said this about the removal of Métis children from their communities during the Sixties Scoop:

“That’s the time when they started picking up kids later on, when the lake started to dry up and there was no fish in the lake, the people were starting to have a real hard time in the community and that’s when they took the kids. They should have helped the parents to keep the kids ... they just took the kids and didn’t help the people.”¹⁸⁸

Métis children were not reliably identified as Métis, which means we can only guess at how many Métis children were part of the Sixties Scoop. More importantly, many Métis children may not even be aware of their heritage. This is a problem that continues today, since Métis children adopted out may not be properly identified as Métis, or private adoption agencies without cultural safety planning may allow adoptive families to “mask” the child’s Métis heritage.¹⁸⁹

Manitoba, the “homeland of the Métis,” was the last province to put an end to out-of-country adoptions during the Sixties Scoop.¹⁹⁰ However, due to intense lobbying on the part of the Manitoba Metis Federation (MMF), the Manitoba government put a moratorium on out-of-province placements in 1982.¹⁹¹ The MMF increased its advocacy work on Métis control of child welfare in the following decades, and Manitoba is currently now the only province to have a designated Métis Child and Family Services Authority.¹⁹²

Despite this progress, the numbers don’t lie. The loss of children within a system that is supposed to be protecting them is an ongoing source of violence against Indigenous women and girls, including the Métis. Elaine D. shared how this has had long-lasting impacts for her and her children.

I’m part of the foster care for the Sixties Scoop and part of the residential school. I’m part of the healing process.... [My kids] didn’t understand. They didn’t know my story. I tell my story so that my grandkids will understand, yeah. I want people to understand that wounds – open wounds, they – they don’t heal, they just get scars. And believe me, I’ve got enough of my scars, not only on my outside, but in my spirit, in my heart, in my soul.¹⁹³

In 1989, the Métis National Council published a national briefing paper that gave voice to what so many Métis families had known all along: that provincial child welfare staff had “little sensitivity to Métis culture or values.”¹⁹⁴ As historians Lawrence Barkwell, Lyle Longclaws, and David Chartrand argue:



The result is that a disproportionate number of Métis children are being taken into care, many for no other reason than the real-life Métis situation of living in poverty and overcrowded conditions.... Poverty has never been an acceptable reason for depriving children of their natural parents and their place in the extended family. The fact that the practice is so prevalent in Métis communities suggests the degree to which the Métis are a devalued people as well as the degree to which provincial family and child welfare institutions and Métis society are alienated from each other.¹⁹⁵

Federal and provincial governments' long history of denying the existence of Métis rights and marginalizing Métis families has made it harder for Métis governments to gain control over child welfare. Métis child and welfare services are generally funded by the province or territory, as opposed to being federally funded, although, as Métis scholars Jeannine Carrière and Catherine Richardson explain, "Métis children continue to receive strikingly low levels of funding for child welfare and family service."¹⁹⁶

Most provincial and territorial child welfare legislation includes some kind of directive to include Indigenous Peoples in cases involving Indigenous children. But the vast majority fail to name or propose a way to work with the Métis, relying instead on the overarching term of "Aboriginal" or "Indian." For example, the most common Indigenous provision in child welfare legislation is the requirement to notify an "Aboriginal" band of court hearings involving "Aboriginal" children. However, there is no equivalent given for Métis.¹⁹⁷

"I'M PART OF THE FOSTER CARE FOR THE SIXTIES SCOOP AND PART OF THE RESIDENTIAL SCHOOL. I'M PART OF THE HEALING PROCESS.... [MY KIDS] DIDN'T UNDERSTAND. THEY DIDN'T KNOW MY STORY. I TELL MY STORY SO THAT MY GRANDKIDS WILL UNDERSTAND, YEAH. I WANT PEOPLE TO UNDERSTAND THAT WOUNDS – OPEN WOUNDS, THEY – THEY DON'T HEAL, THEY JUST GET SCARS. AND BELIEVE ME, I'VE GOT ENOUGH OF MY SCARS, NOT ONLY ON MY OUTSIDE, BUT IN MY SPIRIT, IN MY HEART, IN MY SOUL."

Elaine D.

Colonial Encounter: Distinctive Inuit Experiences

First Encounters with *Qallunaat*

While Inuit women, girls, and 2SLGBTQQIA people share some similar experiences of colonization with other Indigenous Peoples, there are also many differences. For Inuit, important distinctions in time and place are a key feature of their distinguishing experiences of violence.

As Director of Social Development Hagar Idlout-Sudlovenick recounted at the National Inquiry's hearing in Iqaluit, the arrival of the *Qallunaat* (white Europeans) was an important and irreparable imposition in the North.

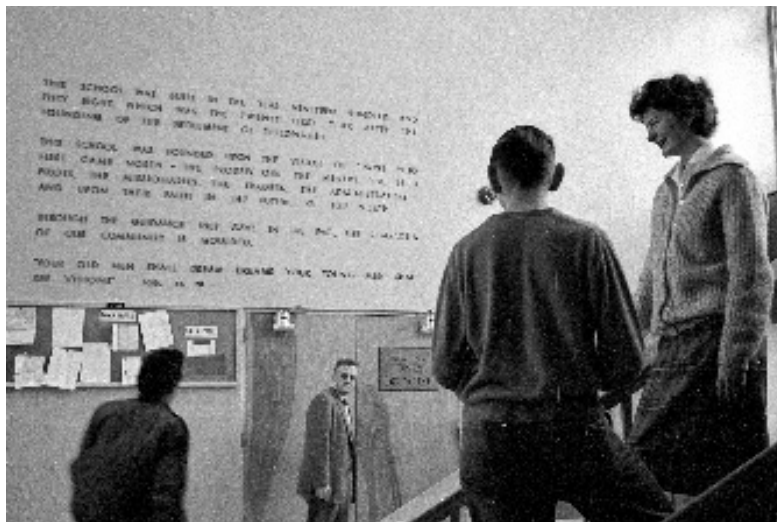


When Qallunaat first arrived to the North, they were very scary, such as RCMPs.... When they tell people, Inuit people, to do this and that, we had to – we had no choice but to say yes, and that’s from being scared, fear.... They came into the communities as if they were higher than Inuit, and Inuit feared these Qallunaats.¹⁹⁸

Inuit first interacted extensively with European whalers and fishermen, whom they called “Qallunaat.” Labrador Inuit encountered fishers and whalers relatively early in the colonization process (as early as the 16th century). In other regions of Inuit Nunangat, however, Inuit did not interact with whalers until the second half of the 19th century.¹⁹⁹

Over time, whalers began to hire Inuit to do various jobs, including working on whaling crews and provisioning whalers with meat and clothing. By the late 19th century, bowhead whale stocks had declined substantially, depriving Inuit of a resource that had been a cornerstone for some communities. As a result, in the early 20th century, commercial whalers stopped visiting most areas of Inuit Nunangat.²⁰⁰

The decline of commercial whaling coincided with the expansion of the fur trade into Inuit Nunangat. Driven by a jump in the market value of Arctic fox furs, the Hudson’s Bay Company expanded its network of trading posts into the Arctic in the early 20th century. In the 1920s and 1930s, rival companies and independent traders also established operations in the region. These posts also hosted American military personnel, missionaries, and a variety of traders. Over time, Inuit became dependent on the goods supplied by fur traders. This dependency was an important factor in the power Qallunaat would later hold over Inuit.²⁰¹



This wall inscription appears at a school in the Northwest Territories, 1959, citing the vision of “those who first came north,” including prospectors, miners, missionaries, and others – without mentioning those who were already there, or the way they were displaced. Source: Library and Archives Canada/National Film Board of Canada fonds/e011177356.

Sexual Encounters and Exploitation with the Qallunaat

Canada’s claims of sovereignty within the Arctic provided the grounds for the introduction of a Canadian justice system, and laid the foundation for the role that the Royal Northwest Mounted Police, and later the RCMP, would play in Inuit Nunangat in the early 20th century, by applying



Canadian laws in the Arctic territory. Their responsibilities were broader than other police postings. In addition to law enforcement, they were required to gather census information and aid Inuit in emergency situations. The RCMP played an important role in establishing the Canadian state's authority over Inuit society and its claims of Arctic sovereignty over Inuit Nunangat.²⁰²

These early colonial encounters in Inuit Nunangat resulted in many sexual relationships between Qallunaat men and Inuit women. Historian W. Gillies Ross documented significant “sexual liaisons” between Inuit women and Qallunaat whalers and police officers. For example, between 1897 and 1911, over 60% of recorded Inuit births near Cape Fullerton harbour were attributed to Qallunaat fathers.²⁰³

Many of these relationships were no doubt consensual, and some were probably driven by the sexual desires of Inuit women. Historian Dorothy Eber documents the relationship between American whaling Captain George Comer and Nivisinaaq (an Inuk woman and community leader known as “Shoofly” to the whalers). According to Eber, the relationship between the two was “both warm and enduring.”²⁰⁴ Both Inuit oral history and Comer’s journals record that he cared deeply for her well-being and, after the whaling era ended, regularly sent her gifts until her death.

In other cases, however, the dynamics were very different. In some circumstances, Inuit women may have consented to their liaisons with Qallunaat men and may have even initiated them. However, this does not mean that they were not being taken advantage of, and neither does it mean that they did not suffer negative repercussions with regards to their social, emotional, and physical health. For example, the Qikiqtani Truth Commission²⁰⁵ found that relationships between Inuit women and RCMP officers frequently “resulted in both anguish for the women and lingering hurt for children who never met their fathers and were physically different than others in their community.”²⁰⁶



A group of Inuit women are photographed in front of the RCMP detachment in Frobisher Bay, Northwest Territories, ca. 1950. © Government of Canada. Reproduced with the permission of Library and Archives Canada (2019). Source: Library and Archives Canada/ Department of Health fonds/e004665194.



In many instances, the liaisons between Qallunaat men and Inuit women were clearly coercive and abusive. The Qikiqtani Truth Commission found that “some RCMP used their position of authority to coerce Inuit women into sexual acts.”²⁰⁷ Rhoda Akpaliapik Karetak, an Elder from the Arviat area, recounted the historic sexual abuse of Inuit women by the RCMP in a documentary film.

Some RCMP officers used to beat and rape us women. They took us into another room and locked the door. I was beaten and raped but had no one to turn to. We didn’t know they weren’t supposed to act like that. Even if we had been informed of our rights, as Inuit we couldn’t speak up. Years later, looking back, I would get very angry.²⁰⁸

July Papatsie told the Qikiqtani Truth Commission that a similar dynamic existed in the Qikiqtani region.

With that much power they could do anything they wanted to do.... The RCMP could do anything they wanted with any woman that was living up north. Anything. Now that woman who was forced sexually by this officer cannot talk back, has nowhere to go and complain. Her husband knows but cannot do anything, is powerless.²⁰⁹

“SOME RCMP OFFICERS USED TO BEAT AND RAPE US WOMEN. THEY TOOK US INTO ANOTHER ROOM AND LOCKED THE DOOR. I WAS BEATEN AND RAPED BUT HAD NO ONE TO TURN TO. WE DIDN’T KNOW THEY WEREN’T SUPPOSED TO ACT LIKE THAT. EVEN IF WE HAD BEEN INFORMED OF OUR RIGHTS, AS INUIT WE COULDN’T SPEAK UP. YEARS LATER, LOOKING BACK, I WOULD GET VERY ANGRY.”

Rhoda Akpaliapik Karetak

Imposing Christianity among Inuit

Christian missionaries also established a permanent presence in Inuit Nunangat in the early 20th century. By the 1930s, most Inuit had become members of various Christian churches.²¹⁰ Missions disrupted the relationship between Inuit men and women. Inuk scholar Lisa Koperqualuk explained that the transition to Christianity resulted in a decline in Inuit women leaders in Nunavik, because Anglican missionaries did not recognize women’s leadership. As she explains, “In the early days, it was not unheard of to have Inuit women *angakkuit* and leaders, though it was limited. When a new era of Christianity began in the early 20th century however, it shut the door on women.”²¹¹ Therefore, the church helped impose patriarchal gender relations on Inuit society, as it had previously done in many First Nations.

Medical care was often tied into a narrative of conversion. Sarah Stringer, a nurse at Herschel Island in 1897, wrote of how she hoped that the successes of Western medicine could convince Inuit to give up their traditional practices.²¹² In the eyes of missionaries, those Inuit who became Christian were often more willing to abandon traditional medical practices in favour of Western medicine.



Reverend David Marsh described such a process in his account of how his wife, Winifred, convinced a converted Inuit woman, Caroline Gibbons, to give birth using Western practices. Marsh recounted how Winifred's first task was to displace the traditional Padlimiut women healers and deny them access to the pregnant woman, so as to remove their influence. This encounter was framed in language that emphasized the dangers of traditional practices and the authority of Western medical practitioners.²¹³



An Inuk man speaks with two missionaries, 1953. Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/e010674338.

Government Interventions and the Assimilation of the Inuit

Prior to 1940, the Canadian state had maintained a *laissez-faire* (or “hands off”) approach to Inuit. The federal government initially decided not to apply to Inuit the assimilatory practices that were fundamental to the colonization of First Nations, like the *Indian Act*. While government provided “relief” to destitute Inuit groups that had become dependent on the fur trade in the 1920s and 1930s, its policy was that Inuit were best left as hunters and trappers living “on the land.”²¹⁴

This approach began to change during World War Two in the interests of defense,²¹⁵ as the state intervened in Inuit society in increasingly intensive ways. The motivations and goals of these interventions changed over time. However, they share many common features. As Inuit politician Mary Simon wrote:

In the period leading up to the 1960s and 1970s, the relationship between the Europeans and Inuit was a grossly one-sided one. We Inuit suffered a steady loss of control over our ability to make decisions – decisions for ourselves and for the lands and waters that have sustained us for thousands of years. We became a colonized people. We were pushed to the margins of political and economic and social power in Inuit Nunangat.



The low points of this one-sided relationship were experienced in the period when entire family camps were wiped out by measles, when Inuit households were coerced into relocating thousands of miles in order to serve agendas developed elsewhere, and when Inuit children were taken away to residential schools.²¹⁶

Inuit usually felt that they had no choice but to go along with the plans developed by government officials. For example, a report by the Qikiqtani Truth Commission explained that Inuit felt they were unable to say “no” when Qallunaat officials told them to send their children away to boarding schools.

Years after dealing with the trauma of being sent away for school at age 7, Jeannie Mike recalled for the [Qikiqtani Truth Commission] a confrontation with her mother. Looking at her own children at seven years old, Jeannie stated she felt compelled to ask her mother, “how could you let me go?” In response, her mother replied, “When Qallunaat asked for something there [was] no choice of refusal.”²¹⁷

The power imbalance that had developed made it difficult, if not impossible, for most Inuit to refuse instructions from government officials. Inuk author and politician Sheila Watt-Cloutier explains that this power relation caused Inuit to view Qallunaat with a type of fear and apprehension that Inuit call *ilira*.²¹⁸ This power relationship that made it difficult for Inuit to refuse orders from Qallunaat underwrote all government activities in Inuit Nunangat in the 1940s, 1950s, and 1960s.



Working with Qallunat: the RCMP Special Constable Program in the Arctic

For the first 70 years of its operations in the Arctic, the Royal Canadian Mounted Police (RCMP) was wholly dependent on Inuit special constables. A report by the Qikiqtani Truth Commission explained how RCMP officers from the South relied on Inuit who filled these roles.

The capacity of RCMP to communicate with Inuit and to survive in Arctic conditions required help from Inuit, both as employees and simply as neighbours providing support in times of need. All regular police detachments were staffed by at least one Inuk employee, normally serving with his wife and children. Beginning in 1936 and continuing until at least 1970, patrol reports submitted to Ottawa officially referred to Inuit staff as “special constables,” an official rank and employment status within the RCMP. Men sent north with the RCMP often received no special training on northern survival, navigation, or travelling; on patrol, they were entirely reliant on Inuit special constables who hunted food for qimmiit [sled dogs], built iglus, navigated, and translated.¹

The Qikiqtani Truth Commission found that the RCMP also benefited from the unpaid labour of special constables’ families.

The families of the Inuit special constables also offered considerable and invaluable assistance to the RCMP, often without compensation. Women would make and mend the trail clothing, do household chores, and prepare meals. Children were expected to help with the detachment chores.¹¹



Inuk Special Constable Minkyoo of the Twin Glacier Detachment of the RCMP erects the building for the post at Alexandra Fjord, Nunavut, 1953. Source: Library and Archives Canada/National Film Board of Canada fonds/a137757.



However, despite playing an integral role in the RCMP's Arctic operations, special constables were not given the opportunity to advance a career in the police service.

There is little evidence that the RCMP anticipated that special constables might eventually choose to become full RCMP officers. Inuit staff members were not offered any training or duties that might have led to better pay or new positions. The RCMP's use of qimmiit was essentially finished in 1969; as soon as the RCMP no longer needed Inuit to help them travel by dog team, Inuit special constables were largely assigned to the role of interpreter.^{III}

According to Inuk historian Deborah Kigjugalik Webster, neither did the RCMP recognize the role of Inuit special constables. In many books about the Arctic written by former RCMP officers, "We'd find reference to Eskimo guide, or Eskimo interpreter – when they were actually a special constable – and there were no names attached."^{IV}



Two Inuit special RCMP constables, (from left) Simone and Mosesee, attaching the standard to Governor General Massey's dog sled, Iqaluit, Nunavut, 1956. Source: Library and Archives Canada/National Film Board of Canada fonds/e002265633.

I Okiqṭani Truth Commission, *Paliisikkut*, 22.

II Ibid.

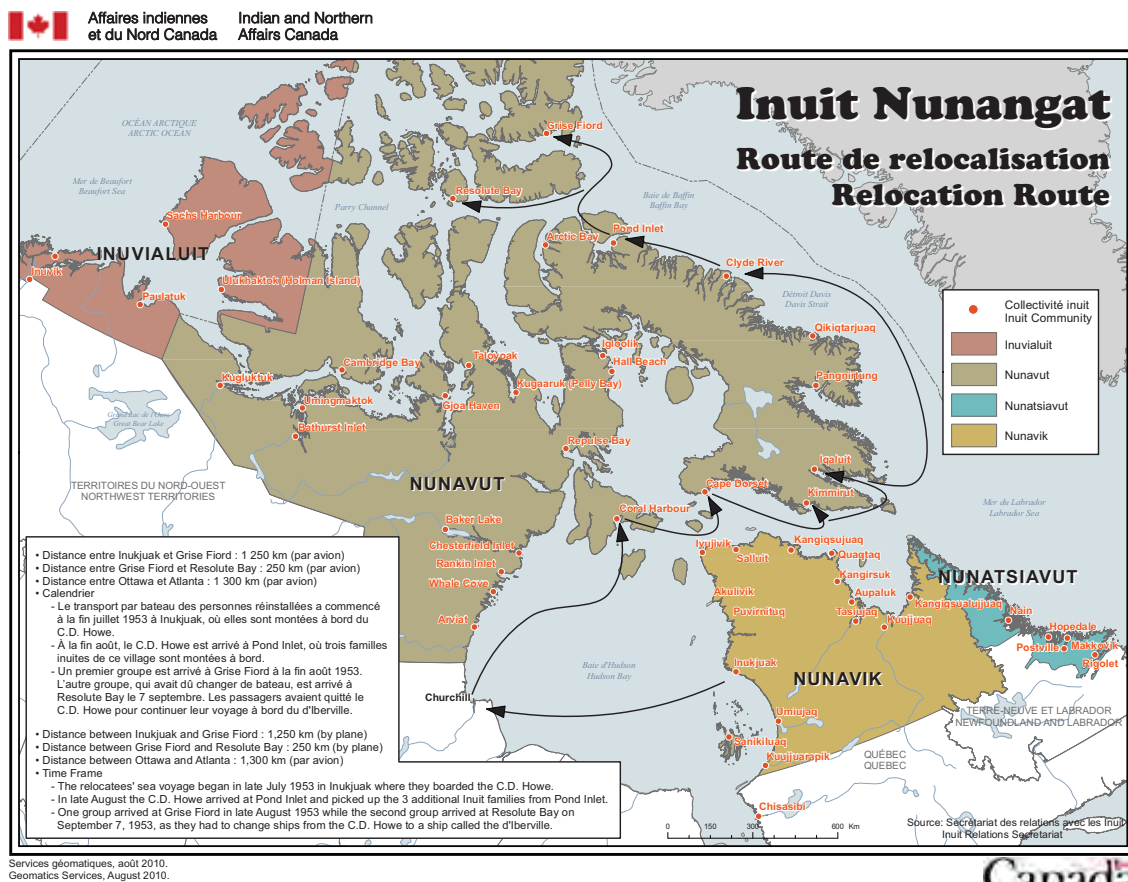
III Ibid., 23.

IV Zeinicker, "Northern researcher digs."



Forced Relocations and the Slaughter of the Sled Dogs

Relocations are one of the most notorious government interventions from this period, with important social and economic implications for communities. Between 1940 and 1970, the government of Canada relocated many groups of Inuit, as well as some First Nations. Some Inuit groups were relocated repeatedly. Early relocations involving Inuit from Ennadai Lake (1949, 1957, 1958) and Nunavik (1953, 1958) were intended to reduce Inuit reliance on government assistance after the collapse of the fur trade. Later relocations were intended to centralize Inuit into permanent settlements to improve the efficiency of delivering social services.²¹⁹ The government of Newfoundland and Labrador also relocated several groups of Labrador Inuit to reduce the cost of service delivery.²²⁰



These relocations are now notorious for the social costs and disruptions they caused. It is now well documented that many of these relocations were poorly planned and caused significant hardship for the Inuit involved – in some cases, famine. Some families were divided, causing significant emotional pain. Further, as we explain below, the movement into centralized, permanent communities was deeply traumatic for some Inuit.²²¹



Other disruptions also have had lasting impact. In addition to relocation, the killing of Inuit sled dogs is perhaps the most controversial of the interventions in this period. In the 1950s and 1960s, large numbers of Inuit sled dogs were shot by RCMP and federal government officials in the Qikiqtani (Baffin Island) and Nunavik regions.²²² As a result, many Inuit lost their dog teams and were forced to move into the permanent communities that had been established by Quallunaat. In Quebec, the Makivik Corporation and the Quebec government commissioned a retired Superior Court judge to head an inquiry into the killing of Inuit sled dogs in Nunavik. His final report in 2009 concluded that Nunavik society had “suffered damaging consequences from the actions, attitudes and mistakes of bureaucrats, agents and representatives of the two governments, who killed at least 1,000 dogs in Nunavik during the 1950s and 1960s.” Sled dogs were not just animals that Inuit had for leisure – they were essential to preserving a certain way of life. Their slaughter dramatically impacted the ability of Inuit to live on the land and to pursue their traditional lifestyles, and contributed to even greater social disruption and dependence on wage labour, driving changes in social relationships and economic well-being for Inuit families, and for Inuit women, girls, and 2SLGBTQIA people.



Inuit children and their dogs, a necessary source of life and livelihood, in Clyde River, Northwest Territories, 1943. Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/a102208.

Residential Schools and Hostels among the Inuit

Beginning in the late 1950s, the government of Canada made formal schooling compulsory for Inuit children. Some Inuit were sent to church-operated residential schools while others attended day schools operated by the federal government. Although Inuit children attending day schools could technically go home to their parents for the evenings and weekends, in many cases, their parents remained on the land. As such, day schools still required most Inuit children to live in boarding homes, or hostels, and therefore involved the painful and traumatic separation of children from their parents.²²³ In *Saqiyuq: Stories from the Lives of Three Inuit Women*, Rhoda Kaujak Katsak recalls how painful it was to be separated from her parents while attending a federal day school.



I remember that first Christmas that my parents came for the holidays, I remember having a really difficult time. I was enjoying myself because my parents were there, being with them and staying with them, but when they were ready to go back to the camp, that was heartbreaking for me. I was crying and crying. I remember my father was sitting upright on a chair and I was kneeling at his knees, crying and crying into his lap. I stayed like that for hours and hours. I was crying and begging him to let me go with him, but he couldn't do anything. Even if he had wanted to he couldn't do anything. At that time I was really mad at him for not taking me home with him. Later I realized that we had to be in school. He had no choice. The Qallunaat authorities in the settlement said so, and there was nothing he could do.²²⁴

Residential and day schools also exposed many students to abuse, and contributed to the erosion of Inuit traditional knowledge.²²⁵ As Inuk residential school survivor Annie B. told the National Inquiry, “My mother, she couldn't talk to me because I was English. We only had to communicate with our fingers. Communicating with my fingers, with my birth mother.”²²⁶



Inuit children in front of the Roman Catholic Mission school in Aklavik, Northwest Territories, 1928. © Government of Canada. Reproduced with the permission of Library and Archives Canada (2019). Source: Library and Archives Canada/ Department of Indian Affairs and Northern Development fonds/e006609805.

The residential schools and hostels were also a vehicle for child apprehension. In the times prior to government intervention, many Inuit had practised custom adoption, in which children were openly adopted by their relatives (which also took place, in varying degrees, within First Nations communities). Among other things, it was a way of coping with changing circumstances, but in the 1960s, the government intervened in those systems, as well. Within Inuit communities, the practice of custom adoption helped take care of Inuit children and ensure that they were raised within culturally safe environments. Custom adoptions among Inuit could take place in times of difficulty such as sickness, food scarcity, or the death of biological parents, and were a way to ensure that camps had functional distributions of population to ensure the continuation of kinship bonds.



Children pictured on the S.S. Distributor, being taken to Mission school at Fort Providence, Northwest Territories, 1928. Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/a101061.

In 1961, the Child Welfare Ordinance imposed a new rule: Inuit must have home assessments prior to adopting, and submit documentation to Ottawa within 30 days of the adoption. This meant that an absence of “qualified” homes could increase the number of Inuit students enrolled in government-run institutions.

While they were not representative of the majority, some officials rejected the ordinance, arguing that custom adoption systems had been practised in Inuit Nunangat for generations, and were working well. Justice John Howard Sissons, who presided

over the first legally registered Inuit custom adoption in 1961, argued that the newly imposed rules of the ordinance trampled on Inuit rights and kinship systems, as well as imposed barriers on Inuit who wished to adopt. The barriers were based on geography and access to postal services, since the documents had to be mailed. Language barriers were a further impediment to following these official new rules. In Sissons’s petition for the adoption of a child named “Kitty” by a



Students attending class at the Arviat Federal hostel in Nunavut, n.d. Source: Library and Archives Canada/Donald Benjamin Marsh fonds/e007914491.



well-respected couple, Qiatsuk and Nuna Noah, he argued that custom adoption “is good and has stood the test of many centuries and these people should not be forced to abandon it, and it should be recognized by the Court.”²²⁷ Sissons was successful, and he continued to register hundreds of custom adoptions in what is now Nunavut and Inuvialuit.



A representative from the Department of Indian Affairs speaks to two Inuit women about pablen, 1948.

Source: Library and Archives Canada/Department of Indian Affairs and Northern Development fonds/a167631.

As in other parts of Canada, though, the number of children in the state system grew. Today, according to the Director of Youth Protection in Nunavik, since 2017, one in three Inuit youth in Nunavik have come into contact with child protection services. Workers handle an average of 45 files, compared to 18 per intervention worker, meaning that resources and capacity may be stretched thin.²²⁸

“I REMEMBER THAT FIRST CHRISTMAS THAT MY PARENTS CAME FOR THE HOLIDAYS, I REMEMBER HAVING A REALLY DIFFICULT TIME. I WAS ENJOYING MYSELF BECAUSE MY PARENTS WERE THERE, BEING WITH THEM AND STAYING WITH THEM, BUT WHEN THEY WERE READY TO GO BACK TO THE CAMP, THAT WAS HEARTBREAKING FOR ME. I WAS CRYING AND CRYING. I REMEMBER MY FATHER WAS SITTING UPRIGHT ON A CHAIR AND I WAS KNEELING AT HIS KNEES, CRYING AND CRYING INTO HIS LAP. I STAYED LIKE THAT FOR HOURS AND HOURS. I WAS CRYING AND BEGGING HIM TO LET ME GO WITH HIM, BUT HE COULDN’T DO ANYTHING. EVEN IF HE HAD WANTED TO HE COULDN’T DO ANYTHING. AT THAT TIME I WAS REALLY MAD AT HIM FOR NOT TAKING ME HOME WITH HIM. LATER I REALIZED THAT WE HAD TO BE IN SCHOOL. HE HAD NO CHOICE. THE QALLUNAAT AUTHORITIES IN THE SETTLEMENT SAID SO, AND THERE WAS NOTHING HE COULD DO.”

Rhoda Akpaliapik Karetak



Medical Relocation among Inuit

The government also began to take greater responsibility for the delivery of health care to Inuit after 1940. Like other interventions, the delivery of government health care was an aspect of colonization. The government response to tuberculosis epidemics is an especially notorious example of how Inuit experienced health care delivery as an externally imposed system that caused extreme social suffering. Beginning in 1950, a patrol vessel called the *C.D. Howe* (which, as discussed earlier, Inuit knew simply as “Matavik,” or “where you strip”) would visit coastal Inuit camps each summer to administer health care. Inuit infected with tuberculosis were sent to sanatoria in the South, where they were separated from family members for extended periods (sometimes years).²²⁹ Inuk filmmaker and former Commissioner of Nunavut Ann Meekitjuk Hanson explained that the patrol vessel quickly became notorious among Inuit.

The *CD Howe* inspired fear. Pure fear. If you had tuberculosis or any other sickness, they would keep you aboard and take you away. You hardly had time to say goodbye to your family, if they happened to be on board with you, and you didn’t know where you were being taken. On top of that, you would have to sail around the Arctic for about three months, until the ship finished doing its rounds of the communities and left for the South. That ship is still talked about by the Elders today.²³⁰

These medical relocations resulted in many Inuit women going missing from their families. For example, in her testimony before the National Inquiry, Micah A. explained that her grandmother had been taken for tuberculosis treatment and never returned: “My mother’s mother, before I was born, she was sent down south because of tuberculosis to a sanatorium. And she passed away down there and she was buried in Winnipeg. We couldn’t find her for a long time and [she] never came back home.”²³¹



Qaqqagtunaaq, an Inuk woman, looks out at the C.D. Howe, anchored in Pangnirtung Fjord, n.d.
Source: Library and Archives Canada/National Film Board of Canada fonds/a166461.



Colatah, age 2, is examined aboard the C.D. Howe by a doctor of the medical survey party on patrol in the Eastern Arctic, n.d. Source: Library and Archives Canada/National Film Board of Canada fonds/e005477090.

The introduction of Western health care is an example of how colonization was gendered, because of the way it intervened in aspects of life that are most intimate for Inuit women, such as childbirth. By removing pregnant Inuit women from their community and sending them to hospitals to give birth, the government disrupted the transmission of Inuit women's knowledge about midwifery.²³² This process also caused considerable emotional pain for Inuit women. In *Saqiyuq*, Elder Apphia Agalakti Awa describes the emotional difficulty involved in being sent away to a hospital to deliver her baby.

That time I was pregnant and I had to be sent out for delivery, it was summertime and I went down to Iqaluit to deliver my baby. I had never delivered in Iqaluit before. All of my other children, I delivered them all on the land, in our sod-house or in igluviak or tents.

I had trouble with my pregnancy that time, and the Qallunaat said I had to be sent out. It was with Ida. She was my last baby I gave birth to and I had to be sent out with her. My daughter Joanna, she was only five years old when I left, and Phillip and Salomie were just babies, little babies. We went by boat to the plane and I remember looking out the plane window. I remember staring out the window at my children, watching Martha carrying Phillip in her amautik and Oopah carrying Salomie in her amautik. I felt so horrible leaving my little ones behind, leaving them all alone. It was August and the ice was all gone. I had tears in my eyes when I was leaving our camp and my children, my little children. I was so sad. It was the beginning of August when I left. I didn't get back to our camp with Ida until January.



When I got to Iqaluit it took me four days in the hospital to deliver. The nurses put me on my back to deliver, so I couldn't deliver. I had so much trouble with that one! Before, whenever I was delivering, I did it sitting up, and usually my husband was with me. It took me four days to deliver my last one. When I delivered on the land, my husband would be with me, holding my hand, helping me. I was used to that, so I couldn't deliver in the hospital. Once you have delivered by yourself or with a friend or your husband, that is the only way that you can deliver. I was in labour in the hospital, but I couldn't deliver, because my husband wasn't with me.²³³

The introduction of government health care also resulted in the sterilization of some Inuit women. A report by the Qikiqtani Truth Commission notes that there is significant controversy over whether Inuit had consented to this practice. As the Qikiqtani Truth Commission reported, Roman Catholic priests called attention to the issue, which received national coverage. Father Lechat estimated that 23% of women in Igloolik had been sterilized, and similar procedures were performed at the hospital in Iqaluit. The QTC reported, "Barry Gunn, a former regional administrator in Iqaluit, claimed women agreed to the sterilization procedures and signed forms to that effect. However, due to language issues, they may not have realized what they were agreeing to."²³⁴

"THE *CD HOWE* INSPIRED FEAR. PURE FEAR. IF YOU HAD TUBERCULOSIS OR ANY OTHER SICKNESS, THEY WOULD KEEP YOU ABOARD AND TAKE YOU AWAY. YOU HARDLY HAD TIME TO SAY GOODBYE TO YOUR FAMILY, IF THEY HAPPENED TO BE ON BOARD WITH YOU, AND YOU DIDN'T KNOW WHERE YOU WERE BEING TAKEN. ON TOP OF THAT, YOU WOULD HAVE TO SAIL AROUND THE ARCTIC FOR ABOUT THREE MONTHS, UNTIL THE SHIP FINISHED DOING ITS ROUNDS OF THE COMMUNITIES AND LEFT FOR THE SOUTH. THAT SHIP IS STILL TALKED ABOUT BY THE ELDERS TODAY."

Ann Meekitjuk Hanson

Centralization and Social Trauma

Because of these interventions, by the early 1970s, most Inuit had moved into the permanent settlements established by Qallunaat, some by choice and some by coercion.²³⁵ In any case, the move from Inuit camps to Qallunaat-controlled towns brought massive changes to Inuit economic, political, and social life. It caused a drastic reduction in Inuit autonomy and self-determination, because government power was more firmly established in the settlements than in the camps.²³⁶

The move also caused a decline in Inuit systems of leadership and authority, as traditional methods of social control lost their effectiveness, and political and religious dynamics changed.²³⁷ Hanson explained that the move from camps is a root cause of many of the social problems Inuit communities are confronting today.



When Inuit lived on the land, we lived in small groups consisting of about three to five families. That size of a group is easy to look after. Social order is easier to maintain, so there are fewer social problems. But when we moved into bigger communities and began living with so many other people, it caused a lot of confusion. I saw once-powerful hunters and leaders becoming poor. They were now in a wage-economy, where you work for an employer and get paid for it; hunting and gathering on the land were no longer valued as full-time work.

When we lived on the land, we always had one leader who pretty much looked after everybody. When we moved in to Frobisher Bay and other communities, we no longer knew who our leaders were. There were Hudson's Bay Company managers, RCMP officers, the clergy, and government agents. We weren't used to having so many leaders in one place. On top of that, they were all Qallunaat. The absence of Inuit leadership caused a lot of social problems. Suddenly, there was more gossiping, cheating, stealing, adultery, alcohol, and that sort of thing.²³⁸

The government's interventions into Inuit society also caused a great deal of emotional pain for many Inuit. As Sheila Watt-Cloutier explained, these interventions were extremely traumatic, and impacted the way many men treated the women around them when "the shame, the guilt, the loss of integrity and pride was turned inward and festered as anger and resentment."²³⁹

This trauma was then transmitted from one generation to the next. As one generation struggled to cope with their traumatic experiences, younger generations were exposed to traumatic experiences of their own (through "adverse childhood experiences").²⁴⁰ A report by Pauktuutit Inuit Women of Canada explained how this intergenerational trauma is passed on through cycles of violence.

The current high levels of violence and abuse in the Inuit context can be traced back to two main 'roots'. 1) loss of culture and tradition; and 2) loss of control over individual and collective destiny. This history leads to psychological trauma, the breakdown of families, alcohol and drug addictions and increased feelings of powerlessness. Fear, mistrust, abuse and denial result, creating a cycle of abuse in which individuals can be both victim and abuser – a cycle that repeats itself with each new generation.²⁴¹

The trauma that was caused by government interventions in the 1940s, 1950s, and 1960s is thus the root cause of a great deal of the violence Inuit women are exposed to today. As we explain in Section 2 of this report, the majority of murdered Inuit women were killed by their spouses. As such, domestic violence and the unresolved trauma that lies behind it are fundamental causes of the murder of Inuit women.²⁴² As family member Sarah N. explained:

If a woman has been injured, she's not going to lead the life she wants to. As long as she doesn't seek healing methods or ways to get better, her life will not have direction. This begins from the start. This begins as far back as the residential school days. There's that influence. And, those behaviours are repeated into the next generation. Even if they don't



want to do that, it's what they've learned. The pain and the damage to the common sense is lost. And, that behaviour continues. And, this is the result. These are the results of pain being experienced.²⁴³

In 1996, the Royal Commission on Aboriginal Peoples identified “healing from trauma” as a priority to address these social problems.²⁴⁴ Elder Rhoda Akpaliapik Karetak points out:

Inuit have not had much time to reflect on what happened to them over the last 100 years and to examine the hurt that Inuit experienced when their lifestyle suddenly changed. Their self-esteem and mental health were really affected, and Inuit have not yet tried to reflect on this or to really understand it. If Inuit Elders and parents do not have an opportunity to reveal their unsolved issues to someone who is able to help, it is hard to find answers for these unresolved issues stemming from colonization. In the past, Inuit could go to their Elders or shaman to help them deal with issues, but since the colonization of Inuit, the way Inuit deal with unresolved issues is not being practiced anymore.²⁴⁵

As such, in addition to being a root cause of violence against Inuit women, colonization has also impeded the ability of Inuit to address the problem.



Eelee Higgins lights the qulliq in Ottawa, Ontario, as Commissioner Robinson assists.



Conclusion: A Crisis Centuries in the Making

This chapter has examined a brief history of colonization in Canada through a gendered and intersectional lens, arguing that the policies, practices, and stereotypes confronting Indigenous women, girls, and 2SLGBTQQIA people today were put into place long ago. Understanding colonization as a structure of encounter, rather than as a series of isolated events, we have demonstrated how Indigenous knowledge systems and ways of understanding land, governance, and identity were targeted by colonizers who wanted to possess the land and to rid it of its people. In addition, we have focused our analysis on key encounters – policies and rules, stereotypes and misconceptions – that were applied differently to First Nations, Métis, and Inuit women, girls, and 2SLGBTQQIA people, and that have impacted them in harmful ways. At the same time, this chapter is a testament to the strength and resilience of these women, girls, and 2SLGBTQQIA people whose traditions and values continue to manifest at the individual, family, and community levels.

A key point in all of this history is that it isn't just "history." Although they might look different now, these policies and the structures and ideas that feed them are still around today and are still forms of violence. We can't brush off things like failures in policing, in health services, or in child welfare as "the way things were done back then." The reality is that many of the people who testified before the National Inquiry have lived through, and continue to heal from, these policies. Many more people are in current conflict with them. Many of the policies and ideas in place today, as well as the structures they are associated with, are modern iterations of the same historical atrocities.

Our analysis of these experiences brings us to three important conclusions.

First, the process of colonization was gendered, because Indigenous women and 2SLGBTQQIA people experienced these encounters differently from Indigenous men. The process of colonization features multiple moments of encounter and transformation where fundamental rights to culture, health, security, and justice are at stake, particularly for Indigenous women, girls, and 2SLGBTQQIA people.

European colonizers brought their own ideas about the roles of women and of men to Indigenous lands and territories, and applied them to diverse communities with their own traditions, roles, and values about women, girls, and gender-diverse people. European land tenure systems, as well as legal and social orders, relied on patriarchy – the dominance of men. Early Europeans simply could not see how Indigenous women's roles supported entire communities, as well as their own families, and helped to ensure continuity of culture, knowledge, language, and values from one generation to the next. When they did come to understand some of these roles, they consistently undermined the role of women in economic production and in governance in an effort to target communities for assimilation and, ultimately, extermination.



Second, the targeting of Indigenous women, girls, and 2SLGBTQQIA people is not new, but has been a common thread throughout the colonization process. Residential schools and various types of relocations caused mothers, daughters, and aunties to go missing from their families, sometimes permanently, and created conditions that feed, rather than prevent, violence. Moreover, violence against Indigenous women, including sexual abuse in residential schools and by various colonial officials, is a common thread throughout the history of colonization, and contributes directly to Indigenous Peoples' distrust of many institutions today. This distrust, in turn, makes it less likely for Indigenous women, girls, or 2SLGBTQQIA people to place faith in these systems in their current state.

Third, the process of colonization created the conditions for the crisis of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people that we are confronting today, economically, socially, and politically. Indigenous Peoples were economically marginalized by the dispossession of their land and resources and the related destruction of their economies. Indigenous women experienced political and social marginalization through the imposition of patriarchy by Christian churches and the government of Canada. Colonization also gave rise to racist and ethnocentric ideas that continue to dehumanize Indigenous women and make them targets of violence. The cycles of intergenerational trauma, set in motion by colonization, are a root cause of domestic violence in Indigenous communities today.

The crisis of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people is centuries in the making. This is what families told us; it is what survivors told us. In considering these histories, and as researchers Sarah Hunt, a member of the Kwakwaka'wakw Nation, and Cindy Holmes assert, we should not be surprised that "the rhythm of today ... is made possible through the historic and ongoing processes and ideologies of colonialism."²⁴⁶

Many witnesses before the National Inquiry discussed the need to learn more about the history of colonization, even as targets of its policies.

Mike Metatawabin, Chairman for the Board of Directors of the Nishnawbe-Aski Police Services, explained to the National Inquiry:

What we have to remember is the assimilation policies, the residential school policies, and their impacts have left a lasting legacy which is violence, anger, unresolved issues. And, I think for the most part, I, myself, as a survivor of residential school, did not understand what happened, or what happened to us, or what is happening even within our own families. Trying to understand the anger of why people are so angry with each other. It took me until I was – I reached the age of 30 years before I began to understand what had happened. And, for the most part, most of our people have never had that chance or do not have that beginning yet. We are still a long ways to go. We have a long ways to go before we understand what really happened to us with all these policies.²⁴⁷



Family member and survivor Shaun L. explained why this history matters today:

After 500 years, these [colonial] ideas have not changed much. The First Nations women and girls are thought of as disposable. They are not. They are the life-givers, the storytellers, the history keepers, the prophets, and the matriarchs.... The fallout of colonialism is like a fallout of a nuclear war, a winter without light.²⁴⁸

In this way, we position the following chapters, which focus on the more contemporary encounters with culture, health, safety, and justice – or the lack thereof – as extensions of these historical moments, and as expressions, in part, of a deep historic and contemporary web of limitations, barriers, and challenges to basic Indigenous human rights – both collective and individual – that continue to target women, girls, and 2SLGBTQQIA people for harm.



Notes

- 1 Chief Judy Wilson (Secwépemc Nation), Part 1, Public Volume 86, Vancouver, BC, p. 4.
- 2 Hunt, “More than a Poster Campaign.”
- 3 Alfred, “Colonialism and State Dependency,” 45.
- 4 For more on this, see Chartrand, “Métis Treaties in Canada.” See also Government of Ontario, “We Speak for the Land.”
- 5 See McDonald-Dupuis, “The little-known history.”
- 6 Wolfe, “Settler Colonialism,” 387.
- 7 Ibid., 388.
- 8 Translation ours. Françoise R. (Pikogan), Part 1, Public Volume 61, Montreal, QC, p. 48.
- 9 Wolfe, “Settler Colonialism,” 388.
- 10 Robert C. (Musgamagw Dzawada'enuxw First Nation), Part 1, Public Volume 114, Vancouver, BC, p. 53.
- 11 Fossett, *In Order to Live Untroubled*.
- 12 See Harrington, “Canada Was Never Terra Nullius” and *Tsilhqot'in Nation v. British Columbia* 2014 SCC 44 at para. 69.
- 13 Wolfe, “Settler Colonialism,” 391.
- 14 Pope Alexander VI, “Inter caetera.” For more on this, see Assembly of First Nations, *Dismantling the Doctrine of Discovery*; John, “Study on the impacts of the Doctrine of Discovery”; and World Council of Churches, “Statement on the Doctrine of Discovery.”
- 15 Heidenreich and Ritch, *Samuel de Champlain*, 281.
- 16 Wolfe, “Settler Colonialism,” 391.
- 17 Thwaites, *The Jesuit Relations*, vol. 5, 237.
- 18 Ibid., vol. 8, 173.
- 19 Ibid., 174-175.
- 20 Ibid., vol. 29, 152-153.
- 21 Sprenger and Kramer, “Malleus Maleficarum.”
- 22 Davenport-Hines, *Sex, Death, and Punishment*.
- 23 Ethienne and Leacock, *Women and Colonization*, 30.
- 24 Simpson, “Anger, Resentment and Love.”
- 25 Dua and Robertson, *Scratching the Surface*, 63.
- 26 Pickles and Rutherford, *Contact Zones*, 233.
- 27 Maracle, “A Journey in Gender,” 39.
- 28 Ibid.
- 29 For more on the contested nature and misunderstandings regarding the use of the term “berdache,” see Cannon, “The Regulation of First Nations Sexuality.”
- 30 As cited in Martin Cannon, “The Regulation of First Nations Sexuality,” 3.
- 31 Thwaites, *The Jesuit Relations*, vol. 59, 127.
- 32 Prime Minister’s Office, “Remarks by Prime Minister Justin Trudeau to apologize to LGBTQ2 Canadians.”
- 33 Rieger, “Activist says recognition.”
- 34 Alfred, “Colonialism and State Dependency,” 44.
- 35 White, *The Middle Ground*.
- 36 Good, “A Tradition of Violence,” 94.
- 37 For a historical treatment of changing patterns of marriage in colonial Canada, see Van Kirk, “From ‘Marrying-In’.”
- 38 Carter, *The Importance of Being Monogamous*, 142.
- 39 Ibid.
- 40 Ibid., 79–80.
- 41 Harmon, *A Journal of Voyages*.
- 42 *The British North America Act, 1867*, SS 1867, c 3.
- 43 Feir, Gillezeau, and Jones, “The Slaughter of the Bison,” 1.
- 44 Ibid., 11.
- 45 Paula P. (Cree/Lakota/Scottish), Part 1, Statement Volume 374, Vancouver, BC, pp. 41-42.
- 46 Bruce, “The Last Best West.”
- 47 Surtees, “The Robinson Treaties (1850).”
- 48 CBC, “Northern Ontario First Nations win battle.”
- 49 Cheryl M. (Mi’kmaq), Part 1, Public Volume 18, Membertou, NS, p. 28.
- 50 Robinson, “Gradual Civilization Act.”
- 51 *An Act respecting Indians and Indian Lands*. C.S.L.C. 1860, c. 14.
- 52 Robinson, “Gradual Civilization Act.”



- 53 *An Act to amend and consolidate the laws respecting Indians*, S.C. 1876, c. 18.
- 54 Elder Miigam'agan (Mi'kmaq), Part 1, Public Volume 44(a), Moncton, NB, pp. 65-66, 67.
- 55 *Indian Act*, R.S., c. I-6, s. 18.
- 56 Cannon, "The Regulation of First Nations Sexuality," 11–12.
- 57 For a useful summary of the emergence of the "new police" model, see Marquis, *The Vigilant Eye*, 7-15.
- 58 For a more detailed history of the work of various Indian agents, see, for example, Brownlie, *A Fatherly Eye*; Satzewich, "Indian Agents"; Dyck, *What Is the Indian "Problem"*; and Steckley, *Indian Agents*. For more on the general policy and operations, see Irwin, "Indian Agents in Canada." On the head of the Indian Department for much of its time, and architect of many of its most repressive policies, see Titley, *A Narrow Vision*.
- 59 Marquis, *The Vigilant Eye*, xix.
- 60 Although the North-Western Territory and Rupert's Land are two separate territories, they are often confused. Originally, and in the transfer of 1869, Rupert's Land included what is today northern Quebec and Ontario, the entire province of Manitoba, most of Saskatchewan, and part of southern Alberta. The North-Western Territory was made up of areas to the north and west of Rupert's Land. But, in 1870, when Canada purchased these territories from the Hudson's Bay Company, they were renamed the Northwest Territories and combined.
- 61 Carter, *Capturing Women*, 21.
- 62 *Ibid.*, 53.
- 63 *Ibid.*
- 64 "Traffic in Indian Girls" was the title of a news article that ran in the *Morning Press* (Toronto) on January 30, 1886, in which the writer alleged that Indian agents and contracts near Fort McLeod were smuggling whiskey and human traffic into the territories and sending the women to "frontier towns for immoral purposes." A copy of the article is available at <https://cdnc.ucr.edu/?a=d&d=MP18860130.2.5&e=-----en--20--1--txt-txIN-----1>.
- 65 Dominion of Canada, *Annual Report of the Department of Indian Affairs*, 1884, lix.
- 66 *The Criminal Code of the Dominion of Canada, as Amended in 1893*, s. 191 (a), (b), and (c).
- 67 Backhouse, "Nineteenth-Century Canadian Prostitution Law"; Bourgeois, "Race, Space, and Prostitution."
- 68 For more on this, see Shaver, "Prostitution"; Backhouse, "Nineteenth-Century Canadian Prostitution Law."
- 69 Rande C. (Kwakwaka'wakw), Part 1, Public Volume 94, Vancouver, BC, p. 37.
- 70 *Saskatchewan Herald*, 15 March 15, 1886, cited in Carter, *Capturing Women*, 188.
- 71 Daschuk, *Clearing the Plains*, 122, 134.
- 72 In CHC, Sessional Papers 14 33, no 15 (1909): 110, cited in Carter, *Capturing Women*, 162.
- 73 Carter, *Capturing Women*.
- 74 *Ibid.*, 172–174.
- 75 Quoted in Morgan, "The North-West Mounted Police," 56.
- 76 *Ibid.*
- 77 For a more detailed explanation, see Anderson, *A Recognition of Being*, 82–85.
- 78 Carter, *Capturing Women*, 165.
- 79 *Ibid.*, 183.
- 80 *Macleod Gazette*, March 16, 1886, cited in Carter, *Capturing Women*, 183.
- 81 *Ibid.*
- 82 Carter, *Capturing Women*, 167–68.
- 83 *Ibid.*, 169.
- 84 *Ibid.*, 181.
- 85 *Ibid.*
- 86 Macleod, *The North-West Mounted Police*, 145. See also National Archives, RG 18, vol. 24, file 667-1888, cited in Carter, *Capturing Women*, 189.
- 87 Smith, "Bloody Murder," 13, cited in Carter, *Capturing Women*, 189.
- 88 Gray, *Talk to My Lawyer!*, 7.
- 89 Adams, *Prison of Grass*, 78.
- 90 Interview with Bernie Williams and Audrey Siegl, September 30, 2018, by Kelsey Hutton, pp. 44-45.



- 91 See Miller, *Shingwauk's Vision*.
- 92 See also LeBeuf, *The Role of the Royal Canadian Mounted Police*.
- 93 APTN Investigates, www.aptn.ca/news/wp-content/uploads/sites/4/2014/10/SchoolLetter1.jpg.
- 94 Truth and Reconciliation Commission of Canada, Volume 1, 28.
- 95 Ibid., 681-685.
- 96 Ibid., 682.
- 97 McCallum, *Indigenous Women*, 32–33.
- 98 Ibid.
- 99 Ibid., 31.
- 100 Albert McLeod, (Nisichawayasihk Cree Nation/Métis community of Norway House), Part 3, Public Volume 8, Toronto, ON, pp. 60-61. For more information about the impact of residential schools on Two-Spirit people, see the following video: Daily Xtra, “Residential schools’ impact on two-spirit people.” November 5, 2014. <https://youtu.be/SzT2ed8xRIU>.
- 101 Truth and Reconciliation Commission of Canada, *The Survivors Speak*, 98.
- 102 Ibid., 95.
- 103 Ibid., 98.
- 104 Elaine D. (Métis), Part 1, Statement Volume 13, Smithers, BC, p. 12.
- 105 Shaun L. (Kaska Dena, Crow Clan), Part 1, Public Volume 3, Whitehorse, YT, p. 7.
- 106 Rande C. (Kwakwaka’wakw), Part 1, Public Volume 94, Vancouver, BC, pp. 28-29.
- 107 As quoted in Henderson, *Settler Feminism*, 179.
- 108 For a more detailed discussion, see Crews, “Biological Theory.”
- 109 Clément, “Eugenics.”
- 110 Ibid.
- 111 Eugenics Archive, “Feeble-mindedness.”
- 112 For more on the history of forced sterilization, see Stote, “The Coercive Sterilization.”
- 113 Kirkup, “Indigenous women coerced.”
- 114 *M.R.L.P. and S.A.T. v. The Attorney General of Canada, The Government of Saskatchewan, Saskatchewan Health Authority et. al.* (16 Feb. 2018), Q.B. No. 1485 of 2017 (Statement of Claim), accessed at <https://www.mauricelaw.com/upload/Class-Action-Docs/Notice-to-Defendants-Q.B.-No-1485-of-2017.pdf>.
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- 116 See Norris and Clatworthy, “Aboriginal Migration,” 3-5.
- 117 Ibid.
- 118 Price, Travato and Abada, “Urban Migration.”
- 119 Peters and Andersen, *Indigenous in the City*, 8-9.
- 120 McCallum, *Indigenous Women, Work, and History*, 7.
- 121 Bohaker and Iacovetta, “Making Aboriginal People ‘Immigrants Too’,” 443.
- 122 For more detail, see McCallum, *Indigenous Women, Work, and History*, 66-119.
- 123 Bohaker and Iacovetta, “Making Aboriginal People ‘Immigrants Too’,” 443.
- 124 For more detail, see McCallum, *Indigenous Women, Work, and History*, 66-119.
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- 129 Razack, “Gendered Racial Violence,” 117.
- 130 Tara Williamson, “Just what was the Sixties Scoop?”
- 131 Johnston, *Native Children and the Child Welfare System*; Truth and Reconciliation Commission of Canada, *Interim Report*, 14–15.



- 132 Senate Standing Committee on Social Affairs, Science and Technology, “The Shame Is Ours.”
- 133 Clancy, “Survivors recall the Sixties Scoop.”
- 134 Stevenson, “Selling the Sixties Scoop.”
- 135 Ibid.
- 136 Bonnie F. (First Nations), Part 1, Public Volume 81, Vancouver, BC, pp. 15-16.
- 137 Cynthia C. (Ermineskin Cree Nation/Maskwacis), Part 1, Public Volume 81, Vancouver, BC, p. 5.
- 138 Shaun L. (Kaska Dena, Crow Clan), Part 1, Public Volume 3, Whitehorse, YT, pp. 8-9.
- 139 Desrosiers, “Le système de santé au Québec,” 16.
- 140 D’Amours, “Survol historique de la protection,” 411.
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- 143 Macdougall and St. Onge, “Rooted in Mobility.”
- 144 Ross, “Canadian Hero?”
- 145 For a more detailed treatment of the history of Métis “country wives,” see Van Kirk, *Many Tender Ties*.
- 146 Payment, “‘La Vie en Rose’?” 20–22.
- 147 Ibid., 21.
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- 149 Payment, “‘La Vie en Rose’?” 20.
- 150 See Carter, *The Importance of Being Monogamous*.
- 151 Ibid., 152.
- 152 Sealey and Lussier, *The Métis*, 92.
- 153 Thistle, “The Puzzle of the Morrissette-Arcand Clan.”
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- 155 Payment, “‘La Vie en Rose’?”, 26.
- 156 Thistle, “The Puzzle of the Morrissette-Arcand Clan.”
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- 158 Payment, “‘La Vie en Rose’?” 26.
- 159 Augustus, “The Scrip Solution,” iii.
- 160 Ens and Sawchuk, *From New Peoples*, 159. See also Robinson, “Métis Scrip in Canada.”
- 161 Sealey and Lussier, *The Métis*, 135.
- 162 Ibid., 96–97.
- 163 St-Onge, “The Dissolution of a Métis Community.”
- 164 See also Milne, “The Historiography of Métis Land Dispersal.”
- 165 Ens and Sawchuk, *From New Peoples*, 239.
- 166 Niemi-Bohun, “Colonial Categories,” 96.
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- 184 Burley, “Roostertown.”
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- 190 Manitoba Metis Federation, *They Are Taking Our Children From Us*.
- 191 Barkwell, Longclaws, and Chartrand, “Status of Métis Children.”
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- 200 Ray, *The Canadian Fur Trade*; Stevensen, *Inuit, Whalers, and Cultural Persistence*; Nunavut Wildlife Management Board, *Final Report of the Inuit Bowhead Knowledge Study*.
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- 210 Trott, “Mission and Opposition”; Oosten, Laugrand, and Remie, “Perceptions of Decline.”
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- 212 Rutherford, ““She Was a Ragged Little Thing,”” 232.
- 213 Ibid., 233.
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- 216 Simon, “Canadian Inuit,” 880.
- 217 Qikiqtani Truth Commission, *Illiniarniq: Schooling in Qikiqtaaluk*, 37.
- 218 Watt-Cloutier, *The Right to Be Cold*, 72.
- 219 Tester and Kulchyski, *Tamarniit (Mistakes)*; Oosten, Laugrand, and Serkoak, “The Saddest Time of My Life”; Qikiqtani Truth Commission, *Nuutauniq: Moves in Inuit Life*.
- 220 *Report of the Royal Commission on Aboriginal Peoples, Volume 1, Part 2, Relocation of Aboriginal Communities*.
- 221 *Report of the Royal Commission on Aboriginal Peoples, Volume 1, Part 2, Relocation of Aboriginal Communities*; Qikiqtani Truth Commission, *Nuutauniq: Moves in Inuit Life*.
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- 224 Wachowich et al, *Saqiyuq*, 166.
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- 226 Annie B. (Inuit, Pangnirtung), Part 1, Public Volume 16, Winnipeg, MB, p. 9.
- 227 Adoptive Families Association of BC, “Perspectives.” See also Bucknall, “John Howard Sissons.”
- 228 Fennario, “One in three Inuit youth.”
- 229 Qikiqtani Truth Commission, *Aaniajurliriniq: Health Care in Qikiqtaaluk*; Lux, *Separate Beds*.
- 230 Hanson, “Women Are Natural Leaders,” 61.
- 231 Micah A. (Inuit, Talurjuaq), Part 1, Public Volume 46(b), Rankin Inlet, NU, p. 2.
- 232 Qikiqtani Truth Commission, *Aaniajurliriniq: Health Care in Qikiqtaaluk*.
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- 235 Redfern, “Supporting Civil Development,” 105.
- 236 Brody, *The People’s Land*.
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- 238 Hanson, “Women Are Natural Leaders,” 67.
- 239 Watt-Cloutier, *The Right To Be Cold*, 73-74.
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- 244 *Royal Commission on Aboriginal Peoples, Report of the Royal Commission, on Aboriginal Peoples, Volume 4, Perspectives and Realities*.
- 245 Karetak, “Healing Unresolved Issues,” 200-201.
- 246 Hunt and Holmes, “Everyday Decolonization,” 54.
- 247 Mike Metatawabin (Fort Albany First Nation), Mixed Parts 2 & 3, Public Volume 5, Quebec City, QC, p. 154.
- 248 Shaun L. (Kaska Dena, Crow Clan), Part 1, Public Volume 3, Whitehorse, YT, p. 5.



Encountering Oppression

This section of the *Final Report* builds on the framework established in Section 1, through an exploration of the many kinds of violence that witnesses addressed in their testimonies in Parts 1, 2, and 3 of the Truth-Gathering Process. Here, we centre the voices of families, friends, and supporters of those whose lives have been taken by violence and those who have survived violence themselves. We centre their voices in order to honour the resilience, agency, and expertise of Indigenous women, girls, and 2SLGBTQQIA people in issues that impact them the most. In addition, we centre the voices of those survivors and family members who are learning to heal from their losses as a way to honour those who no longer walk among us.

As Section 1 outlined, centring these voices as being those of authority is part of our intersectional approach to understanding how lived experiences best portray the complexities of the issues faced. The examples cited in this section of the *Final Report* are not intended to paint all agencies, departments, and institutions with the same brush, but these experiences, in keeping with our approach to understanding encounters, help us to explore moments of harm and trauma as those that also engage the best potential for solutions, and for new paths forward.



In our *Interim Report*, we defined “violence” according to the definition of the World Health Organization (WHO) as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.”¹ This definition includes violence between people, self-directed violence (suicide or self-harm), and armed conflict. The National Inquiry also expands this definition of violence to include colonial, cultural, and institutionalized violence. This is consistent with our Terms of Reference and our companion Orders-in-Council and Administrative Decree.

As the Government of Newfoundland and Labrador’s Violence Prevention Initiative asserts, “Violence is rooted in inequality, and may occur once or repeatedly over a lifetime.” It may also occur, as is the case with many of our witnesses, over generations. Violence and abuse “are used to establish and maintain power and control over another person, and often reflect an imbalance of power between the victim and the abuser.”²

The Violence Prevention Initiative identifies nine different types of abuse:

Physical Violence	Sexual Violence	Emotional Violence
Physical violence occurs when someone uses a part of their body or an object to control a person’s actions.	Sexual violence occurs when a person is forced to unwillingly take part in sexual activity.	Emotional violence occurs when someone says or does something to make a person feel stupid or worthless.
Psychological Violence	Spiritual Violence	Cultural Violence
Psychological violence occurs when someone uses threats and causes fear in an individual to gain control.	Spiritual (or religious) violence occurs when someone uses an individual’s spiritual beliefs to manipulate, dominate or control that person.	Cultural violence occurs when an individual is harmed as a result of practices that are part of their culture, religion or tradition.
Verbal Abuse	Financial Abuse	Neglect
Verbal abuse occurs when someone uses language, whether spoken or written, to cause harm to an individual.	Financial abuse occurs when someone controls an individual’s financial resources without the person’s consent or misuses those resources.	Neglect occurs when someone has the responsibility to provide care or assistance for an individual but does not.

As such, this section takes on this definition of violence in an expansive way, understanding that violence is structural, systemic, and institutional, and is an ingrained part of how Indigenous people encounter everyday life. We view violence in all of its forms not only as an act, but as a pattern and a structure, which must be dismantled to be properly understood.



This report builds on the work of scholars such as the late Patricia Monture Angus, who researcher Cindy Holmes cites as calling for, in 1995, a new expansive definition of violence that “reflected the complexities of colonial power relations and the intersecting and interrelated forms of violence experienced by Indigenous peoples.” The National Inquiry acknowledges state violence – colonialism, patriarchy, misogyny, and racism – as inseparable from the everyday violence that Indigenous women, girls, and 2SLGBTQQIA people face. We use this kind of definition to explain how there isn’t just a single form of violence against Indigenous women, or a single reason Indigenous women and girls go missing or are murdered. Reducing the violence that Indigenous women face to interpersonal violence only is far too narrow an understanding to capture what feeds it. Relying simply on the idea of “male violence against Aboriginal women,” as Cindy Holmes explains, recolonizes and erases many of the larger currents that work to sustain the totality of violence that Indigenous women, girls, and 2SLGBTQQIA people experience.³

We maintain that colonial violence is complicit in all of these types of abuse. Section 2 of our *Final Report* is an examination of all of these forms of violence, as lived by those who experience them, in moments of encounter that set them on the path toward harm or toward healing. A decolonizing lens helps us understand how all of these forms of violence connect for Indigenous Peoples, and understand how the relationships that undergird them can be transformed.

Four Pathways that Maintain Colonial Violence

In each of the next four chapters, we have chosen to focus on a different theme that presented itself in the testimony. Rather than organizing each chapter according to an event, or to a moment in time, we chose themes that could illustrate how the structures that serve to maintain colonial violence do so in key areas relevant to the everyday experiences of Indigenous women, girls, and 2SLGBTQQIA people. In choosing thematic areas that reflect these experiences in areas of culture, health, security, and justice, we also deliberately connect to international human rights instruments that Canada has pledged its support to as an important lens through which to view these obligations and to ensure accountability. Indigenous women’s rights to culture, health, security, and justice are not “extras,” but are basic human rights that are necessary and due.

In addition, each of these four chapters highlights how the pathways that maintain colonial violence, in each thematic area, are the same. While the nature of experiences varied from group to group, and we don’t use this lens to pan-Indigenize these experiences, highlighting their commonalities can help reveal the underlying causes, as our mandate directs us to do.

In their descriptions of encounters that led loved ones to harm, families and survivors who spoke at the National Inquiry consistently referred to four general ways that their experiences were rooted in colonialism – both historic and modern forms. These four pathways continue to enforce the historic and contemporary manifestations of colonialism in ways that lead to additional violence over and across generations.



As Expert Witness and Executive Director of the Arctic Children and Youth Foundation Sarah Clark testified:

Historical trauma is cumulative and intergenerational in its impacts, meaning its cumulative effects are passed on. These various sources of trauma that originated from outside Indigenous communities that I just discussed generated a wide range of dysfunctional and hurtful behaviours, such as physical and sexual abuse, which is recycled generation after generation within the community. As a result, we see negative behaviour, such as alcohol abuse, sexual, physical and emotional abuse, child neglect and violent crime. The link between the effects of past events like these and adverse outcomes in the present have been well documented.⁴

Our four pathways are explained in Chapter 1, but we reiterate them now for ease of reference:

- **Historical, multigenerational, and intergenerational trauma** examines the context of contemporary struggles with collective trauma or harm stemming from historic and current policies, arguing that current systems often work to perpetuate this trauma, instead of healing this generation. We maintain that intergenerational and multigenerational trauma is directly connected to interpersonal violence, as well as to self-harm, that ultimately places Indigenous women, girls, and 2SLGBTQQIA people in danger.
- **Social and economic marginalization** ensures that the structures that are carried forward from the past live on in the contemporary systems that cause marginalization. In particular, the ongoing dispossession of Indigenous Peoples through policies that worsen or maintain the poor conditions that people live in demonstrates how, in many rights areas, social and economic marginalization, as also linked to political marginalization, is a direct contributor to violence. In addition, the impact of this marginalization on Indigenous women, girls, and 2SLGBTQQIA people is especially significant in terms of the violence that stems from it.
- **Maintaining the status quo and institutional lack of will** are ways in which governments, institutions, and other parties have obfuscated their responsibilities, legal and other, toward Indigenous women, girls, and 2SLGBTQQIA people. Whether through lack of will, inadequate funding, or a desire to maintain the status quo that marginalizes Indigenous women, these policies – or the lack thereof – directly contribute to targeting Indigenous women, girls, and 2SLGBTQQIA people.
- **Ignoring the agency and expertise of Indigenous women, girls, and 2SLGBTQQIA people** is a consistent theme, both historically and in contemporary ways, particularly given the internalization of patriarchy and misogyny that, as many women have cited, keeps them outside of formal political structures. To challenge the current status quo, we maintain that agencies, institutions, and governments must be willing to work with



those who hold the most expertise – those impacted by violence – and to recognize their agency and resilience, and the solutions they bring to the table.⁵

At the conclusion of each chapter, we link many of the problems we heard with international human rights instruments as a way of highlighting the commitments Canada has made. As Expert Witness and Indigenous human rights activist Ellen Gabriel pointed out in her testimony:

When we talk about human rights, and this is the thing that I want to stress is, this needs to be based on a human rights end. And, human rights, as the UN says, are universal and inalienable and indivisible, interdependent and interrelated, it promotes equality and non-discrimination, participation and inclusion, accountability in the rule of law, none of which have been offered up to Indigenous people. We are constantly being told that we do not know what is best for us, that government policies are the best ones. We are constantly told that third-party interests to develop our lands and territories, to extract resources, are more important than our rights, that money will soothe the pain of losing our land, which it does not.⁶

These standards established by human rights instruments aren't meaningful unless they are applied fully to upholding human rights, which did not occur in many of the stories shared in this report. They need to be brought to life, and they need to live not only at an institutional or systems level, but in every single relationship, encounter, and interaction that Indigenous women, girls, and 2SLGBTQQIA people may have.

We invite you to read through these next chapters with a view to the big picture, as well as with a view to engaging your own beliefs and relationships – whether you are a survivor, a family member, an ally, or a non-Indigenous person. These experiences show that we all have a role to play in ensuring a full range of human rights for Indigenous women, girls, and 2SLGBTQQIA people. The negative encounters described in the following sections aren't intended to suggest that every person or institution holds the same discriminatory attitudes; they are intended to highlight how change begins at the base. These attitudes are a remarkably consistent feature of the many experiences we heard about in the way that Indigenous people experience them, and, for these reasons, these relationships and encounters are precisely where we should begin in seeking to restore safety for Indigenous women, girls, and 2SLGBTQQIA people.



Confronting Oppression – Right to Culture

Introduction: Identity and Culture

As documented in Chapter 4, the history of colonization has altered the relationships of people to their culture and identity through concerted efforts at assimilation and policies designed to sever these cultural and kin connections. The impacts of colonization on Indigenous women, girls, and 2SLGBTQIA people have resonated over generations and affected the way that people can access their cultural rights.

In sharing their truths about their missing and murdered loved ones, witnesses spoke often about the links between violence, the circumstances surrounding that violence, and the loss of traditional culture – its own form of violence. Within many Indigenous communities, the right to culture is understood as including the ability to practise and pass on cultural traditions, language, and ways of relating to other people and to the land. When describing the role of culture in their lives, however, many witnesses spoke about the many ways in which this right to culture has been violated. In speaking specifically about these violations, witnesses described the barriers they faced in accessing culturally safe services in areas such as health, security, and justice. They also described how, in the ongoing crisis of apprehension of Indigenous children through the child welfare system, the cultural rights held by Indigenous Peoples are undermined. For many people, the ongoing legacies of colonialism and its sustained effort to destroy the cultural, linguistic, and spiritual foundations held by Indigenous Peoples, families, and communities continue to be felt or evidenced by family separation, institutional discrimination, and societal denial of these realities. In all of these instances, the violation of cultural rights contributes to other forms of violence that disproportionately impact the lives of Indigenous women, girls, and 2SLGBTQIA people.



A key part of our process over the course of the National Inquiry has been to invest in relationships and to centre them as key in our analysis. In Iqaluit, Commissioners speak with Hagar Idlout-Sudlovenick and Inukshuk Aksalnik of the Qikiqtani Inuit Association.

Key to this discussion is racism, a particular form of colonial violence that seeks to undermine, to minimize, and to set aside Indigenous cultural rights and to diminish Indigenous Peoples. In particular, the experiences highlighted by many witnesses of their encounters with people and with systems are important opportunities for reflection, because they are moments where outcomes could have been transformed by a non-discriminatory approach that sets aside stereotypes and biases in favour of the basic value of respect.

In this chapter, we first confront the way in which intergenerational and multigenerational trauma works to maintain colonial violence in the present, as explained in stories about the loss of culture. The chapter then turns to the way in which the lack of access to full social, economic, and political rights compromises access to culturally appropriate services and the right to live one's culture. The chapter describes instances in which lack of political will and insufficient institutional responses have impacted the respect of Indigenous cultures. We examine how, in their testimonies, those who offered their truths have also offered stories of agency, of resilience, and of expertise as a way of restoring cultural rights. We identify the common experiences within these pathways that maintain the colonial violence that we heard about from First Nations, Métis, and Inuit testimonies, and we also highlight the distinctive expressions of violations of cultural rights as they appeared before the National Inquiry.

While the moments of encounter identified and highlighted within this chapter do not represent the entirety of Indigenous experiences within various institutions and systems, we maintain that they are important and representative of the types of oppression with respect to culture that Indigenous women, girls, and 2SLGBTQQIA people face. They are opportunities to reflect on how protecting cultural rights means beginning with respectful relationships, and understanding how these kinds of encounters can contribute to harm, or to healing, in the lives of those who have been most targeted by systemic, institutionalized, and interpersonal racism and violence.



Defining “Culture”

In sharing their truths with the National Inquiry, families, survivors, Knowledge Keepers, and others made it clear that culture must be part of any undertaking to restore and protect Indigenous and human rights. In the same way, witnesses often cited racism and discrimination as important barriers to accessing these rights, including the most basic rights to personal security. As such, many witnesses described cultural rights as a necessary condition for the enjoyment of all rights. Many testimonies emphasized the importance of recognizing, respecting, and upholding Indigenous culture, as understood by different Indigenous groups, within institutions and systems, such as child welfare, health care, justice, and many more. Central to the protection of cultural rights in these contexts are respect for the importance of the family unit and a willingness to address the ways in which contemporary violations against Indigenous families in terms of child apprehension, in particular, place these rights in jeopardy. The testimonies also emphasized how the violation of cultural rights, in many cases, serves to endanger loved ones and to create situations in which women, girls, and 2SLGBTQIA people are targeted for violence.

International organizations have emphasized the importance of cultural rights and, alongside them, self-determination. As Professor of Law Alexandra Xanthaki explains, the concept of “culture” has evolved in recent decades, along with the scope of what are now considered cultural rights. For decades, international organizations tended to view culture as linked narrowly to the protection of cultural artifacts belonging to the state or to individuals.⁷ But this definition fell far short of what many communities, including Indigenous communities, understood by “culture,” and, since the late 1980s, the definition has expanded.

In its broadest conception, “culture” is defined by Xanthaki as

the sum total of the material and spiritual activities and products of a given social group which distinguishes it from other similar groups ... a coherent self-contained system of values and symbols as well as a set of practices that a specific cultural group reproduces over time and which provides individuals with the required signposts and meanings for behaviour and social relationships in everyday life.⁸

As Xanthaki explains, “in this broad sense, the right to culture covers all aspects of life.”⁹ Now, in addition to cultural artifacts, “culture” includes elements such as ways of life, language, histories or literatures (both oral and written), belief systems, ceremonies, environments, and traditions “through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their view representing their encounters with the external forces affecting their lives.”¹⁰

In its current interpretation in international human rights law, Indigenous Peoples’ right to culture includes several key aspects. For instance, the right to culture includes non-discrimination with regards to participation in the cultural life of the state as a whole, but it also encompasses rights to cultural autonomy, and to the protection of cultural objects, customs, practices, traditions, and manifestations. In the international rights context, the United Nations’ Expert Mechanism on the



Rights of Indigenous Peoples has highlighted that Indigenous women and children are often holders of significant cultural knowledge, but can also be disproportionately affected by violations of the right to culture.¹¹

Within the international framework, cultural, economic, and social rights approaches highlight the importance and centrality of the family unit. The World Population Plan of Action affirms the family as the most fundamental unit in society, and the United Nations Population Information Network (POPIN) notes, “In spite of the many changes that have altered their roles and functions, families continue to provide the natural framework for the emotional, financial and material support essential to the growth and development of their members.... The family in all its forms is the cornerstone of the world.” The duties of families as primary agents of socialization include key areas that are threatened when the family is placed in jeopardy, including the establishment of emotional, economic, and social bonds, protecting family members, especially children, and providing care, socialization, and education of children.¹²

This explanation is indicative of a new weight and depth afforded to cultural rights by the international community, and the depth of dislocation and disruption that many witnesses reported feeling in the context of policies and practices that threaten the family unit and the culture it protects. As one witness from Vancouver, Patrick S., explained, “An Elder told me this once. You know, our culture is as deep as the shells that have layered it up since the beginning of time on the bottom of the ocean. If you work really, really hard you might make it through the first layer in a lifetime. That’s how deep our culture is, you know.”¹³

In 2016, the Human Rights Council of the United Nations unanimously adopted a resolution calling upon all states to “respect, promote and protect the right of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage, and to take relevant actions to achieve this.”¹⁴ The Human Rights Committee has also noted that, for Indigenous Peoples, the right to culture can require that a range of other rights are also fulfilled, including: the right to participate in customary activities; the right to access lands, territories, and resources; the right to family; and the right to participate in decision-making processes that affect their cultural rights.¹⁵ States are also under an obligation to take action to prevent and provide redress for any action that deprives Indigenous Peoples of their integrity as distinct peoples and their cultural values or ethnic identities, and that contains any form of forced assimilation or integration.¹⁶

As the United Nations points out, “Gross violations of economic, social and cultural rights have been among the root causes of conflicts, and failure to address systematic discrimination and inequities in the enjoyment of these rights can undermine the recovery from conflict.” Further:

The denial of economic, social and cultural rights can lead to violations of other human rights. For example, it is often harder for individuals who cannot read and write to find work, to take part in political activity or to exercise their freedom of expression. Failing to protect a woman’s right to adequate housing (such as lack of secure tenure) can make her more vulnerable to domestic violence, as she might have to choose between remaining in an abusive relationship or becoming homeless.¹⁷



At first glance, the right to culture may not look like it is closely tied to the issue of missing and murdered Indigenous women and girls. However, understanding the role that culture plays in the context of the safety of Indigenous women, girls, and 2SLGBTQQIA people is key, from the standpoint of both harm and healing.

In generating harm, the violation of cultural rights disempowers Indigenous Peoples, particularly women, girls, and 2SLGBTQQIA people, through racism, through dismissal, and through heavy-handed state actions that seek to impose systems on them. The violation of cultural rights, as they are linked to the ability of culture to promote safety and to the ability of women to transmit it, is an important dimension of understanding the discrimination people face at every level of navigating the state.

On the other hand, the role of culture in healing – the promotion of cultural rights and cultural continuity, that is, the passing of culture from one generation to the next¹⁸ – was a key element of what many witnesses identified as an area in which their loved ones could have found comfort, safety, health, and protection from violence. In addition, promoting cultural rights in the aftermath of tragedy – in the context of treatment, investigations, and prosecution, for instance – means protecting rights and values as defined by Indigenous women, girls, and 2SLGBTQQIA people themselves.

Pathway to Violence: Intergenerational and Multigenerational Trauma

In sharing stories about family, land, home, and belonging, witnesses often spoke about the importance of the role of culture as a way of ensuring the health, safety, and well-being of their families, communities, and environments. As many witnesses described, in their understanding of culture, practising ceremony and using traditional medicines have been and continue to be important ways of fostering relationships that centre respect and reciprocity. As we discussed in Chapter 2, within these Indigenous cultural systems, women, girls, and 2SLGBTQQIA people have traditionally occupied a position of honour and respect.

“AN ELDER TOLD ME THIS ONCE. YOU KNOW, OUR CULTURE IS AS DEEP AS THE SHELLS THAT HAVE LAYERED IT UP SINCE THE BEGINNING OF TIME ON THE BOTTOM OF THE OCEAN. IF YOU WORK REALLY, REALLY HARD YOU MIGHT MAKE IT THROUGH THE FIRST LAYER IN A LIFETIME. THAT’S HOW DEEP OUR CULTURE IS, YOU KNOW.”

Patrick S.



National Inquiry staff and members of the Elders and Grandmothers Circle lead the Strong Woman Song in Quebec City, Quebec.

In describing contemporary experiences, witnesses also described how the violence directed toward their communities that contributed to the loss of culture and cultural practices has, in its simultaneous destruction of these value systems and world views, fundamentally changed the nature of family and community, and, specifically, the position of women, girls, and 2SLGBTQQIA people within family and community. Patrick S. explained how, in today's society, sexist and racist belief systems that champion individualism, hierarchy, and the exercise of power over others run counter to traditional Indigenous cultural systems of relating and organizing.

An Elder told me a story last week. And he said, “There’s white people – there’s white men and there’s white people.... He said, “White people are the people we, you know, the white nation we intersect with; our schoolteachers, our friends ... [they] don’t try and impress us, don’t try and change us, just accept us who we are and, you know, we’re – we’re good neighbors with them, basically.... White men are those people, you know, whatever gender they may be, who subjugate us, who oppress us, who still, you know, cling blindly to that dominant, you know, that paradigm of power, of hierarchy, you know. Those are, you know, white men.”¹⁹

For many people, loss of culture contributes to, or is experienced as, a form of trauma that extends across generations, and that is reinforced in many ways today. In the First Nations and Métis context, stories shared by witnesses about cultural loss and the violation of cultural rights and the ongoing impacts of that loss on their families and communities often begin with reference to the residential and day school system, the Sixties Scoop, and/or child apprehensions within the current child welfare system, all of which led to disconnection from community and culture. In the case of Inuit, the violation of cultural rights is similar, but shifts to include the important impacts of mass centralization and relocation, and a relatively recent change in way of life.

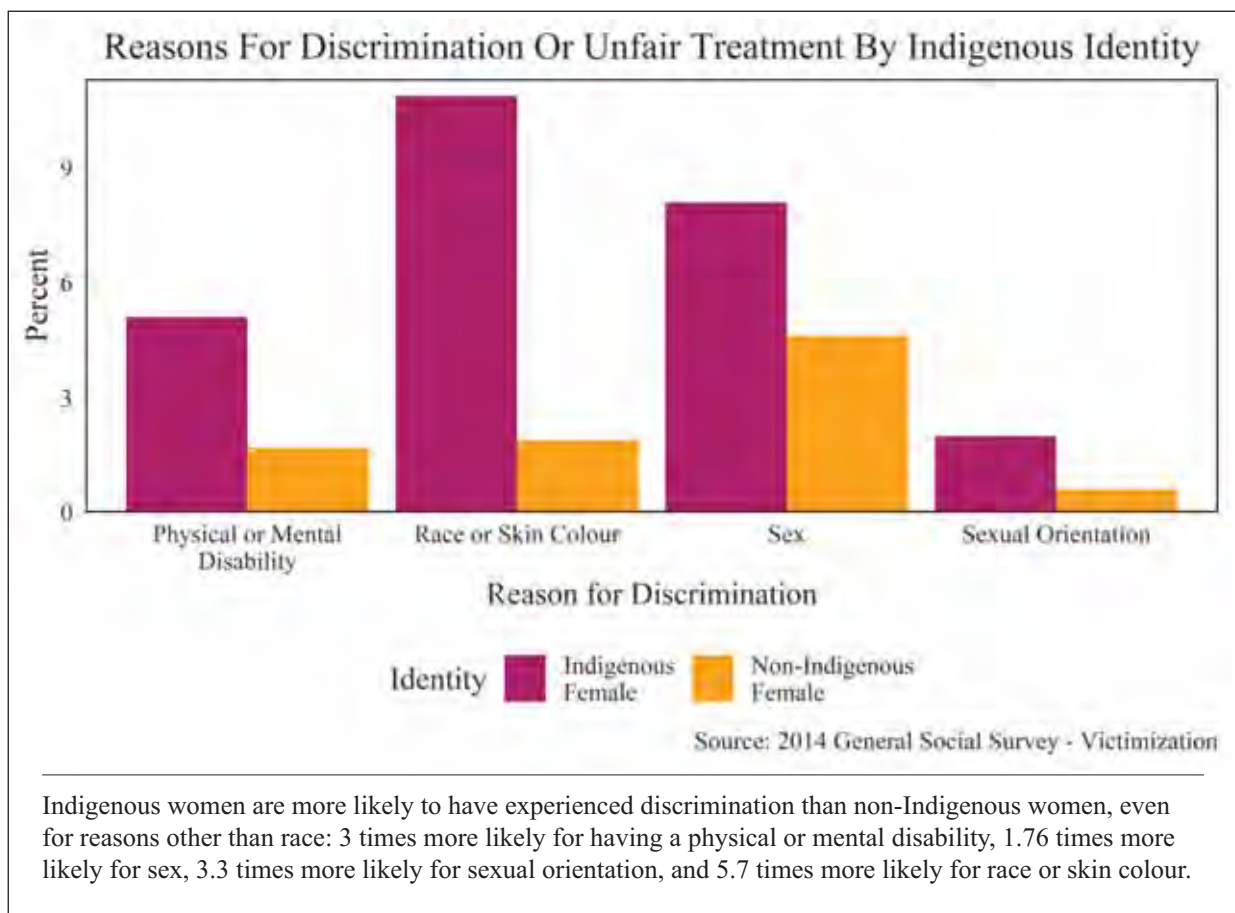


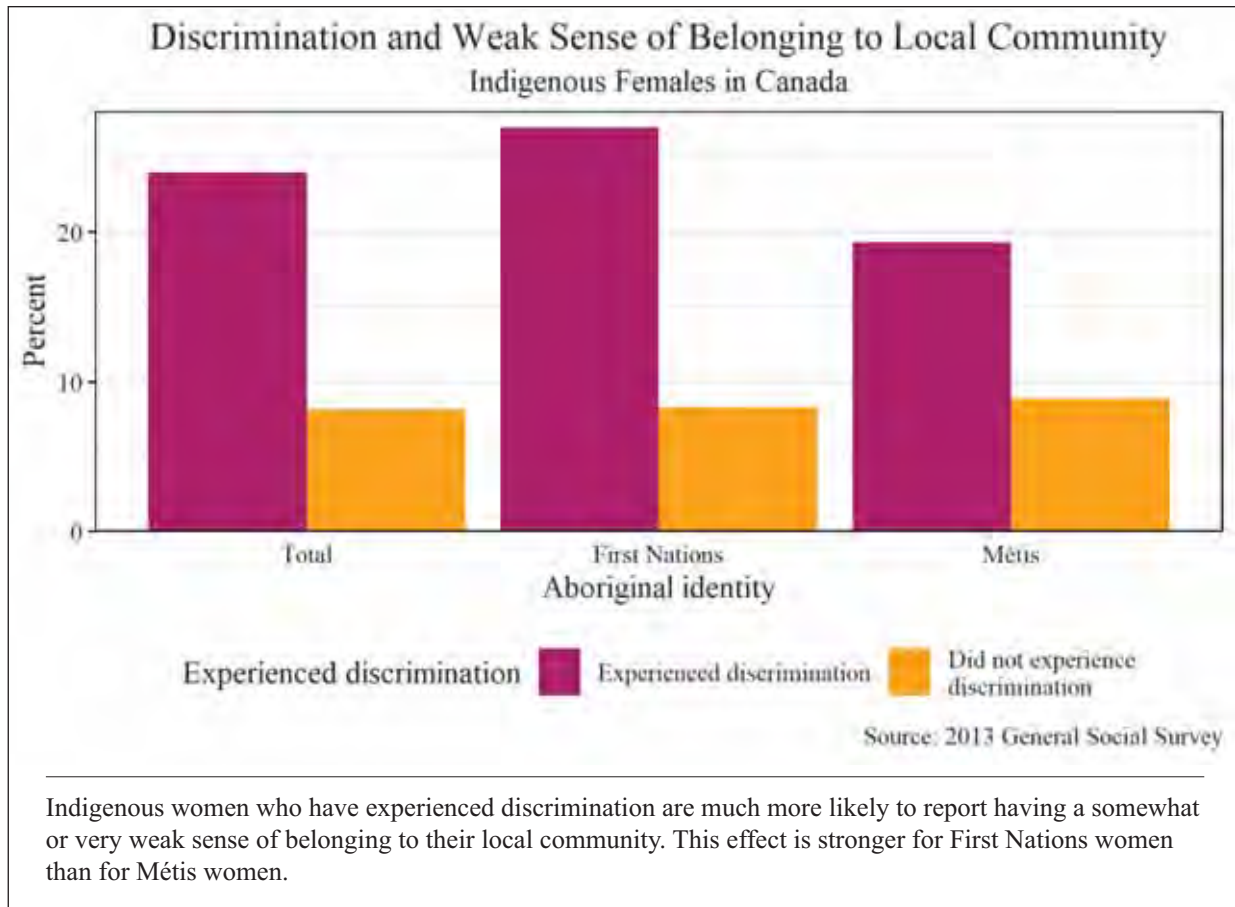
For 2SLGBTQQIA people, stories of cultural loss and violation that continue to have impacts today describe the fundamental shift from the value and respect many Two-Spirit and gender-diverse people held within traditional Indigenous cultures to extreme and at times violent exclusion and erasure from those communities.

Overall, these “patterns of cultural violence,” as described by legal anthropologist Rosemary J. Coombe, also include

the seizure of traditional lands, expropriation and commercial use of indigenous cultural objects without permission by indigenous communities, misinterpretation of indigenous histories, mythologies and cultures, suppression of their languages and religions, and even the forcible removal of indigenous peoples from their families and denial of their indigenous identity.²⁰

These processes also include attempts to convince Indigenous people that they themselves are somehow of less value than non-Indigenous people, in a process of dehumanization through education and socialization.





Notably, these patterns continue today, and undermine the full enjoyment of rights held by Indigenous Peoples by virtue of being Indigenous. As family member and Kaska Dena community leader Ann M. R. explained:

As Indigenous people we are very distinct, with unique heritage, language, cultural practice and spiritual beliefs. So, I want everybody to know what it means to be “distinct.” The dictionary says unmistakable, easily distinguishable, recognizable, visible, obvious, pronounced, prominent, striking. That is we as Indigenous people. We have proven that you can never assimilate us and you can never change us. The White Paper of 1969 tried that. It didn’t work. The colonial policies and structures continue on the path of assimilation today.²¹

Collective and Individualized Post-Traumatic Stress

As was explored in Chapter 4, the history of colonization has had devastating impacts on all Indigenous Peoples, and has affected Indigenous women, girls, and 2SLGBTQQIA people in distinctive ways. The cumulative effects of assimilation, of disenfranchisement through the *Indian Act* for First Nations, and of removal from the land for all Indigenous Peoples in Canada



have contributed to the loss of culture, language, and family. As Moses M. described, this loss of culture, language, and family is accompanied by a loss of Indigenous ways of knowing and relating to each other that, in the past, fostered good relations among people.

My father always sat us down, and these are his words [speaking in Nuu-chah-nulth]. Very few but very powerful words that as our people our very first law is respect, that you always go by that in whatever you're going to do, then there isn't much that you're going to do wrong. He also knew that we as people are just human, that if we make a mistake that we learn by it so that we don't keep on doing the same wrongs.

My mother also taught us about respect in a different way [speaking in Nuu-chah-nulth]. My humble translation of that is that I as an individual cannot demand respect but I have to earn it. And that's the other part of our lives today is that I come from a tribe of around 1,250 people in our tribe, and there's maybe 20 or 25 that can speak the language. So we no longer understand what our old people were saying about things like respect [speaking in Nuu-chah-nulth].²²

Witnesses who attended residential school or who are children and grandchildren of residential school survivors, as well as those impacted by the Sixties Scoop, emphasized how these particular systems, of which we heard about most, placed them in danger. Michele G. explained:

Maybe the government was beginning the process to close residential schools down, but the Sixties Scoop policy was the replacement. In other words, they continued coming onto our reserve, taking us children. The only thing that had changed was that they sent us to middle-class white families across the country. Some of those families were good, some bad, and some were horrific.²³

Concrete effects of these experiences varied, but, for many people, the most severe and lasting impacts are those that have fundamentally disrupted the sense of self-worth, family, and connection that had previously been nurtured and protected through culture and family. Carol B. shared the following observation.

And I really feel that the intergenerational trauma brought on by the residential schools has really impacted our families in a negative way. How can you possibly learn to love and value yourself when you're told consistently – daily, that you're of no value. And that we need to take the Indian out of you. How could you value or love yourself? And how could you expect to love and value your children? And so for me, it was really important that I speak on my mother's behalf because if she were alive today, we would have a loving relationship. Or she would love me the best ... way that she knows how, given the circumstances that she had to grow up in.²⁴



Like Carol, other witnesses characterized their experiences at residential school, and the ongoing challenges they and their loved ones faced as a result of the ways residential school attendance disrupted family and culture, as a form of trauma. The cumulative effects, as Gail C. stated, represent a form of Post-Traumatic Stress Disorder (PTSD).

So between starvation, between laws and policies, between attitudes, between as what Sandra called yesterday was the open-air prisons [reserves], between the residential school and the foster system, you have whole populations suffering from traumatic stress – PTSD.... You know, people have been ambushed and they're suffering. And they're having a hard time. And this is the kinds of things that – this is also the kinds of things that leads to the violence against Indigenous women.... When you have that kind of information in terms of how your women are looked at, your women become targets.²⁵

Experiences like the ones described by Gail of the trauma created through the residential schools system and the foster system, and the ongoing impact of that trauma on the well-being of Indigenous families, are the subject of research undertaken by Dr. Amy Bombay and other researchers who are interested in understanding how residential school attendance shapes the lives not only of survivors but also their children and grandchildren. In the research Amy Bombay shared with the National Inquiry, she explained how many of the features commonly known to have been present at residential schools constitute what are known as “adverse childhood experiences.” These include such experiences as harsh living conditions, lack of proper food or clothing, and physical, sexual, and emotional abuse. Among residential school survivors, these adverse childhood experiences are common, and result in significant consequences.²⁶

Among those experiences that continue to have a negative impact, survivors identified factors connected to the destruction of family and loss of culture more frequently than other factors. For instance, research by Bombay and others shows that isolation from family was identified most frequently (77.8%) as one aspect of the residential school experience that continues to carry a negative impact. Also significant is that almost the same percentage of residential school survivors identified loss of cultural identity (69.9%) as having a negative effect as they did verbal or emotional abuse (70.7%).²⁷ Other factors connected closely to cultural identity that survivors identified as having a negative impact included loss of language (68.2%), separation from community (67.4%), and loss of traditional religion/spirituality (66%). The fact that, for those

“AS INDIGENOUS PEOPLE WE ARE VERY DISTINCT, WITH UNIQUE HERITAGE, LANGUAGE, CULTURAL PRACTICE AND SPIRITUAL BELIEFS. SO, I WANT EVERYBODY TO KNOW WHAT IT MEANS TO BE ‘DISTINCT.’ THE DICTIONARY SAYS UNMISTAKABLE, EASILY DISTINGUISHABLE, RECOGNIZABLE, VISIBLE, OBVIOUS, PRONOUNCED, PROMINENT, STRIKING. THAT IS WE AS INDIGENOUS PEOPLE. WE HAVE PROVEN THAT YOU CAN NEVER ASSIMILATE US AND YOU CAN NEVER CHANGE US. THE WHITE PAPER OF 1969 TRIED THAT. IT DIDN'T WORK. THE COLONIAL POLICIES AND STRUCTURES CONTINUE ON THE PATH OF ASSIMILATION TODAY.”

Ann M. R.



residential school survivors who participated in her study, these familial and cultural losses were more widely identified as having a negative impact than such things as lack of food (48.8%), harsh living conditions such as lack of heat, for example (48.2%), and even sexual abuse (42.6%) demonstrates the deep significance of those aspects of experience connected to culture and family.²⁸

The cumulative effects of this disruption of cultural and familial continuity are concrete – and devastating. In addition to the impacts for survivors of the residential school system, Bombay explained, “there is consistent evidence showing that the children and grandchildren of those affected by residential schools are at risk for various negative mental, physical and social outcomes.”²⁹

In her testimony, Robin R. provided a powerful account of how these cycles of trauma over lifetimes, and which manifest over generations, are so engrained and accepted that violence in the lives of residential school survivors and their children or grandchildren seems “pre-determined.”

My future was pre-determined in many ways. All of my grandparents attended residential school. They were severely alcoholic. And when I was a child growing up, when I lived in Alberta, there’s not a time that I remember seeing one of my family members sober. My mother was raised in violence, experiencing physical and sexual abuse throughout her childhood. I don’t know much about my father because he left my mother when I was very young. I vaguely remember my father’s father, but never really knew him well. The only father figures I had were the men that came into my mother’s life and continued the abuse she had already known her entire life. Thankfully, I had not experienced abuse at the hands of my mother’s partners, but drug addiction was also an issue with my mother and the men that came into our lives. In spite of this, when I was a teenager, I was a scholarship student preparing for university and college. I was highly academic and I wasn’t drinking or using drugs.

These are some of the things from my past that laid the path that brought me into this situation where I shared my life with a man who could murder my child. I wanted to escape from the pain of my childhood. I wanted a home of my own where I could feel safe, would feel safe. I was 15 years old when I had Isabella. Her father was a 19-year-old drug addict who was trying to live clean. Because I grew up watching my mother being physically abused, I allowed this to be part of my relationships, too, believing it was somewhat normal that I accepted it.³⁰

Understandably, the cumulative effects of trauma have also resulted, for many of those who shared their truths, in a sense of anger and displacement that doesn’t always heal with time. As Verna W. explained:



This life wasn't easy for any of us. But, you know, I don't know if it [residential schools] made me stronger or made me more pissed off with the people today because they're still not doing it – doing anything right for us, any of us, and that's right across Canada. I am still angry because I got nothing to reconcile with anybody for.³¹

Other witnesses described the loss of a sense of belonging. Chrystal S. said:

So you know, we really have not had ... our home for so many generations, we've really been displaced for so many generations. We've had generations who grew up in residential schools, so further displaced from their homes. We have generations, from the grand-parents, great-grandparents, who already didn't have a home, but then were moved to residential school, where there was nothing but horrors that are unimaginable to children, and today, in Canada, today in Vancouver, the Downtown Eastside, you know, they don't even have their own homes in that community.

What's the biggest problem for Indigenous people of Canada today is having a home. So we have this long history of not having our home. Of not having a home to live in. How can we raise our children if we don't have a home to belong to? If we don't have a home that's safe? That has our family around us? If we're not even allowed to have that and we're not even allowed to even feel like we belong here, how can we raise our kids in that?³²

Amy Bombay believes an essential intervention in breaking this cycle comes in repairing the ways in which the residential school system and the foster care system severed familial and cultural ties. Based on her research, Bombay explained, “factors related to culture and cultural identity are particularly protective in buffering against those negative effects of residential schools and other aspects of colonization.”³³ Unfortunately, as the National Inquiry heard from many witnesses, the institutional systems with which Indigenous Peoples interact often ignore the importance of culture and family. In doing so, they reinforce rather than dismantle the harmful relationships and systems that continue to create traumatic conditions.



DEEPER DIVE

The Need for a Systems-Level Approach to Transforming Child Welfare

The *Final Report* includes testimony that conveys the extent to which child welfare systems have worked to create the conditions that maintain violence in families, in communities, and within Indigenous groups in Canada. The history of the child welfare system, as well as many of its contemporary iterations, points to the need for a comprehensive, systems-level approach to transforming the ways that child welfare operates in Canada, from its most fundamental level: the lack of respect for Indigenous families and the rights of Indigenous children. As many witnesses identified, the apprehension of children that occurs unfettered on this scale represents the strongest form of violence against a mother, in addition to the violence that it represents for the children.^A A system this broken and that places Indigenous children at greater risk for violence, now and in the future, requires nothing less than a complete paradigm shift.

66 Million Nights, and 187,000 Years of Childhood: Contextualizing Child Welfare in Canada

Over the course of our hearings, the National Inquiry heard from many survivors of the child welfare system, as well as from many family members whose loved ones did not survive. The high number of Indigenous children in care is directly linked to the history and contemporary legacies of colonial policies. According to Dr. Cindy Blackstock, the Gitksan executive director of the First Nations Child and Family Caring Society of Canada and professor at the School of Social Work at McGill University:

It's really the whole roots of colonialism, where you create this dichotomy between the savage, that being Indigenous Peoples, and the civilized, that being the colonial forces ... if you're a

savage, you can't look after the land, and so the civilized have to take over. And if you're a savage, you can't look out for your children, and the civilized have to look after them.^B

This kind of colonial violence – the removal of children from their families – violates fundamental human rights and compromises culture, health, and security. It is a direct attack on the survival of the group, culturally, biologically, physically, and overall. For those children left behind, children of women who are missing or who have been murdered, the significant consequences of being placed in care are lifelong and critically important: they have implications for programs and initiatives related to healing and to a complete overhaul of the system as it exists.

Cindy Blackstock testified passionately on the subject, pointing out that, by any measure, Indigenous children are still the most likely to be placed in care. As she explained, “And, to give you a sense of the scale of it just for on-reserve, between 1989 and 2012, we’ve known that First Nations kids are 12 times more likely to go into child welfare care, primarily driven by neglect, primarily driven by poverty, substance misuse and by poor housing.”^C Her testimony revealed the extent to which the causes for children in care connect to the violation of key rights, and the need for healing, in areas related to culture, health, and human security, which encompasses both social and physical security.

In some testimonies heard by the National Inquiry, the danger to children can be compounded or increased by being placed in care; in many instances, they are placed into situations where the likelihood of harm and violence is even higher than it was before. For example, the Canadian Observatory on Homelessness’s national youth homelessness survey, conducted in 2015, found that almost 60% of the 1,103 homeless youth (ages 13 to 24) surveyed in nine provinces and Nunavut had previous or current involvement with child welfare.^D A British Columbia



study by the Representative for Children and Youth and the Office of the Provincial Health Officer, published in 2009, found that just over a third of the children in care had also been involved in the youth justice system.^E The same report argued that children in care were more likely to be involved with the justice system than to graduate from high school.

The ongoing disruption to culture, identity, and family through the child welfare system runs in direct opposition to what research demonstrates about how to foster resiliency and improve the lives of Indigenous people. As Amy Bombay explained, when cultural pride and culture are practised and available, they are often accompanied by better overall health outcomes.^F

In many cases, families – and the sense of belonging, identity, and culture that can come from being in a family – are further punished by structural barriers. In 2018, Winnipeg Member of the Legislative Assembly of Manitoba Bernadette Smith worked to amend Manitoba's child apprehension laws to ensure that children cannot be seized due only to poverty^G – something that many witnesses outlined as part of their own experiences. But the funding formula still provides funding for children in care, rather than funding designed to properly support families or to prevent the apprehension of children in the first place.

Natalie G. made the following observation about how funding is misdirected into the hands of child welfare services or foster families rather than into the hands of families who need it.

They [Mi'kmaq Family and Children Services] spend thousands and thousands of dollars apprehending these children, and ... it's hard to believe that they'll take a child out of a home, put them in another home, but they're going to pay, like, \$5,000 for new beds, new dressers, new clothes, some food, whatever. Why can't they take that \$5,000 or whatever, buy them brand-new beds in their own home, buy some food for their own home, help the parents, get L'nu [Mi'kmaq] support, you know?^H

According to Blackstock, the ongoing failure to address the structural roots of the challenges facing

Indigenous families related to poverty, housing, and other basic needs facilitates a system in which the apprehension of children becomes a way for governments to make money by increasing federal transfers, while keeping intact a system that undermines Indigenous culture and family systems. Senator Murray Sinclair has affirmed that “the monster that was created in the residential schools moved into a new house. And that monster now lives in the child-welfare system.”^I

Looking at this crisis, Blackstock maintains, is about understanding how it impacts children. As she explained to the National Inquiry:

Kids don't think about overrepresentation. When they're looking forward to something or they're looking forward to something being over, they think, “How many sleeps until I see my mom?” And this spreadsheet counted up those sleeps. How many sleeps did First Nations kids spend away from their families in foster care between 1989 and 2012? And it was 66 million nights, or 187,000 years of childhood.^J

Children's Rights and Canada's Obligations

For Blackstock and others, those 66 million nights represent fundamental human rights violations committed against children. As many people point out, the rights of children in care are also directly connected to Canada's human rights obligations.

The idea for a convention devoted to the rights of children was first proposed by the country of Poland, in 1978, before the United Nations, but it took 10 years for it to gain the unanimous support of the international community.

A working group began the drafting process in 1979, composed of members from the United Nations Children Fund (UNICEF), different non-governmental organizations (NGOs), and the 48 member states of the Commission on Human Rights.^K On November 20, 1989, the General Assembly of the United Nations (UN) finally adopted the *Convention on the Rights of the Child* (CRC) as part of Resolution 44/25.



The CRC's 54 articles and its two Optional Protocols are based on four core principles: non-discrimination; the best interests of the child; the right to life, survival, and development; and respect for the views of the child.

For example, Article 3 of the CRC stipulates, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative bodies or legislative bodies, the best interests of the child shall be a primary consideration." The CRC also specifically cites child welfare as an area where the rights of children may be in jeopardy. Article 9(1) asserts: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."

Article 9(1), in theory, means that any decisions affecting children, including within the context of child welfare, must be made with this principle in mind. An example of this principle in action means that children should not be separated from their family unless it is necessary for their best interests. As we heard, however, the extent to which the "best interests of the child" are interpreted by workers, as well as by the rationale that undergirds removal in the first place, demonstrates how subjective and culturally biased interpretations of the "best interests" provision have had devastating impacts, particularly when the provision is applied through a colonial or racist lens. As Canadian lawyer, judge, and legislative advocate for children's rights Dr. Mary Ellen Turpel-Lafond testified to the National Inquiry:

One of the most important things that needs to be changed, kind of in a large stroke immediately, is to change the definition of the best interests of the child, so that the best interests of the child includes being with the family and the right of the child to stay connected to their community, their family, their Nation, their identity, and to allow for the best interest of the child to be applied in a way that children aren't removed because of poverty and they aren't removed because of some of those continuing impacts of residential school.^L

The CRC's Article 24 also entitles all children to health and well-being, whether they are living in their own biological families or in care. As numerous researchers have identified, Indigenous children continue to live, on average, far below the standards of other children in Canada. For instance, First Nations children living in urban centres are twice as likely as non-First Nations children in the same centres to live in poverty, in single-parent households, or in inadequate housing, or to experience hunger.^M The challenges of on-reserve First Nations communities, as well as Inuit communities, as related to infrastructure and housing as well as poverty and lack of services, are documented throughout this report. Children who are First Nations and who live with disabilities struggle in obtaining services. In addition, food security in more remote or northern communities continues to be a crisis of significant dimensions.^N

Canada's obligations under the CRC also link to other national and international law instruments that speak to the rights of children, including the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and the *Canadian Human Rights Act* (CHRA). Discrimination against Indigenous children also violates the *International Covenant on Civil and Political Rights* (ICCPR) and the *Universal Declaration of Human Rights* (UDHR). According to the First Nations Child and Family Caring Society, Canada's obligations are also linked under the principles of the Honour of the Crown, and fiduciary duty.

In 2018, the Canadian Coalition for the Rights of Children (CCRC) published a discussion paper examining the implications for child welfare within the context of children's rights in Canada. Specifically, and in relation to the *Convention on the Rights of the Child*, the CCRC identified three key areas for consideration and in need of urgent reform. These included data and accountability, focused on understanding the true scope of child welfare practices within Indigenous communities, and as recommended by the Truth and Reconciliation Commission's (TRC) Calls to Action 2 and 55; legislative reform "that requires all actors to make the best interests of the child a top priority," including eliciting and considering the views of children themselves; and measures to support families, including "the state's duty to provide support for parents of vulnerable children, address public service discrimination, and ensure equitable access to services for all families."^O



The inclusion of the TRC's Calls to Action is significant, and points to the reality that is lived by many of those who testified before the National Inquiry. The TRC's Calls to Action, developed in conjunction with its *Final Report* focusing on the experiences of Indigenous residential school survivors, cited child welfare as an important legacy of the system itself. The first five of the TRC's 94 Calls to Action centre on child welfare, calling on all levels of government to work together to reduce the number of children in care, to report accurately on the numbers of children in care, to fully implement Jordan's Principle on the basis of substantive equality, to support the right of Indigenous governments to establish and maintain their own agencies, and to support Indigenous families through culturally appropriate parenting programs.^P Further, the recommendations specifically call upon government to ensure that care is culturally safe and takes into account the legacies of the residential school system in subsequent generations, both in terms of placement and ongoing support.

TRC Calls to Action – Child Welfare

1. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to reducing the number of Aboriginal children in care by:
 - i. Monitoring and assessing neglect investigations.
 - ii. Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside.
 - iii. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the history and impacts of residential schools.
 - iv. Ensuring that social workers and others who conduct child-welfare investigations are properly educated and trained about the potential for Aboriginal communities and families to provide more appropriate solutions to family healing.
 - v. Requiring that all child-welfare decision makers consider the impact of the residential school experience on children and their caregivers.^Q

Despite its obligation to report to the UN Committee on the Rights of the Child, Canada could not, in 2012, provide it with an accurate number of children in care, especially of children aged 14 to 18 years who may have been placed in "alternative care facilities." In 2012, the government of Canada appeared before the UN Committee on the Rights of the Child to review its compliance with the CRC. In its review of Canada, entitled "Concluding Observations," the committee observed specific concerns related to Indigenous children in the areas of child welfare, health, poverty, education, and juvenile justice.^R Specific to child welfare, it recommended that removal decisions must always be assessed by "competent, multidisciplinary teams of professionals," and that the government should "develop criteria for the selection, training and support of childcare workers ... and ensure their regular evaluation."^S It recommended that the child's view "be a requirement for all official decision-making processes that relate to children," including child welfare decisions.^T This is especially true for young people who are leaving care, and the committee recommended that they be supported and involved in planning their transition.^U In addition, and importantly, the committee noted that Canada could not escape its obligations due to its federalist structure – namely, the way in which services are funded by Ottawa and delivered by provinces or other governments.^V

As Marlyn Bennett, a child welfare researcher who is also a member of Sandy Bay Ojibway Nation in Manitoba, points out:

As a wealthy and prosperous nation with an international reputation for challenging oppressors of the under classes, Canada falls short when its treatment of Aboriginal children is exposed and scrutinized. The social determinants of health overall for First Nations communities have a large impact on the health and well-being of First Nations children and often impeded their future success.^W

Speaking on CBC's *Power and Politics* program in late 2017, then-Minister of Indigenous Services Jane Philpott characterized the overrepresentation of Indigenous children in care in Canada as a "humanitarian crisis."^X But, for many who have worked within and observed the system for years, there is reason to be wary. As Blackstock testified, evoking the forgotten history of Dr. Peter Henderson Bryce, the chief



medical health officer with Indian Affairs who surveyed the health of children in residential schools in 1904 but whose findings were ignored, “And that’s a pattern that we’re going to see throughout the whole trajectory of child welfare: the Canadian government knowing better and making a conscious choice not to do better.”^Y

A Diverse Landscape of Service Delivery

The UN Committee on the Rights of the Child’s observation – that Canada should not renege on its obligations by virtue of its federal structure – is an important one. As many studies devoted to child welfare systems have pointed out, there is a great diversity of types and levels of child welfare in Canada. In part, this is because child welfare incorporates various levels of government in terms of its funding and its operations, as well as the fact that quality of care and the practices associated with it vary greatly, as Bennett says, “from agency to agency and from region to region depending on how First Nations Child and Family Service Agencies,”^Z as well as Métis and Inuit service agencies and providers, organize themselves. The diversity of types of care also depends on the structure, funding arrangement, and level of care delegated to child welfare. For Indigenous communities not serviced by Indigenous agencies, the non-Indigenous system steps in, as administered in each province and territory.

Provincial Agencies

Under the Canadian Constitution, child welfare services are a delegated provincial responsibility, where non-Indigenous children are concerned. But, under the amendments to the *Indian Act* in 1951, child welfare for First Nations children officially came under provincial control rather than being under federal control, as it was previously. By this time, children’s aid societies, as they were known, had already been in existence for some time. The first Children’s Aid Society was established as early as 1891, in Toronto, and Ontario was the first province to pass a *Child Protection Act* in 1893, making it illegal to abuse children. The Act, fully entitled the *Act for the Prevention of Cruelty to and Better Protection of Children*, as researchers Jim Albert and Margot Herbert explain, “promoted

foster care, gave children’s aid societies guardianship power, and established the office of the superintendent of neglected children.”^{AA} Within this system, most service providers tended to blame families for their inability to take care of children, rather than understanding the wider societal issues, such as poverty among the working class, that created conditions where abuse and alleged “neglect” could occur.

Until the 1950s, the government of Canada executed child welfare interventions on reserves through its established Indian agents, who would intervene in cases where they suspected abandonment or abuse.^{BB} As Bennett explains, these interventions were “without a legal basis,” and, in most cases, the response was sending the child away to residential school. But, due to the 1951 changes in the Act, provincial governments became more engaged in child welfare under section 88 of the *Indian Act*, whereby provincial laws of general application were applied to First Nations people within any province. Previously, constitutional responsibility for those determined to be “Status Indians” was reserved for the federal government. Since child welfare fell under provincial responsibility under the *Constitution Act*, provinces became more involved in child welfare, because section 88 allowed them to intervene in areas outside of their constitutional jurisdiction. Since there was no section dealing with child welfare specifically within the *Constitution Act* or the *Indian Act*, the federal government maintained that those services could be provided by the provinces. This was confirmed in the Supreme Court of Canada in 1976 in the *Natural Parents v. Superintendent of Child Welfare* case.^{CC}

The child welfare field has, of course, changed significantly from its early roots; greater understanding in the circumstances of families that undergird an accusation of neglect, and the professionalization of what once used to be a largely volunteer-based, or religiously oriented, occupation, have changed how provincial and territorial child welfare agencies do their work. In part, the publication of the Truth and Reconciliation Commission of Canada’s Calls to Action has also urged the federal government to take on a greater role to clarify areas of responsibility and its own duties towards Indigenous children in care. One of the federal government’s six points of action on this file is exploring the potential for co-developed federal child and family services legislation.



At the same time, criticism of these agencies – as much of our testimony demonstrates – shows that for Indigenous children within provincial and territorial systems, experiences with the child welfare system both represent systemic violence in key rights areas, including children’s rights, as well as possibly serve to later target them for violence.

Within the provincial and territorial child welfare system, as policy researchers Vandna Sinha and Anna Kozlowski explain, “The province or territory is responsible for service provision, lawmaking, governance, and funding for off-reserve families.”^{DD} In provinces and territories, children are directed to agencies largely on the basis of location, with obvious implications for urban Indigenous families who are not attached to a specific reserve community or Métis settlement area.

First Nations Agencies

In general, the application of provincial laws and standards means that the jurisdiction for First Nations governments in administering their own services is delegated, and must follow the standards set by provincial and territorial legislation on the matter. Directive 20-1, a national funding formula administered by the Department of Indian and Northern Affairs, as it was called then, came into effect in 1991. It sets out a requirement that “First Nations CFS Agencies enter into agreements with the provinces to arrange for the authority to deliver a range of comparable child and family services on reserve.”^{EE} In practice, this means two separate agreements; the first sets out the delegation of authority with the province or territorial government, while the second agreement is with the federal government and establishes funding for the agencies. The funding for these agencies is based on a population threshold of children aged 0 to 18 on-reserve. In some provinces, such as Ontario, there are other arrangements: the Province of Ontario funds services and then is reimbursed by the federal government.

According to a profile prepared on First Nations services in Canada, there are over 125 First Nations child and family service agencies in operation.^{FF}

Within Directive 20-1, there are five common models operated by First Nations agencies, including:

1. **Delegated Models:** These models provide for the assignment of child and family service agencies to provide services to First Nations on- or off-reserve, according to the rules and standards set out by the provincial or territorial statute. These agencies can operate with full delegation, which allows them to provide full protection and prevention authority, or partial delegation, which authorizes them to provide support and prevention services for families at the same time as the provincial or territorial authority provides the child protection component.
2. **Pre-Mandated Services:** These agencies provide prevention support and family support under agreements with the provinces or territories. They are mostly located in Ontario and, according to Cindy Blackstock, “provide an essential service by ensuring that clients have access to culturally based preventative and foster care resources, thus making a significant contribution to supporting Aboriginal and First Nations communities to care for their children, youth and families.”^{GG}
3. **Band Bylaw Model:** This model operates under the *Indian Act’s* provisions that allow band councils to pass bylaws on their reserves. The Spallumcheen First Nation in British Columbia, who operates its own agency and represents the only case, as Bennett says, where those laws can “circumvent the application of provincial child welfare laws or standards,” was created under this rule.^{HH} But the Spallumcheen First Nation’s legislation has been challenged many times in Canadian courts, so far without overturning it. The enactment of similar systems in other reserves, however, has not been successful.
4. **Tripartite Model:** In this case, both provincial or territorial and federal governments delegate their law-making authority to First Nations, with the rule that First Nations must meet provincial standards. This is the case for the Sechelt First Nation in British Columbia, which has developed and implemented its own authority for child and family services based on a tripartite agreement model. Under its provision, the Sechelt Agreement’s regulations aren’t geographically limited and apply to Sechelt members on- and off-reserve. The Sechelt Agreement, as researchers



Ardith Walkem and Halie Bruce report, also “recognize[s] Sechelt’s ability to pass child welfare laws.”^{II} Under section 14(1):

The Council has, to the extent that it is authorized by the constitution of the Band to do so, the power to make laws in relation to matters coming within any of the following classes of matters: ... (h) social and welfare services with respect to Band members, including, without restricting the generality of the foregoing, the custody and placement of children of Band members.^{JJ}

5. Self-Government Model: Under the Nisga’a Treaty, “Nisga’a Child and Family Services has achieved full child protection services for the four communities of Gitlaxt’aamiks, Gitwinksihkw, Laxgalts’ap and Gingolx.”^{KK} The services are in compliance with British Columbia’s *Child, Family and Community Service Act*, and are guided by the Ayuuk (the Nisga’a inheritance of oral culture and laws). Child protection workers endeavour to uphold the safety and health of children. It provides both statutory services (an extension of the child welfare law) and non-statutory services (volunteer community services), including family support services that focus on prevention. As Bennett explains, the culturally based model can provide “the benefit of being based on the worldview, cultures, and histories of the Aboriginal peoples and affirms, versus competes with, traditional child and family caring processes.”^{LL}

There are also many communities who do not operate an agency of their own, for a variety of reasons, including, as Bennett explains,

small economies of scale resulting in limited financial and human resources to operate an agency to lack of willingness on the part of provincial and territorial governments to support Aboriginal agency development to individual communities feeling satisfied with services being delivered by the province or territory often in consultation with the Aboriginal community.^{MM}

In these cases, the province or territory of residence provides the services within existing non-Indigenous agencies, including to many off-reserve First Nations.

In 2000, the Assembly of First Nations and the Department of Indigenous and Northern Affairs reviewed Directive 20-1, and offered recommendations for its improvement. Their report focused on topics such as governance, legislation and standards, communications, and funding of existing First Nations child and family service agencies. Its recommendations focused on clarifying areas of responsibility, jurisdiction, and resources; better accounting for factors that negatively impact care; funding for capacity development; and, fundamentally, supporting the goals of First Nations “to assume full jurisdiction over child welfare. The principles and goals of the new policy must enable self-government and support First Nations leadership to that end.”^{NN}

Métis Agencies

Child welfare within a Métis context is, in some ways, different from child welfare in the context of First Nations child welfare agencies, primarily based in the long century during which the Métis were, by all accounts, “the forgotten people.” Stuck in jurisdictional voids where neither the provincial nor the federal government claimed responsibility towards them as a Nation, Métis children were nevertheless marketed for adoption into non-Indigenous homes, as were First Nations, within the context of the Sixties Scoop. The mass marketing of these children, without the accompanying acknowledgement of federal responsibility during this time, left Métis without resources or assistance.

But, in the early 1980s, “Métis and First Nations leaders campaigned heavily against the practice of adopting Métis and First Nations children out to families not living in the local community, particularly out of the province and country.”^{OO} In Manitoba, this action resulted in a prohibition against all out-of-province adoptions and the appointment of a special committee, chaired by Judge Edwin Kimelman, to review the placement and adoption of Métis and First Nations children.

Released in 1985, the committee’s final report, *No Quiet Place*, recommended changes to Manitoba’s child welfare legislation that would facilitate bringing cultural and linguistic heritage into the child’s development. Kimelman called the sum of previous practices aimed at separating children from their families “concerted efforts at cultural genocide.”^{PP} In its after-



math, *No Quiet Place* helped to establish relationships between the government of Manitoba and the Manitoba Metis Federation on child welfare issues.

A few short years later, the Aboriginal Justice Inquiry (AJI) produced its own report in 1991, outlining its analysis of the historical treatment of Indigenous Peoples within social services. Specifically, it noted that “child welfare practices in Manitoba had a major destructive force on Aboriginal families, communities, and culture.”^{QQ} As summarized by researchers Shannon Allard-Chartrand et al., the AJI recommended a number of changes to the child welfare system, including legislating rights to culturally appropriate services and establishing a mandated Métis child and family service agency.^{RR}

In 1999, the creation of the Aboriginal Justice Implementation Commission alongside the Aboriginal Justice Inquiry – Child Welfare Initiative (AJI-CWI) meant that the initiative was brought back to life. According to Allard-Chartrand et al.:

The AJI-CWI was jointly established between the provincial government and Métis and First Nations leaders. It looked to implement a strategy to restructure the child welfare system within Manitoba. The most significant objective of this initiative was establishing a province-wide Métis mandate and expanding off-reserve authority for First Nations.^{SS}

Among other measures, the work resulted in an amendment to Manitoba’s *Child and Family Services Act*, stating that “Aboriginal people are entitled to the provision of child and family services in a manner which respects their unique status, and their cultural and linguistic heritage.”^{TT} In addition, four new child and family services authorities were created out of the process, including the First Nations of Northern Manitoba Child and Family Services Authority, First Nations of Southern Manitoba Child and Family Services Authority, Metis Child and Family Services Authority, and General Child and Family Services Authority. Under three separate memoranda of understanding, the Manitoba Metis Federation, the Assembly of Manitoba Chiefs, and Manitoba Keewatinowi Okimakanak undertook the responsibility to administer and provide child and family services under a delegated model, where the system continues to operate under provincial or territorial regulations. It

did so through new legislation, proclaimed in 2003. Under the legislation, the province maintains authority for setting child welfare standards and for assessing how delegated authorities meet the requirements of the Act, as well as allocating funding and support services to them. In turn, authorities are authorized to set service standards to supplement those that already exist.

For the Métis agency in Manitoba, which operates at arm’s length from the Manitoba Metis Federation, and as asserted by Allard-Chartrand et al., “The new governance structure is a tremendous step toward the repatriation of Métis children. The Métis Authority is better equipped to offer culturally appropriate services for Métis families than the previous system. This grants Métis families and communities greater self-determination.”^{UU} At the same time, the systemic deficiencies within the old system are articulated in the new, specifically as related to the training of supervisors on Indigenous awareness and anti-racism, a lack of funding and family support systems as related to prevention, the shortage of resources to handle caseloads, and implications of these stressors for staffing resulting in high turnover and poor health.^{VV} In 2006, the report “Strengthen the Commitment: An External Review of the Child Welfare System” also “emphasized the need for an appropriately resourced mechanism to develop and implement the goals of the AJI-CWI.”^{WW}

Today, there are a number of Métis child welfare agencies in operation, including in British Columbia, Alberta, and, as above, in Manitoba, that provide delegated child welfare services devoted to the Métis. None of these have received federal funding to date. The Province of Manitoba funds its agencies, whereas, as the TRC reports, “in Alberta, the province funds municipalities and Métis settlements for Métis child welfare services ... in British Columbia, five Métis child and family services agencies deliver services while a non-profit organization, the Métis Commission for Child and Families, consults with the provincial government.”^{XX}

In Alberta, the Métis Child and Family Services Agency “ensures children and families are served with dignity, respect, and understanding throughout the delivery of Métis community-based family services and support programs, so that we may serve to strengthen the Métis child, family and community.”^{YY} It



aims to reduce the number of children apprehended under Alberta's provincial services by "improving the quality and effectiveness of social services, the development of programs to strengthen Indigenous families, and the development of community awareness and responsibility for the well-being of Indigenous children."^{YY}

Inuit Child and Family Services

Across Inuit Nunangat, Inuit children encounter different challenges from those of children in other regions in accessing culturally safe and relevant protection services, as well as in the experiences of apprehension. As researcher Lisa Rae, reporting for the National Aboriginal Health Organization, points out, "Many of the challenges faced by Inuit communities today can be traced to historical events."^{ZZ} These include the "imposition of non-Inuit values on Inuit communities and the imposition of the Canadian justice system, the introduction of the wage economy in relatively recent times, the impacts of residential schools and hostels, and the loss of Inuit self-reliance, culture and way of life."^{AAA} These experiences, combined with the imposition of "southern bureaucratic governance over Inuit way of life," establish a foundation for the elevated rates of child apprehension in the North, compounded by the struggle of many residents to provide a basic standard of living. In addition, and as Rae explains:

These severe changes, particularly the trauma experienced by many Inuit during the residential school period, have resulted in increased suicide rates and the normalization of suicide in Inuit communities, elevated rates of drug and alcohol abuse, family violence, mental health challenges, and a lack of coping skills.^{BBB}

Part of the differences in the structures and mechanisms governing child and family services in Inuit Nunangat rests with the land claims and self-government agreements in force there.

The Nunavut Territory was created in 1999, pursuant to the *Nunavut Act* in conjunction with the settlement of the Nunavut Land Claims Agreement, which received Royal Assent in 1993. In Nunavut, all child welfare and child protection services are provided by the Government of Nunavut's Health and Social Serv-

ices department and through the Child and Family Services Branch. Under the legislation, there are provisions for community agreements for Inuit communities to take more control over child welfare and custom adoption. Nunavut has yet to create its own child welfare law. When it does, and given that it serves a mostly Inuit population, many people insist it should reflect Inuit laws, values, and practices.

In the Inuvialuit Settlement Region, located within the Western Arctic Region of the Northwest Territories, under the 1984 Inuvialuit Final Agreement, child welfare services are provided through regional health authorities. While this does represent a localized authority over the services, it is not Inuit self-government and jurisdiction over child welfare, and remains a form of delegation, whereby laws in application remain territorial laws. In 2015, the Inuvialuit Self-Government Agreement-in-Principle was signed, and included section 8.1, stipulating:

The Inuvialuit Government may make laws in relation to the provision of Child and Family Services for Inuvialuit within the Western Arctic Region, provided that such laws include standards: for the protection of Children; and that apply the principle of acting in the best interests of the Child.^{CCC}

The agreement-in-principle further establishes that the Inuvialuit laws shall be compatible with the Northwest Territories' core principles and objects for child and family services. Within the current framework, provisions are in place for community agreements among First Nations, Inuit, and Métis communities to take more control over child welfare, using specific agreements and provisions for custom adoption, with respect to their distinctive perspectives.

Under Nunavik's land claim that covers Northern Quebec, the James Bay and Northern Quebec Agreement, signed in 1975, child welfare services are provided through the Nunavik Regional Board of Health and Social Services, one of 17 regional services in Quebec. As with the case of Inuvialuit, this is a delegated model with more local and regional control, but the laws in application, in this case, remain those of the province of Quebec. Child protection services are provided through two health centres: the Tulat-



tavik Health Centre (Ungava Bay) in Kuujuaq and the Inuulitsivik Health Centre (Hudson Bay) in Puvirnituk. The Kativik Regional Government is represented on the board of directors of the Regional Board of Health and Social Services.

Under the Nunatsiavut agreement, signed in Newfoundland and Labrador in 2005, Nunatsiavut has a law-making agreement with respect to child and family services, under section 17.15:

The Nunatsiavut Government may make laws in Labrador Inuit Lands and the Inuit Communities in relation to the following matters respecting social, family, youth and children's programs, services and facilities for Inuit:

- (a) programs and services for the protection, assistance, well being and development of children, youth and families, including programs and services that focus on prevention and early intervention as they relate to children, youth and families;
- (b) the recruitment, approval, support and monitoring of residential services for children and youth, including caregivers, emergency housing, and group homes;
- (c) the placement of children in approved residential services;
- (d) child care services, including the licensing and monitoring of child care facilities and persons providing child care in private residences.^{DDD}

While Nunatsiavut has this authority, it has yet to take it up, focusing in the interim on capacity building to ensure a smooth and healthy transition from the current provision of services at the regional health authority level.

Child welfare and family support services may be organized differently in different jurisdictions, and the services provided for Inuit may also apply to non-Inuit living there.

As Lisa Rae contends, "While these agreements are significant landmarks for Inuit, the transfer of control over services and building capacity in Inuit commu-

nities to take on those services is a slow process with many challenges."^{EEE} In addition, the provision of child welfare under these different departments hasn't necessarily solved all of the issues related to children in care. For example, Nunavut undertook a review of its *Child and Family Services Act*. During its course, a judge found:

The Act is in violation of the Canadian Charter of Rights and Freedoms, because of its failure to provide a mechanism that allows for timely post-apprehension screening on the grounds of removal. Currently, after children are removed from their parents by a social worker, there is no way for parents to appeal the decision through the courts in a timely manner.^{FFF}

A 2011 report from the Auditor General of Canada also outlined significant issues within Nunavut's department of Health and Social Services, including failures in the department's ability to meet its own standards and procedures, including a lack of safety checks on foster homes, poor record keeping, a lack of coordination between services, social worker shortages, and unmanageable workloads.^{GGG}

In Nunavik, the Commission des droits de la personne et des droits de la jeunesse conducted an investigation in Ungava Bay and Hudson Bay in 2007 after it received complaints about the delivery of services in Nunavik, including lack of services to those referred to it, poorly trained staff, and lack of knowledge about the *Youth Protection Act* of Quebec.^{HHH}

The investigation revealed the need for

improving the governance structure of service organizations and delivery, improving specialized resources such as addictions services, conducting assessments of foster families, offering training and supports for foster families, building an employee assistance program to support and train workers, as well as recommendations in the areas of housing, adoption, and the application of the *Youth Justice Act*.^{III}

In 2010, a follow-up report concluded there was some progress in some areas, but noted that 30% of children living in Nunavik are reported to child protection services, crime is increasing, the suicide rate remains high, and drug and alcohol abuse is one



of the key areas of investigation and child placement.^{JJJ} Staff recruitment and training remained problems, as well as the assessment of potential foster families, housing needs, and the involvement of regional organizations.^{KKK} In 2018, an Aboriginal Peoples Television Network story reported that one in three Inuit youth in Nunavik are involved with child protection, with intervention workers carrying case-loads of approximately 45 cases, with the provincial average being 18.^{LLL}

While these regions are distinct, they share much in common. Over 2010 and 2011, an Inuit Children and Social Services Reference Group identified a number of key issues for Inuit in relation to family support and child welfare services. These included:

1. addressing child and family poverty caused, in part, by the high cost of living, as well as addictions in many Inuit families;
2. fostering community involvement to generate solutions to different challenges;
3. taking an Inuit-specific, distinctions-based approach to child welfare and to family support;
4. developing culturally safe resources and services, as well as educating service providers about Inuit culture and values, since many who are delivering services are not Inuit, or not from that region;
5. focusing on prevention and on supporting families to prevent apprehension in the first place;
6. improving supports for those experiencing financial or social distress, akin to a home-care visiting model at work in Nunatsiavut;
7. supporting traditional practices, including custom adoption;
8. ensuring access to legal services to ensure proper representation in cases involving child welfare;
9. seeking more direction from Inuit about how best to meet Inuit needs and priorities;

10. maintaining cultural ties and community connection for adoptees who are sent outside of communities and adopted by non-Inuit;
11. increasing community involvement in decision making that affects children and youth; and
12. building capacity in Inuit communities for people to be able to provide services for themselves, and to increase economic health.

These common themes and experiences point to the need for agreements to take into account local needs and circumstances, as well as the larger themes important to children, youth, and families regarding culturally safe resources and Inuit-specific approaches.

“It’s not just pushing paper”: Interjurisdictional Disputes and Non-compliance

This complexity of agreements and the challenges associated with a diverse child welfare landscape are stark and important examples of where interjurisdictional cooperation can impact the operation and provision of these services.

As Blackstock argues, in specific reference to the government’s non-compliance in the application of Jordan’s Principle,^{MMM} explained earlier in this report, the failure to act to fully address the problem goes beyond simple inaction, with profound consequences: “I just want to emphasize that this non-compliance isn’t neutral. It’s not just pushing paper around. It’s having real impacts on children.”^{NNN}

Eight existing reports spanning from 1994 to 2015, with approximately 28 recommendations, address the need to improve child and family services for Indigenous Peoples. Reports note there are several ways in which the inadequacies of child welfare systems contribute to violence against Indigenous women, girls, and 2SLGBTQIA people. First, the disruption to Indigenous families and communities caused by child apprehensions, conducted systematically over generations by Canadian governments, has resulted in trauma, substance abuse, low self-esteem, cultural disconnection, a lack of parenting



skills, and, ultimately, violence. Second, apprehended children are more vulnerable to sexual abuse and exploitation while they are in care. There are also increased chances of youth becoming street-engaged earlier if they have been apprehended. Third, leaving or “aging out” of care can significantly elevate young Indigenous women’s and gender-diverse people’s vulnerability to violence, especially when it involves a sudden end to their community supports and relationships.

Most of the recommendations under this sub-theme are directed either at provincial governments, or else at the need to better coordinate services and funding at multiple levels of government. The need for better interjurisdictional funding was mentioned by virtually everyone.

In 2016, the Canadian Human Rights Tribunal (CHRT) found that the federal government discriminated against First Nations children in care by providing them with less funding compared with non-First Nations children in care.^{OOO} The CHRT held that this discrimination perpetuated historic disadvantages, particularly the legacies of residential schools. The CHRT also found that the federal government was failing to implement Jordan’s Principle, and that the structure of Directive 20-1 effectively created an incentive to remove First Nations children from their families by providing non-First Nations recipients with higher levels of funding, greater flexibility, and fewer reporting requirements that incentivizes non-culturally appropriate services.^{PPP} While the CHRT found the federal government had made some effort to address shortcomings of the directive in recent years, these measures failed to adequately remove inequalities in child welfare funding formulas for First Nations children.

The federal government has been slow to implement the CHRT’s orders. As of March 2019, the CHRT has issued its seventh non-compliance order to the federal government for failing to fully implement Jordan’s Principle.^{QQQ} While the federal government has promised more funding to address child welfare issues and make sure there are equitable services for Indigenous children, what it has promised still falls far short of what families need.^{RRR} Almost all Canadian provinces have initiated at least one systemic review of child welfare regimes within their respective jurisdictions.^{SSS} To date, there are no legislated national standards for child welfare.

“The price of us waiting”: Encouraging New Initiatives for Change

For many of our witnesses, changes must happen right now, to begin to address the very real impacts that child welfare has on human security, and on the safety of Indigenous women, girls, and 2SLGBTQQIA people. The loss of childhoods, as Cindy Blackstock explained, represents

the price of us waiting. That’s the price of us putting up with this underfunding and this partial equality for even a day more. That’s why we have to do everything in our power as individuals, as systems, as inquiries, to make sure that this is the generation of kids, First Nations, Métis, and Inuit kids who don’t have to recover from their childhoods, because we know better and we can do better, so we’ve got to get to it.^{TTT}

As the National Inquiry heard, the price of waiting is too much. Particularly with high numbers of Indigenous children aging out of care, as well as being apprehended on a daily basis, the consequences in



Dr. Cindy Blackstock testifies before the National Inquiry in Winnipeg, Manitoba.



these moments of transition can be grave. In addition, the remarkable level of apathy that was demonstrated, at least until recently, for a crisis that has been worsening for decades underscores the extent to which governments are cognizant of this price, and aware of the need to change.

The National Inquiry heard specific testimony related to the price of waiting, particularly in moments of transition. For instance, “aging out of care” refers to the process by which many children in foster care are abandoned when they reach the age of majority – in most cases, 18 – by child and family services systems funded to support children and youth up to a certain age. Many of these children simply “age out” of the child welfare system, without having forged a stable family connection and without the skills to survive, let alone thrive, on their own.

As the Canadian Coalition for the Rights of Children’s research demonstrates, provincial child welfare systems do not adequately prepare youth for life after care and directly contribute to lower graduation rates from high school, greater mental health issues, and a greater likelihood of becoming involved in the youth criminal justice system.^{UUU}

Stephen Gaetz, professor and director of the Canadian Observatory on Homelessness at York University, points out:

Difficult transitions from care often result in a range of negative outcomes, such as homelessness, unemployment, lack of educational engagement and achievement, involvement in corrections, lack of skills and potentially, a life of poverty. Many young people who leave care fail to make the transition to independent living because of underdeveloped living skills, inadequate education, lower levels of physical and emotional well-being and lack of supports and resources that most young people rely on when moving into adulthood.^{VVV}

In addition, in many jurisdictions, the rules governing child welfare ignore more recent social and economic changes, making it more difficult for youth to live on their own at an early age. For example, over 40% of Canadians aged 20 to 29 live with their parents due to high costs of housing, their attendance at college

and university, or poor job prospects.^{WWW} For these reasons, child welfare services that cease providing support for youth at a relatively young age place youth in jeopardy. While there are programs that seek to fill these gaps, they don’t exist everywhere and aren’t all successful. Many testimonies before the National Inquiry gave examples of how youth aging out of care ended in homelessness and sometimes even death.

As First Nations Family Advocate for the Assembly of Manitoba Chiefs Cora Morgan testified, the outcomes for children aging out of care in Manitoba, for example, are not good.

The education outcomes in Manitoba for children in our care, only 25% of them graduate high school, and you know, we have high populations of homeless people due to children aging out of care. You know, those are the things that when you take children out of the community and, you know, they lose language, they lose connection, they lose family, and then they come into Winnipeg and they’re searching for some sort of belonging, and it’s not always in a good place.^{XXX}

Turpel-Lafond presented *Paige’s Story*, a report about the death of a girl who aged out of care and then died in Vancouver’s Downtown Eastside. As she said in her testimony:

Essentially, the story of Paige’s life is that she moved around Vancouver, and particularly, in the Downtown Eastside, and she aged out of care in a way that many youth age out of care. And I certainly heard and worked with them extensively, which is essentially being given sort of their belongings in a garbage bag and being sent, in British Columbia, kind of to the curb at 19. So Paige aged out of care, and she had no place to live. The only place she had to live was in the Downtown Eastside. And she died, tragically, of a drug overdose at 19 years old in the Downtown Eastside.^{YYY}

Resolving the issues of ongoing apprehension, as well as of aging out of care without proper support, is key. Some Indigenous organizations have advocated for greater federal legislative input in child welfare systems, seeing it as a means by which In-



Indigenous self-determination may also be better facilitated.^{ZZZ} Improving accountability in the child welfare system for past and current practices is an important issue. The problematic consequences of primary provincial control over child welfare systems include significant disparities from province to province concerning the extent to which each provincial government will recognize Indigenous jurisdiction over Indigenous children in the child welfare system, including the extent to which First Nations agencies will be delegated authority to administer these systems (and receive financial and technical support to do so).^{AAAA} Further, conflicts and inconsistencies can arise between provincial child welfare legislation and federal funding frameworks. While Canadian constitutional law fails to provide clarity over interjurisdictional financial responsibilities, especially in cases in which federal and provincial jurisdiction may overlap, federal legislation (coordinated with the provinces and territories) may provide more clarity.^{BBBB}

In her testimony, Dr. Valérie Gideon, regional director for First Nations and Inuit Health, Ontario Region for Health Canada, talked about a working group recently appointed by the minister of Justice to review “all laws, policies and operational procedures in the context of the United Nations Declaration and the rights of Indigenous peoples in section 35.”

As she pointed out:

It’s a question of prioritization and I mean, there’s been a – obviously now, with Minister Bennett very actively consulting with First Nations, Inuit, and Métis on the recognition and implementation of Indigenous rights framework, and there’s also discussions with respect to child and family services and potential legislation, so there is a lot of work underway.^{CCCC}

This includes a more active engagement with those not traditionally serviced by the federal government, such as Métis and Inuit. Over the course of the working group’s review, “more than 65 engagement sessions with nearly 2,000 participants were held.”^{DDDD}

In late 2018, then-Indigenous Services Minister Jane Philpott announced that the government of Canada will introduce co-developed federal legislation on Indigenous child and family services in early 2019. Ac-

companied by Assembly of First Nations National Chief Perry Bellegarde, Inuit Tapiriit Kanatami President Natan Obed, and Métis National Council President Clément Chartier, Philpott pointed out that Indigenous children represent 52.2% of children in foster care in private homes in Canada, and that these children face greater risks regarding health outcomes, violence, and incarceration.^{EEEE} As the government’s summary of the meeting explains, the steps being taken reflect a need for significant legislative change.

Currently, Indigenous families are bound by rules and systems that are not reflective of their cultures and identities. The goal of the proposed legislation is to change that. It aims to support Indigenous families to raise their children within their homelands and nations as well as increase efforts to prevent child apprehension where possible and safe to do so.^{FFFF}

The proposed legislation is intended to affirm section 35 rights of the Canadian Constitution and support the Calls to Action of the TRC, as well as operate in line with Canada’s commitments to UNDRIP and the CRC. According to the government, the proposed legislation is based on the principle and the right to self-determination for Indigenous Peoples to determine their own laws, policies, and practices for child and family services.

The focus on the legislation, Minister Philpott maintained, was necessary and would provide “a powerful tool to support these efforts.” Minister Carolyn Bennett, Minister of Crown-Indigenous Relations, said, “This is a critical step in supporting the rights and well-being of Indigenous children. The status quo is not acceptable.”^{GGGG}

Indigenous leaders, similarly, cited the importance of reforming child and family services in ways that respect, as Assembly of First Nations National Chief Perry Bellegarde explained, “our rights, cultures, family structures.... First Nations are ready to focus on prevention over apprehension, and apply First Nations laws, policies and cultural values that place children at the centre of our Nations.” Inuit Tapiriit Kanatami President Natan Obed reiterated the commitment of Inuit to “working constructively and on a distinctions basis towards the co-development of federal child and family welfare legislation to help



meaningfully address social inequity in Inuit Nunangat, and across Canada, and ultimately decrease the overrepresentation of Inuit children in care.” Clément Chartier, president of the Métis National Council, asserted:

This proposed legislation will provide a new chapter towards increased recognition that we, the Métis Nation, are best placed to nurture and to care for our children. This is an unprecedented initiative that will ensure the survival, dignity and well-being of our families, communities and nation for generations to come.^{HHHH}

On February 28, 2019, Indigenous Services Minister Seamus O’Regan introduced Bill C-92, An Act respecting First Nations, Inuit and Métis children, youth and families. Co-developed with Indigenous partners, including the Assembly of First Nations, Inuit Tapiriit Kanatami, and the Métis National Council, the Bill seeks to affirm Indigenous Peoples’ inherent right to exercise jurisdiction over child and family services, as well as to “establish national principles such as best interests of the child, cultural continuity and substantive equality to guide the interpretation and administration of the Bill.”^{IIII} Significantly, the Bill outlines new factors for consideration in determining what is meant by the “best interests” of an Indigenous child in care, including cultural, linguistic, and spiritual values and the ongoing and important aspect of relationship with one’s biological family, community, and Indigenous group. The Bill also emphasizes the need to focus on prevention to reduce apprehension, and to provide care to support families as an integral unit.

Conclusion: “Our ability to dream for ourselves”

In identifying solutions, Cindy Blackstock argued that it is important to

re-embrace those cultural ways of keeping kids safe and be prepared to do that.... We feel that one of the things taken from many Indigenous Peoples through colonization, perhaps even, I would argue, the most important thing was our ability to dream for ourselves. What does a healthy Gitksan family and child look like? Some of us have pieces of that vision, but that commu-

nal vision, that was broken apart; in some cases, more than in others. And so, one of the first things is to re-dream what that looks like, and then work with community to re-establish that dream.^{JJJJ}

One example is the First Nations Child and Family Caring Society’s Touchstones of Hope project to promote reconciliation in the area of child welfare, launched in 2005. This project is based on five principles. They include:

- self-determination: respecting that Indigenous Peoples are in the best position to make decisions regarding Indigenous children;
- holism: respecting the child as part of an interconnected reality where family, community, Nation, and world are all honoured;
- culture and language: honouring the culture and language of an Indigenous child and supporting that through the provision of culturally based child welfare and family support services;
- structural interventions: addressing poverty, poor housing, and substance misuse as key components to effective child welfare and family support services for Indigenous children; and
- non-discrimination: providing Indigenous children with a comparable level of child welfare and allied services as provided to non-Indigenous children and giving preference to Indigenous knowledge when responding to the needs of Indigenous children.^{KKKK}

The National Inquiry heard about other programs, too, that enhance connection to community and that are aimed at confronting this crisis. In her testimony, Cora Morgan talked about a program from the First Nations Children’s Advocate Office, where they work to help mothers whose newborn babies are likely to be apprehended. This initiative focuses on creating cultural connection and safety, from birth. As she explained:

Newborn babies, we were getting calls from moms who, upon the discharge of their babies,



they were going to be apprehended. So we started responding at the hospital to try and prevent babies from being taken. And then we started trying to offer more. We soon had the ability to offer moccasins.^{LLLL}

She also cited the Sacred Babies workshop, where families create bundles for their family.^{MMMM}

For children already in care, witnesses testifying before the National Inquiry also identified a number of practices focused on cultural safety that could ultimately help create a sense of belonging for the child, and improve outcomes later in life. As Mary Ellen Turpel-Lafond discussed, cultural plans for children in foster care are necessary to maintain strong ties to community and to cultural identity, and, thereby, to personal safety. She explained:

I think that it should be required that there be what I called early cultural plans, which means there has to be an operationalized cultural plan. So you don't just, like, go later and find out who your family is.... So there isn't that discontinuity between your identity, your culture, and your time in foster care.^{NNNN}

As the programs and efforts in this Deeper Dive demonstrate, the answers are there. As Cindy Blackstock argued:

A lot of people think that we need to find new answers to remedy some of the most pressing problems confronting First Nations children in care and their families. I argue against that. I think that, actually, we have known for, for at least, 111 years, the inequalities that have been facing these communities, and how that has piled up on the hopes and dreams of children and, in fact, incentivized their removal of children – from their families. First, in residential schools; then, through the Sixties Scoop; now, in contemporary times.^{OOOO}

The existing child welfare system inflicts violence on Indigenous women, girls, and 2SLGBTQQIA people, and contributes in significant ways to a lack of safety.



Findings:

- The Canadian state has used child welfare laws and agencies as a tool to oppress, displace, disrupt, and destroy Indigenous families, communities, and Nations. It is a tool in the genocide of Indigenous Peoples.
- State child welfare laws, policies, and services are based on non-Indigenous laws, values, and world views and, as such, are ineffective. Further, they violate inherent Indigenous rights to govern and to hold jurisdiction over child and family services.
- The apprehension of a child from their mother is a form of violence against the child. It also represents the worst form of violence against the mother. Apprehension disrupts the familial and cultural connections that are present in Indigenous communities, and, as such, it denies the child the safety and security of both.
- There is a direct link between current child welfare systems and the disappearances and murders of, and violence experienced by, Indigenous women, girls, and 2SLGBTQIA people.
- The state has a fiduciary obligation to children and youth in its care. Canada has failed to support Indigenous children who are in state care to safely grow into adulthood.
- Indigenous children are removed from their families due to conditions of poverty or as a result of racial and cultural bias. The state characterizes these circumstances as “neglect.” This is a form of discrimination and violence.
- The use of birth alerts against Indigenous mothers, including mothers who were in care themselves, can be the sole basis for the apprehension of their newborn children. Birth alerts are racist and discriminatory and are a gross violation of the rights of the child, the mother, and the community.
- The child welfare system fails to meet the needs of Indigenous children and youth and fails to protect them from abuse and exploitation. State failure to protect has assisted human traffickers in targeting children and youth in care for sexual exploitation.
- State funding of child welfare services incentivizes the apprehension of Indigenous children and youth. This is exemplified by the state’s prioritizing funding for foster homes over economic and support services to families; state policies that limit access to specialized support services unless the child is in care; and agency funding models that are predicated on the number of children in the agency’s care.
- Gaps in child and family services and infrastructure in northern and remote communities result in the disproportionately high rate of Inuit, Métis, and First Nations children being sent out of their communities and regions to obtain services and care in other jurisdictions. This can result in jurisdictional neglect and culturally unsafe services. Further, it can result in the denial of the human rights and Indigenous rights of the children and their families.



- A Dr. Janet Smylie (Cree/Métis), Mixed Parts 2 & 3, Public Volume 2, Iqaluit, NU; Cora Morgan (Sagkeeng First Nation), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB; Jackie Anderson (Métis), Part 2, Public Volume 3, Calgary, AB.
- B Dr. Cindy Blackstock (Gitksan), Part 3, Public Volume 10, Toronto, ON, pp. 256-257.
- C Dr. Cindy Blackstock (Gitksan), Part 3, Public Volume 10, Toronto, ON, p. 259.
- D Gaetz et al., as cited in Hyslop, "How poverty and underfunding."
- E Representative for Children and Youth and British Columbia Office of the Provincial Health Officer, "Kids, Crime and Care."
- F Dr. Amy Bombay (Ojibway, Rainy River First Nations), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, pp. 182-183.
- G Malone, "Change to Manitoba's child apprehension."
- H Natalie G. (Mi'kmaq), Part 1, Public Volume 18, Membertou, NS, p. 87.
- I Krugel, "Child welfare system."
- J Dr. Cindy Blackstock (Gitksan), Part 3, Public Volume 10, Toronto, ON, p. 260.
- K "The Beginnings of the Convention on the Rights of the Child."
- L Dr. Mary Ellen Turpel-Lafond (Cree), Mixed Parts 2 and 3, Volume 13, Winnipeg, MB, p. 202.
- M Canadian Council of Provincial and Youth Advocates, "Aboriginal Children."
- N McIntyre, Walsh and Connor, "A Follow-Up Study of Child Hunger," as quoted in Bennett and Auger, "The Rights of First Nations Children," 3.
- O Canadian Coalition for the Rights of Children (CCRC), "The System Needs Fixing," 2.
- P Truth and Reconciliation Commission of Canada, *Calls to Action*, p. 1.
- Q Ibid.
- R Bennett and Auger, "The Rights of First Nations Children," 4.
- S United Nations, Human Rights Committee, "Concluding observations," in CCRC, "The System Needs Fixing," 5.
- T Ibid.
- U Ibid.
- V Ibid.
- W Bennett and Auger, "The Rights of First Nations Children," 8.
- X Reported by Barrera, "Indigenous child welfare rates."
- Y Dr. Cindy Blackstock (Gitksan), Part 3, Public Volume 10, Toronto, ON, p. 187.
- Z Bennett, "First Nations Fact Sheet," 1.
- AA Albert and Herbert, "Child Welfare."
- BB Bennett, "First Nations Fact Sheet," 1.
- CC As quoted in Bennett, "First Nations Fact Sheet," 2.
- DD Sinha and Kozlowski, "The Structure of Aboriginal Child Welfare," 7.
- EE Bennett, "First Nations Fact Sheet," 2.
- FF For a list of agencies, see First Nations Child and Family Caring Society, "First Nations Child and Family Service Agencies in Canada."
- GG Blackstock, "Aboriginal Child Welfare," cited in Bennett, "First Nations Fact Sheet," 4.
- HH Bennett, "First Nations Fact Sheet," 2, 4.
- II Walkem and Bruce, "Calling Forth Our Future," 62.
- JJ Ibid, 61.
- KK Nisga'a Lisims Government, "About NCFCS."
- LL Bennett, "First Nations Fact Sheet," 5.
- MM Ibid., 5-6.
- NN McDonald, Ladd, et al., "First Nations Child and Family Services," 119.
- OO Bostrom, Rogan and Asselin, "The Aboriginal Justice Inquiry," cited in Allard-Chartrand et al., "Métis Children and Families," 10.
- PP Ibid.
- QQ Bourassa, "Summary review," cited in "Métis Children and Families," 10.
- RR Ibid, 10.
- SS Ibid, 11.
- TT Ibid.
- UU Ibid, 12.
- VV Ibid, 12.
- WW Ibid.
- XX Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History...*, 52.
- YY "Métis Child & Family Services Society."
- ZZ Rae, "Inuit Child Welfare," 4.
- AAA Ibid.
- BBB Ibid.
- CCC Canada, Aboriginal Affairs and Northern Development Canada, "Inuvialuit Self-Government Negotiations."
- DDD Labrador Inuit Land Claims Agreement, "Land Claims Agreement," 264.
- EEE Rae, "Inuit Child Welfare," 10.



FFF	Nunatsiaq News, "Judge: Nunavut child protection," as cited in Rae, "Inuit Child Welfare," p. 11.	TTT	Dr. Cindy Blackstock (Gitksan), Part 3, Public Volume 10, Toronto, ON, p. 260.
GGG	Office of the Auditor General, <i>2011 March Report of the Auditor General of Canada</i> .	UUU	CCRC, "The System Needs Fixing."
HHH	Commission des droits de la personne et de droits de la jeunesse Québec, "Investigation into Child and Youth."	VVV	Gaetz et al., "Without a Home," 49-50.
III	Rae, "Inuit Child Welfare," 11-12.	WWW	Gaetz, "Coming of Age," 2.
JJJ	Commission des droits de la personne et de droits de la jeunesse Québec, "Investigation into Child and Youth."	XXX	Cora Morgan (Sagkeeng First Nation), Mixed Parts 2 & 3, Public Volume 11, Winnipeg, MB, pp. 153-154.
KKK	Rae, "Inuit Child Welfare," 11-12.	YYY	Dr. Mary Ellen Turpel-Lafond (Cree), Mixed Parts 2 & 3, Public Volume 13, Winnipeg, MB, p. 77.
LLL	Fennario, "One in three Inuit youth."	ZZZ	Grammond, "Federal Legislation," 136.
MMM	Jordan's Principle dictates that if a First Nations child is in need of services, they must receive them immediately from the government of first contact. The principle arose in response to jurisdictional disputes that would arise between the provincial and federal governments over which jurisdiction would have to pay for these medical services.	AAAA	Ibid.
NNN	Dr. Cindy Blackstock (Gitksan), Part 3, Public Volume 10, Toronto, ON, p. 246.	BBBB	Ibid.
OOO	<i>First Nations Child and Family Caring Society of Canada v Attorney General of Canada</i> (for the Minister of Indian and Northern Affairs Canada) 2016 CHRT.	CCCC	Dr. Valérie Gideon (Mik'maq Nation of Gesgapegiag), Part 2, Public Volume 4, Calgary, AB, p. 50.
PPP	First Nations Child and Family Caring Society, "Memorandum of Fact," 8.	DDDD	Canada, Indigenous Services Canada, "Government of Canada."
QQQ	<i>First Nations Child and Family Caring Society of Canada v Attorney General of Canada</i> (for the Minister of Indian and Northern Affairs Canada) 2016 CHRT 2.	EEEE	Ibid.
RRR	Ostroff, "Trudeau budget continues illegal discrimination."	FFFF	Ibid.
SSS	Alberta, British Columbia, and Manitoba governments have commissioned multiple reviews of their respective child welfare systems. Saskatchewan, Quebec, and New Brunswick have all initiated reviews of their respective child welfare systems. Ontario, Nova Scotia, Newfoundland and Labrador, and the Yukon do not appear to have commissioned such reviews of studies within their respective jurisdictions.	GGGG	Ibid.
		HHHH	Ibid.
		IIII	Canada, Indigenous Services Canada, "An Act."
		JJJJ	Dr. Cindy Blackstock (Gitksan), Part 3, Public Volume 10, Toronto, ON, pp. 257-258.
		KKKK	Blackstock et al, "Reconciliation in Child Welfare."
		LLLL	Cora Morgan (Sagkeeng First Nation), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, pp. 45-46.
		MMMM	Cora Morgan (Sagkeeng First Nation), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, p. 46.
		NNNN	Dr. Mary Ellen Turpel-Lafond (Cree), Mixed Parts 2 & 3, Public Volume 13, Winnipeg, MB, p. 289.
		OOOO	Dr. Cindy Blackstock (Gitksan), Part 3, Public Volume 10, Toronto, ON, p. 182.



First Nations and Métis Elders are recognized and thanked at the close of the hearings on racism in Toronto, Ontario.

The Impact of Colonial Systems on Identity, Family, and Culture

Of the systems we heard most about, and those that represent shared experiences across Indigenous groups including First Nations, Métis, and Inuit, the residential and day school experiences, as well as Sixties Scoop or child welfare interventions, are an important catalyst for violence against Indigenous women, girls, and 2SLGBTQQIA people. More specifically, the ongoing suffering caused by these experiences through the disruption of family systems continues to jeopardize the safety of Indigenous women, girls, and 2SLGBTQQIA people. This is particularly true for those left to deal with the legacies of these systems for their families, as manifested in physical or emotional abuse, in unresolved pain, in poverty, or in substance abuse.

Some of the abuses that occurred in the context of state-sponsored assimilative schooling and of foster care are described in more detail in Chapter 4. This section focuses on how these experiences serve to weaken family and community ties – ties that ultimately can work to restore safety and to protect Indigenous women. These impacts are not short-term. As many witnesses described, they can last for years.

In one case, Shara L. talked about how hard it was to have eight brothers and sisters but grow up separate from them because of residential school. Ultimately, this transformed her family forever. She described running into one of her family members at an Elders' Gathering.

As I got closer, [I saw] it was my [elder family member]. I was just like, “Oh, my God....” And I was going to hug, he got up and he just hugged me over the counter. A barrier between us, and even I wanted to go around and give him a full body hug. No, he was – “Hey, [family member], how are you doing?” Like, not even – not even a minute. You know. And right away my defences went up to block, a wall just came up, and I just instantly – “Hold your emotions back. Don’t show your love. Don’t – don’t express yourself,” and this was going through my head because he did the same thing. He just give me the real quick hug, not even a hug. Right away I knew. Yeah, he’s still affected at 60-plus years old. He still has that mentality, that, what he was taught in residential school.³⁴



Another witness, Ann M. R., explained how the impact of residential schools affected the communities of Pelly Banks and Frances Lake for many generations. Ann's sister was found dead at the age of 26 at a garbage dump, after being jailed for two weeks for drinking, since it was illegal for First Nations people to drink at the time in Yukon. Ann was in residential school and wasn't told of her sister's death. She remembers her mother's heartache very vividly, saying "her heart died that day that she lost Tootsie."³⁵ Because of the segregation of families in residential schools, she says, she didn't really know her sister.

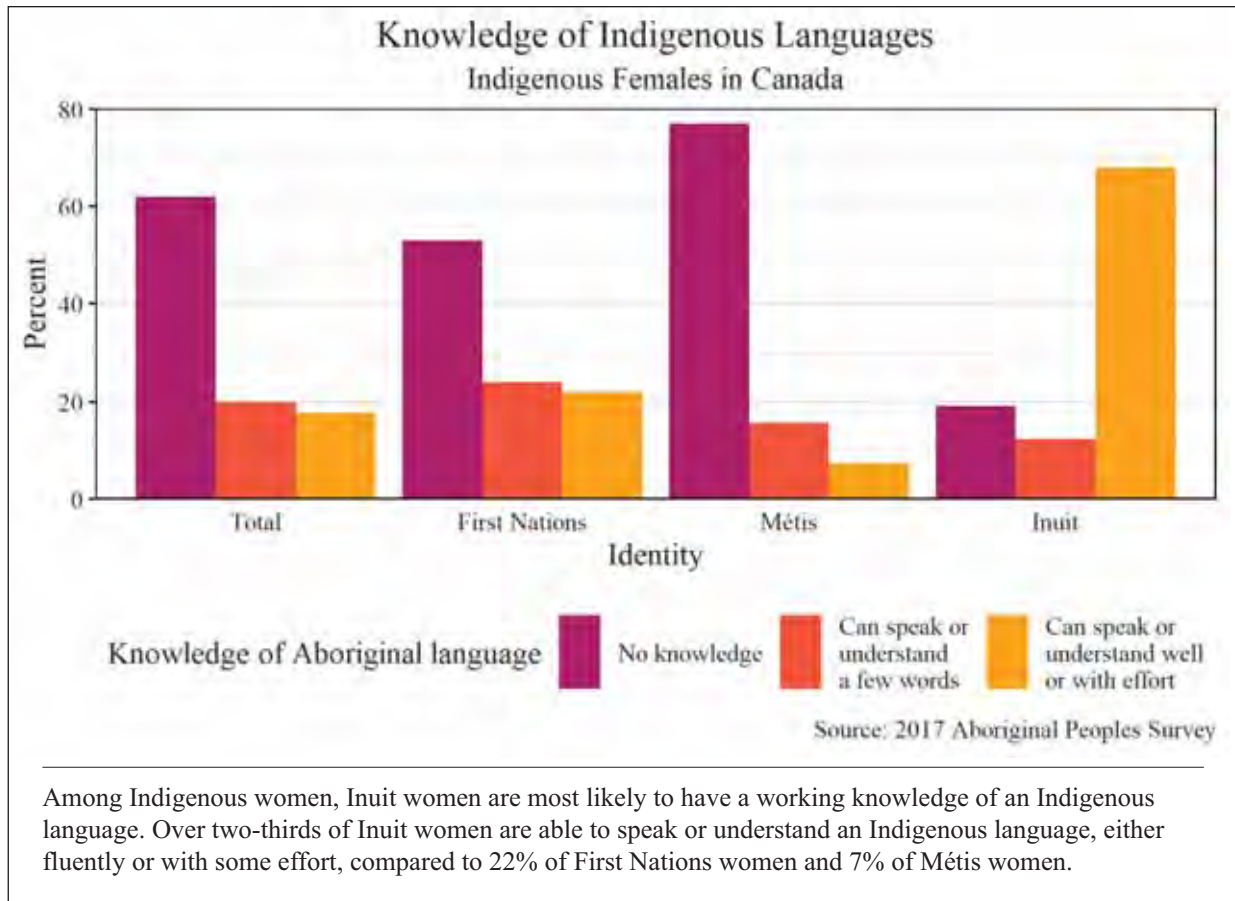
Like Ann, many other witnesses have siblings who died in residential schools. Many of them were never notified, only learning about the deaths when they returned home. As Elder Jal T. said:

After seven years in residential school I never saw my sisters for four years. When I came home they told me my sisters were passed away and [I asked] why didn't they tell me. They said they didn't want to disrupt my education and school. So you can imagine the shock, because the women are our biggest part of our life.³⁶

In addition to – or because of – this disruption to family, community, and culture, many people spoke about how the lessons they had been taught at residential school and how the negative stereotypes about their culture and family systems translated into the way they parented their own children in relation to Indigenous culture and language. For many, in this sense, the negative impact of the residential school system continued outside of the residential school setting and into families.

For Moses M., not teaching his children their Nuu-chah-nulth language was an act of protection. He shared the following observation about how his residential school experience shaped his relationship to his language and, consequently, the role culture and language played in his relationships with his children.

I'm a survivor of residential school. I spoke my own language until I went to school at seven years old. And today I have nine children – or had nine [Moses's daughter was murdered], and 60-plus grandchildren, and I never taught any one of them our language. I always wondered why. It's my own way of protecting my children because somebody tried to beat it out of me. But I'm still here. I still speak the language.³⁷



In her statement, Muriel D. spoke about how her mother’s experience at residential school translated into her mother’s parenting.

I just really wanted to talk about all the effects at the residential school. They took us, like, from my mother and us, me and my sisters and brothers, all we had to go through and we were never taught anything, or we never had any physical or emotional caring, I think. My mom was so – was so closed off. And so ... all of us, my sisters and brothers are totally damaged from – from my mom being in Blue Quills School.³⁸

Speaking of the impact of residential schools on Indigenous families and the struggles she experienced as a result of her mother’s attendance at residential school, Carol B. put it simply as follows:

I honestly can’t imagine what it’s like to be brutalized on a daily basis. Made to feel that you’re nothing. I – and it hurts my heart. And that’s why I was able to forgive my mother. You know, she did the best that she could with what she had. And like I said earlier, I think it’s impossible to love if you have not felt love yourself.³⁹



Carol B. was able to forgive her mother and recognize how her experiences of abuse and structural marginalization made it difficult for her to parent. However, unlike family members like Carol, the Canadian state, child welfare workers, and legislators continue to see things otherwise.

“I HONESTLY CAN’T IMAGINE WHAT IT’S LIKE TO BE BRUTALIZED ON A DAILY BASIS. MADE TO FEEL THAT YOU’RE NOTHING. I – AND IT HURTS MY HEART. AND THAT’S WHY I WAS ABLE TO FORGIVE MY MOTHER. YOU KNOW, SHE DID THE BEST THAT SHE COULD WITH WHAT SHE HAD. AND LIKE I SAID EARLIER, I THINK IT’S IMPOSSIBLE TO LOVE IF YOU HAVE NOT FELT LOVE YOURSELF.”

Carol B.

For many witnesses, one of the most severe ongoing impacts of the residential school system on Indigenous families and culture is the way it contributes to the creation of conditions used by the Canadian state to justify the removal of Indigenous children from their homes. As some witnesses were careful to note, the Sixties Scoop and the ongoing crisis of child apprehension are commonly viewed as the continuation of the assimilative school systems in which many Indigenous Peoples were swept away. As Corey O’Soup explained to the National Inquiry:

You know, at the height of the residential school system, there were thousands of kids being taken away from homes.... The current foster care system, there is more kids in our current system than were ever in the residential school system. And it’s not a historical issue, it’s a contemporary issue. Kids are still being taken away.⁴⁰

Carol B. put it this way:

We have another residential school system starting with child welfare. How many children do we have in care right now? Our children are maybe not being taken away and put in schools, but they’re put – being put in foster homes.... Is that not the same? I mean, we just got our children back. And now, they’re being taken away again to be raised by – and I’m sorry to say, non-Native families, they need to be placed with Native families. Native foster homes. Once again, we’re being stripped away of our culture, our language, our family, our roots. They’re doing it to us all over again, but in a different way. And that needs to change.⁴¹

The connections that witnesses drew between residential school attendance and child welfare are confirmed in research shared by Amy Bombay.

And, we found that, again, having a parent who went to residential school was linked with more reports of cumulative exposure to various childhood adversities, and we found that that, in turn, kind of was a pathway leading to people being more likely to have spent time in foster care. So, we did find that those with a parent who went to residential school were more likely to spend time in foster care, and that those adverse childhood experiences were a key factor in that cycle across generations.⁴²

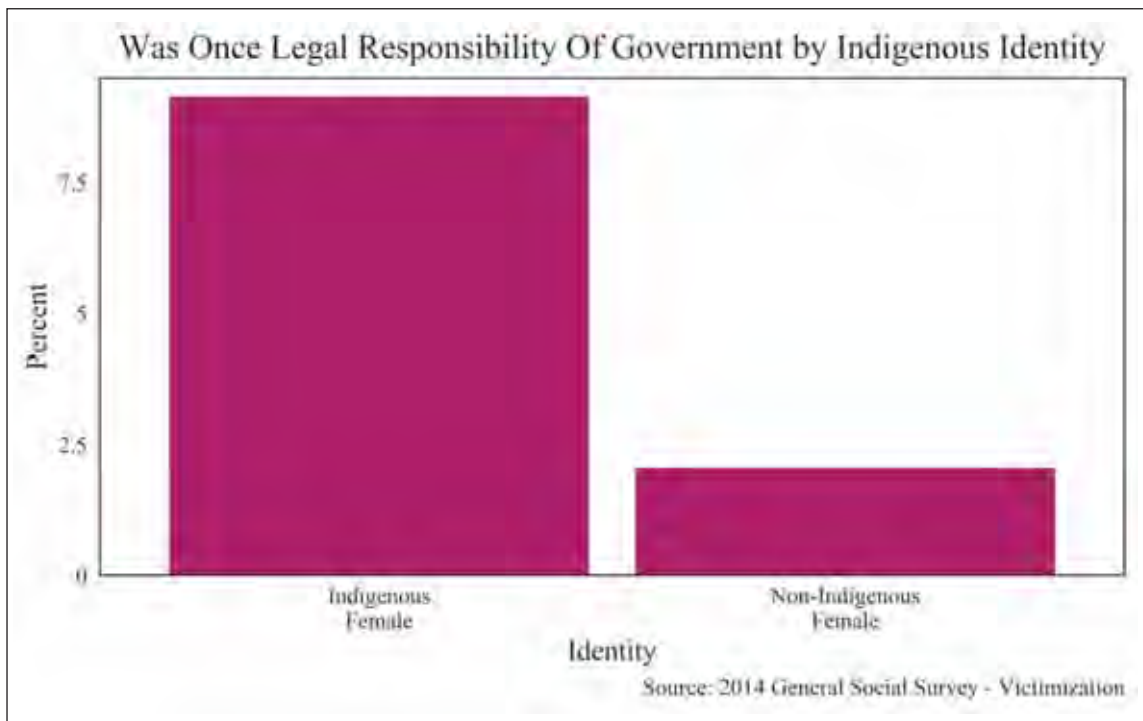


The impact of these removals is important, because, like residential schools, it separates families and alienates family members from each other. Other witnesses pointed out the impact of these experiences on their relationships with family – experiences that marked them for life. As Juanita D. recalled:

I think my very first foster home that I went to – I don't have a lot of recollections, like the recollections that I do have are of trauma. So, you know, I know that I suffered from forms of torture. And so, with that, that means that I was confined while I was in a foster home. So, that meant that the door was locked.

I had no human contact. I was fed food from under the door. I remember I was on the third floor, or whatever. There were windows below me, and then the ground. And, I jumped out of that window, and I took off and I wanted to see my mom. I didn't have, like, visitations with my mom at all. I didn't have any visitation with my family.⁴³

She recounted a feeling of isolation in foster care: “And, I don't ever remember, like, having any bonding. I never had, like, that bonding or that love provided to me, like children should have. I also didn't have any counselling services or connection to culture provided to me. And, I never got to see any of my family either during that time.”⁴⁴



Indigenous women are 4.4 times more likely to have been the legal responsibility of the government (9.1%) than non-Indigenous women (2.1%). This includes being in foster care, group homes, residential school, or youth justice facilities.



Darlene S. shared a similar experience. Speaking of her time in care, and of the worker assigned to her case, she said:

She was a true ... welfare agent. She was like this mean woman who was, like, going to do her job properly, and at the time I wasn't even sure who she was until she says, until she said who she was ... and that's all she said, that, "You are not to have any contact with your Indian relatives." Those were her words.⁴⁵

Carol B. spoke about the impact of this alienation on her sense of self and connection to culture.

I mean, I grew up in the system. And at that time, like, any time I would ask my foster parents any information about my family, they would just say, you know, well, that's in the past, you should be grateful that you have a roof over your head. And the past needs to be left behind. So not even having that information – not having – not knowing where your roots are. It just makes you feel that you don't know where you belong. Do I belong in the Native world? Do I belong in the non-Native? So you grow up feeling confused.⁴⁶

In many cases, siblings were separated, never to see each other again. In other cases, they did find each other – but not before their experience in care marked these relationships for life. As Danielle E. shared:

When I was about nine and Laney [Eleanor, her sister] was 10, they were separating us from our home.... In our backyard at that foster home, we had this couch, and we used to use it as a playhouse. And, Eleanor and I were on there, and we promised each other that no matter what, when we grew up, we would find – we would find each other. And, we did.⁴⁷

Carol M. noted:

It reflects a lot of what our people have gone through, you know, from being a child growing up in the foster home, in a white home, trying to connect back with your family, with your culture. Lost. I think they say a lot of our kids didn't come home from residential school. You know, that's true. A lot of them died and a lot of them got lost inside of themselves. We got lost. We were lost. We are lost. I don't think any of us have come home.⁴⁸

In her testimony, Carla M. made a connection between the loss of culture and values instilled through traditional teaching and contemporary attitudes toward violence against Indigenous women.

[It's] because of the shaming that happened through the residential schools – at least that's where I believe it comes from – the belief that whoever was murdered deserved it, that they brought it in on themselves, that shaming that had lasted for so long. And then the families accepting that and saying, well, they were doing whatever, they were whatever, I mean, and that's not just happening to First Nations women, that just happens to women, oh, [who] wore that kind of clothing so they deserve to be killed.⁴⁹



Institutionalized since Birth: Child Welfare Agencies and Birth Alert Systems

As we heard in testimony from family members, survivors, Knowledge Keepers and Expert Witnesses, the removal of a child from its parents at birth represents one of the very worst forms of violence; and that, once removed, it can be exceedingly difficult to get a baby back. One of the most egregious and ongoing examples of violence against mothers and against children is the operation of birth alert or newborn apprehension systems. These exist in several child welfare jurisdictions, including Manitoba, whose practices have recently been publicized on social media.¹ It is notable that in Manitoba, a birth alert is automatically required by doctors who are treating any pregnant woman under the age of 18. While there are, at times, legitimate reasons for child apprehension at birth regarding child safety, evidence suggests that the birth alert system disproportionately impacts Indigenous women and their infants.

The Nature of Birth Alerts

Birth alerts are one of the contributing factors to the disproportionate rates of the apprehension of Indigenous infants and children by child welfare. According to Manitoba's Child and Family Services manual, for example, "Birth alerts apply to expectant mothers considered by agencies to be high risk in relation to the care they will provide for their newborn infant. The practice in Manitoba is to issue alerts to track and locate these high-risk expectant mothers."² The alerts serve to flag certain women – largely Indigenous – in hospital, and stipulate that, if an alert has been issued, the agency may apprehend the child at birth.

In these cases, hospital social workers are given a list of women who are pregnant and their due dates and as soon as one of these women enter the hospital to give birth, an alert is activated.

Often, Indigenous mothers about to give birth will not be aware that there has been a birth alert placed against them. As Dr. Janet Smylie, a family physician,

as well as a public and Indigenous health researcher and Knowledge Keeper, observed:

It's striking to me that people think it's still okay to send a birth alert to the hospital without informing a woman. So I'm aware that other prenatal providers have actually gotten scolded by, like, social service agencies, child protection agencies, both Indigenous and non-Indigenous, because they actually found out about a birth alert and told a woman that there was a birth alert, right? So to me, like, I don't understand how that could be conceptualized, right? Because it would seem to me that it would be very important to tell people, like, if there was that kind of legal intervention happening. Like, I don't think it's acceptable in Canadian health care systems to hold that kind of important information and not let people know."³

In her testimony, Cora Morgan, a First Nations family advocate with the Assembly of Manitoba Chiefs' First Nations Family Advocate Office, likewise commented on how birth alerts are often issued without the



expectant mother's knowledge and that a much more effective approach would be to inform the mother and work with her if necessary to ensure that the newborn does not need to be apprehended:

A lot of times, what will happen is an agency in Winnipeg will ... issue the birth alert, and it could be unbeknownst to the mother that there's a birth alert on their baby, and that mom will go throughout her pregnancy, and she will be at the hospital, deliver her baby, and then get a letter from the agency that her baby is going to be apprehended.

And so, a switch in process would be that as soon as that ... birth alert is issued, that it's transferred to the appropriate agency, and the agency looks at the circumstance of the mom upfront and, you know, look at if there's ways to address things before baby comes into the world instead of waiting for baby to be born.^{iv}

Targeted for Life

One aspect of the birth alert practice that Indigenous health care and child welfare advocates find particularly troubling is that they continue to target and punish Indigenous women across their childbearing experiences where these alerts may apply to women who have had other children in care – even if the time elapsed is over a decade long.

In addition, in her testimony, Cora Morgan shared the following example of how even Indigenous women who age out of care, sometimes many years ago, were still flagged by this system: "I had a woman who had her first baby at 38 years old, and because she aged out of the system, they had flagged her baby. She had been out of care for 18 years. So, yes, there is a reality of our families being at risk."^v According to Sandie Stoker, executive director of Child and Family All Nations Coordinated Response Network, a parent's historical involvement with child welfare is a factor, especially if nothing changed for that family.^{vi} In other words, if the person who is having the baby was at one time in the care of child welfare, or if other children have ever been placed into care, regardless of the time lapsed, a birth alert will likely be issued

for them, regardless of their own personal ability to parent. Cora Morgan offered another example demonstrating that even when Indigenous parents take extraordinary efforts to prepare for parenting the birth alert system may still impact their ability to keep custody of their newborn:

So, the very first birth alert I responded to was within a couple of months of being on the job, and this young woman had aged out of care and she was exploited as a youth and, you know, had addiction issues. And, now, she was 23, having her first baby, attended every parenting program, and it was all self-motivated. Her and her partner prepared for the baby, and her baby was at risk of apprehension. And so, when I arrived at the hospital an hour before the agency was there to pick up the baby, they had six bags of baby clothes, they had their car seat. They were all ready. The paternal grandmother was there. When I arrived, she was breastfeeding her baby, and you know, I couldn't believe what was going on. And, I had phoned our Grand Chief at the time, and I'm, like, this is happening right now, and I can't even witness this.

The father, you know, was just kind of beside himself. And, I said, "Well, the issue is with the mom because she grew up in care, and they've issued a birth alert." I said, "There's no concerns or issues that they have with you, and it's your baby. You should be able to take your baby." He's, like, "Okay, I'll take my baby." And he was getting ready to do that, and the assistant advocate said, "You know that the police will be called and you will likely be charged if you take your baby," and then he backed down.

And, you know, the worker came in with their agency car seat, and they took the baby. And I had found out later that they had issued that birth alert when the mom was three months pregnant, and they held onto it for her entire pregnancy. And then when the agency got a call from the hospital, they responded. And so, there was over six months of time that they could have went to that home and got to know that mom, and taken – you know, given her the opportunity.^{vii}



In addition, birth alerts or apprehensions may also occur in relation to the other parent, who may not be living with the custodial parent. In a story documented by *The Current* in January 2018, a 16-year-old woman who was in school and living at home with her mother had her son apprehended based on concerns about the boy's father, who was in trouble with police at the time, as well as concerns about her own parenting. The young mother argued that her parenting was appropriate, explaining, "The worker that I had at the time [...] plainly said that I teased my son. Like I teased a four-month-old child. I don't know how you can tease a child. I guess that's just because it wasn't up to how she would parent."^{viii}

Janet Smylie explained how the ongoing targeting of Indigenous mothers and newborns in this way effectively erases the possibility that Indigenous women can create the relationships and care necessary for children, especially if they have been prevented from doing so in the past through forced separation:

So, I would agree in my experience providing care that it seems that once there's one apprehension, it seems to be a black mark on people's files and they're deemed, like, to be inadequate parents for life. And, again, I'm not always privy to the insider discussions that are held in the child protection agency services, but it's very interesting because even in our criminal justice system, we believe that people can change, right? And, be rehabilitated, even though I hesitate to use that word within the context of parenting.^{ix}

As Smylie acknowledges, ultimately, this treatment amounts to racism.

I also think racism has a huge role, both attitudinal and systemic racism and colonial violence. So, in my experience, 25 years providing primary care, including maternity care to diverse First Nations, Inuit, and Métis families in diverse urban, and rural, and remote settings, I find that First Nations, Inuit, and Métis parents get constantly misjudged.^x

Implications for Health and Well-being

Drawing on her many years of experience as a family physician, as well as a Knowledge Keeper, Smylie also offered some perspective about how birth alerts, and the subsequent separation between mother and baby caused when the newborn is apprehended, hold significant negative impacts for both mother and baby. As Smylie explained, the importance of these early relationships is well recognized both within Indigenous knowledge systems and mainstream health care research.

So, even if one was just relying on the mainstream medical literature, and one didn't take into account, like, the importance that is highlighted by the Knowledge Keepers and Elders who supported me in providing this testimony, in terms of the importance of feeling safe and secure and a sense of belonging and Indigenous identity; that if we discounted that, if we just looked at mental health outcomes and health outcomes over the lifespan, that is definitely critically interfering with the development of the child. And that doesn't account for the health and mental health of the mother. So, to me, having a child apprehended in that manner would be comparable to the death of a child, both on the family and the mother.^{xi}

Cora Morgan, who testified at the Knowledge Keeper, Expert, and Institutional Hearing on Child and Family Welfare in Winnipeg, Manitoba, donated baby moccasins. She was sworn in on these baby moccasins and wanted to leave them for the Inquiry's bundle following her testimony. She shared why she chose to be sworn in on them. She had attended a ceremony at Serpent River First Nation just as the First Nations Family Advocate Office was starting. When she shared what the Family Advocate Office was trying to do and their work with families, the women at the ceremony stood in support. Cora explained that at Serpent River, there are petroglyphs, one of which is a baby who has feathers in their hair, since a



baby who has feathers in their hair will always come home. She was speaking to Nancy Rowe from the Mississaugas of the New Credit First Nation, in Ontario, before she left about the office's work and said that "if at minimum all we can do is offer feathers for babies, then that's what we will do." Nancy later drove to Winnipeg to bring feathers and began working with other teachers to make hundreds of baby moccasins, which have been given to the office. The First Nations Family Advocate Office provides these moccasins to expectant mothers who come to see them, beginning to make their bundles, and in the hospital to women whose children are going to be taken at birth.

In her testimony, Cora talked about how the organization's prenatal support team works to navigate the birth alert system.

Now that we have a larger team since last October, we have a prenatal support team. And so, our prenatal support team works with expecting moms or moms with babies, helps advocate if there's birth alerts. They are there to work with moms and offer – and fathers – traditional parenting programs. They also have a Sacred Babies workshop, and they work with families to build bundles for their family.^{xii}

All of these practices are in keeping with what Janet Smylie described as maintaining a "continuity of relationships"^{xiii} that supports and acknowledges the significance of early relationships.

So what we actually need to optimize health and well-being, at least in my understanding as a Métis woman, is these high-quality early relationships, because what that builds in is a sense of love, security, and belonging. And then that translates into a feeling of self-worth, self-acceptance, compassion, and strong abilities to engage in relationships. And if relationships is the fabric and glue that holds us together, then this investment is a critical thing.^{xiv}

While practices such as birth alerts, as well as the medical evacuation of pregnant women from remote communities to give birth elsewhere, are often

justified as a means of mitigating risk, Smylie argues that this particular definition of risk is limited and reflective of a colonial, biomedical understanding. As she argues, this way of understanding risk in relation to birth and parenting

undervalu[es] ... the importance of birth as a way of strengthening *wahkohtowin*, the sacred time where an infant is perceived, at least in my developing Métis world view, as a spiritual gift that is coming from the spirit world, and that spirit needs to be attended in that transition into this physical life. And, also how the person that attends the birth becomes a relative that will understand that child and know information about that family and support the well-being and support the nurturing of that child's gifts. And how important it is to be born on that land, right, so that there are protocols around birth so that you have that *wahkohtowin* tie to the land as well, right? So, all of those things, it's actually all about, like, our cultures, right? So, the risk of losing culture is also something that needs to be attended to, as well as the acute, like, physical safety of the mom and the infant. And, in fact, through these modern models of Indigenous midwifery, you can have both of those things.^{xv}

Smylie also talked about the additional risks in how the birth alert system and infant apprehensions actually lead Indigenous expectant mothers to avoid going to a hospital or reaching out for medical support out of fear that their child will be apprehended. During the Racism in Institutions Panel held during an Expert and Knowledge Keeper Hearing, Dr. Barry Lavallee, a family physician and then-director of the Student Support for the Centre for Aboriginal Health Education at the University of Manitoba, acknowledged that Indigenous women may have a "reasonable fear" that in seeking medical care for their child or in giving birth, they may trigger a referral to child welfare.^{xvi} Cora Morgan, likewise, stated that, based on what she has witnessed in her role as the First Nations family advocate with the Assembly of Manitoba Chiefs' First Nations Family Advocate Office, simply being Indigenous puts women at risk for being flagged for a birth alert.



I do agree that women are flagged [by the system to have their child removed at birth]. One of my co-workers just went – is having her second child, and because she was Indigenous in appearance, the doctor automatically made an assumption that she – there was a potential of a birth alert on her baby.^{xvii}

For some Indigenous women, seeking reproductive health care within mainstream health care settings may be additionally complicated by a lack of cultural understanding on the part of health care workers. For instance, as Jennisha Wilson, manager for programs related to sex work, exiting the sex trade, and anti-human trafficking at Tungasuvvingat Inuit, explained, a lack of understanding of Inuit culture and history often leads to tensions between Inuit women and support workers.

Some of the other things that often I hear is that there are challenges of individuals not being understood as what does it mean to be Inuk. They're often misunderstood as being First Nations, which takes away their identity and their ability to mobilize around their specific needs and to understand that there are differences between the cultures. Those are just a few of the vulnerabilities, but you can imagine how, if you were coming to the South looking for supports, and you are met with racism, discrimination, lack

of – folks wanting you to be there and then misunderstanding where to place you as an individual, how that leads to mistrust – mistrust between individuals, service providers, law authority individuals, but also pushes you to feel like you don't belong.^{xviii}

Conclusion

Ensuring the health and well-being of Indigenous mothers and their newborns is an important part of rebuilding Indigenous families and communities in ways that also lessen the potential for further violence and harm. For Cora Morgan, this involves “examin[ing] the legality of birth alerts and the practice of birth alerts and newborn apprehension.”^{xix} For Janet Smylie this begins with valuing and protecting these early relationships. As she asks: “[H]ow can we rebuild ... a feeling of love, peace, and joy, right, and security, and belonging, if our infants keep getting apprehended?”^{xx} This includes, as we heard, embracing practices that can generate health, well-being and strength. This also includes, as the evidence demonstrates, supporting practices like community midwifery and the right to give birth at home and within the community, to ensure that the bonds of safety that are created in that moment are cemented for life, and can ultimately contribute to safety later on.



- I *Chronicle Herald*, "Blindsided."
- II Manitoba, "Child Protection Services," s. 1.3.1.
- III Dr. Janet Smylie (Cree/Métis), Mixed Parts 2 & 3, Public Volume 2, Iqaluit, NU, pp. 246–247.
- IV Cora Morgan (Sagkeeng First Nation), Mixed Parts 2 & 3, Public Volume 11, Winnipeg, MB, pp. 203–204.
- V Cora Morgan (Sagkeeng First Nation), Mixed Parts 2 & 3, Public Volume 11, Winnipeg, MB, p. 26.
- VI CBC Radio, *The Current*, "I felt like my heart was ripped out."
- VII Cora Morgan (Sagkeeng First Nation), Mixed Parts 2 & 3, Public Volume 11, Winnipeg, MB, pp. 25–26.
- VIII CBC Radio, *The Current*, "I felt like my heart was ripped out."
- IX Dr. Janet Smylie (Cree/Métis), Mixed Parts 2 & 3, Public Volume 2, Iqaluit, NU, pp. 236–237.
- X Dr. Janet Smylie (Cree/Métis), Mixed Parts 2 & 3, Public Volume 2, Iqaluit, NU, p. 235.
- XI Dr. Janet Smylie (Cree/Métis), Mixed Parts 2 & 3, Public Volume 2, Iqaluit, NU, p. 240.
- XII Cora Morgan (Sagkeeng First Nation), Mixed Parts 2 & 3, Public Volume 11, Winnipeg, MB, p. 46.
- XIII Dr. Janet Smylie (Cree/Métis), Mixed Parts 2 & 3, Public Volume 2, Iqaluit, NU, p. 160.
- XIV Dr. Janet Smylie (Cree/Métis), Mixed Parts 2 & 3, Public Volume 2, pp. 122–123.
- XV Dr. Janet Smylie (Cree/Métis), Mixed Parts 2 & 3, Public Volume 3, p. 36.
- XVI Dr. Barry Lavallee (First Nations/Métis) Part 3, Public Volume 9, Toronto, ON, p. 228.
- XVII Cora Morgan (Sagkeeng First Nation), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, p. 199.
- XVIII Jennisha Wilson, Mixed Parts 2 & 3, Public Volume 16, St. John's, NL, p. 41.
- XIX Cora Morgan (Sagkeeng First Nation), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, p. 81.
- XX Dr. Janet Smylie (Cree/Métis), Mixed Parts 2 & 3, Public Volume 2, Iqaluit, NU, p. 135.



The *Indian Act* and the Practice of “Banishment”

In speaking about the ways in which Indigenous women and girls were targeted within colonial systems, a number of witnesses also pointed to and described how the *Indian Act* and its denial of Status was not only a denial of home, but also a denial of connection to culture, family, community, and their attendant supports. For those seeking the safety of home – both cultural and physical – the intergenerational and multigenerational effects of the *Indian Act*, for many First Nations communities, are also significant, and have erected barriers to accessing cultural rights, as well as cultural safety.

The *Indian Act*'s impact of determining Status for some, while stripping others of Status, continues to affect many First Nations women, girls, and 2SLGBTQQIA people. This is documented in greater detail in Chapter 4, but this section deals with the impacts of the Act in a contemporary context. Despite the reinstatement of Status for thousands of women and girls, the ongoing stigma that comes with having been excluded by the Act can contribute to danger.

Wendy L., for example, explained how her mother was torn from her community and not allowed to go back, even after she was reinstated with Indian Status.

Because of what happened to my mother, I feel that in a sense she was missing because she was stripped of her cultural identity and her Status, and she was really torn from her community because of the discriminatory provisions of the *Indian Act*, where she ... had her Status taken away from her. Which, as many people know, did not happen to the Aboriginal men. In fact, when Aboriginal men married non-Indian women, no matter which race they were, not only did the men retain their Status and band membership, but their spouses and their descendants acquired them. So today you have mixed families on reserves or off-reserve, where the women that had married non-Native men were actually cast out from their communities. So in a sense my mother was missing because she was stripped from her community and her family, and that had a big impact on her life, her education, her economic situation, her as a person.⁵⁰

The “banishment,” as some other witnesses referred to it, had longer-term impacts on her mother, as well. When Wendy’s grandfather passed away in 1968, Wendy’s mother was not allowed to live in his house, despite his having left her – his only child – the land, properties, and homes. Because Wendy’s mother had been declared non-Native, she was not allowed to inherit or live in the home where she was born and raised. Wendy said, “I believe in the sense that she was missing. She was missing her family, her community, any supports that she could receive, any support from the government, financial or programs, any community involvement. She was cut off from all of that.”⁵¹

Despite the insistence of some community leaders who argued that anyone with Squamish blood was welcomed back, Wendy said that “it wasn’t true. The women were not welcomed back.”⁵²



While Wendy's mother's Status and band membership were returned, she was blocked from actually returning to live on the Squamish Nation Reserve. Women were, in Wendy's words, "torn from their communities, and literally thrown off the edge of the reserve and told to leave."⁵³

In her testimony, Natalie G. shared another example of the way in which gender discrimination within the *Indian Act* and band membership excluded Mi'kmaq women from their community. As Natalie explained, the refusal to grant Status and band membership for women in their community put many women in precarious positions and impacted their ability to build families in keeping with the culture and the community.

We have many women that are living off the reserve that should be on their home reserves and not living in squalor, you know, or feel that they have to always be working so hard. I mean, they're getting up in age. Why do they have to be scrubbing floors or, you know, making crafts all the time just to make ends meet, you know? And a lot of our women – we still have women walking the street thinking that the only way that they're going to make that little bit of ends meet is to give a part of their soul to the devil in order to make a little bit of change to pay for the rent, pay for maybe their kids' things or whatever, so it was – like, it was hard because when Mom looked out her window, she seen Millbrook First Nations reserve. How ironic is that? It just doesn't make sense, but that's the government, that's the Canadian government trying to cause part of the assimilation, the colonization.⁵⁴

Despite Natalie's mother's standing as what she describes as a "real Mi'kmaw woman," she was not valued in her community, and was forced to undertake an arduous process in order to have her band membership returned. As Natalie said, the denial of Status and band membership is also the denial – or perhaps fear – of strong, traditional women taking their place in the community and within the band council.

The band council, I believe, was fearful of my mother because she was a strong Mi'kmaw warrior that wasn't going to let things slide under the rug. She was going to bring them forth, and I believe she was going to bring all those [Status] cards that were given out to the non-Native women, she was going to see that the government brought – took them, rightfully so, but the children still would be Status.⁵⁵

"BECAUSE OF WHAT HAPPENED TO MY MOTHER, I FEEL THAT IN A SENSE SHE WAS MISSING BECAUSE SHE WAS STRIPPED OF HER CULTURAL IDENTITY AND HER STATUS, AND SHE WAS REALLY TORN FROM HER COMMUNITY BECAUSE OF THE DISCRIMINATORY PROVISIONS OF THE *INDIAN ACT*, WHERE SHE ... HAD HER STATUS TAKEN AWAY FROM HER ... SO IN A SENSE MY MOTHER WAS MISSING BECAUSE SHE WAS STRIPPED FROM HER COMMUNITY AND HER FAMILY, AND THAT HAD A BIG IMPACT ON HER LIFE, HER EDUCATION, HER ECONOMIC SITUATION, HER AS A PERSON."

Wendy L.



As Natalie explained, this exclusion impacts women’s children and grandchildren, as well. Natalie described how, as a young girl, she and her cousins were not provided access to similar educational supplies as other children living on the reserve: “My cousins go to the band office and get free school supplies and whatever. We – we didn’t get that.”⁵⁶

Natalie offered the following reflection on the ongoing impact on the children and grandchildren of women who lost Status or band membership: “There’s the first generation, they got their Status, but their children, they can’t get them registered and then they’re trying to go back to the grandmother’s law, but still they’re having a hard time getting them registered. Those children should be registered.”⁵⁷ Women banished in this way have often sought refuge in larger urban centres, often unsafe environments that may have ultimately led to their disappearance or to their death, and have experienced alienation from family and from culture that could contribute to keeping them safe.

As these experiences shared by Wendy and Natalie demonstrate, the impact of the *Indian Act* on women’s power and place within community and family put Indigenous women in danger. Many people consider that the death and disappearance of Indigenous women are directly connected to policies and practices such as these and others that have severed the protective measures that cultural practice, family, and a sense of belonging normally offer.



A drum group performs at the hearings in Calgary, Alberta.



Challenging Exclusion: Human Rights-Based Challenges to the *Indian Act*

As some of the witnesses appearing before the Inquiry have asserted, the *Indian Act* has, since 1876, excluded First Nations women in many areas, with important impacts that touch on human rights instruments. The *Indian Act* applies only to First Nations women, and not to Métis or Inuit.

In its 2014 report, *Missing and Murdered Indigenous Women in British Columbia, Canada*, the Inter-American Commission on Human Rights (IACHR) found that “existing vulnerabilities that make Indigenous women more susceptible to violence” include both the context of colonization, broadly speaking, as well as unjust and discriminatory laws, such as the *Indian Act*, that continue to affect women.^I

It also found that “addressing violence against women is not sufficient unless the underlying factors of discrimination that originate and exacerbate the violence are also comprehensively addressed.”^{II}

As we saw in Chapter 3, the case of Jeannette Corbiere Lavell, who married a non-Indian in 1970, resulted in a legal challenge against the *Indian Act*'s subsection 12(1)(b), alleging it violated the equality clause in the 1960 *Canadian Bill of Rights* on the grounds of discrimination by reason of sex. This case built on the early work of advocates such as Mary Two-Axe Earley, a Kanien'kehà:ka (Mohawk) woman who, in 1966, after the death of a clan sister from a heart attack she believed was induced by the denial of property rights in Kahnawà:ke under the *Indian Act*, mobilized a campaign to raise awareness of the issues facing women denied Status and related rights under the *Indian Act*. Mary Two-Axe Earley became involved with Indian Rights for Indian Women (IRIW) in 1967 and appeared before the Royal Commission

on the Status of Women the same year. Mary also found herself the target of the *Indian Act* in 1969 after the death of her husband, when she was forced to transfer her house to her daughter, who was married to a man from Kahnawà:ke, in order to retain her property in her own family and to return to the reserve.^{III}

The Lavell case, a few years later, revolved around Jeannette Corbiere Lavell, a member of the Wikwemikong Band who married a non-Indian and whose name was therefore deleted from the Indian Register. The case charged that the *Indian Act*

should be held to be inoperative as discriminating between Indian men and women and as being in conflict with the provisions of the *Canadian Bill of Rights* and particularly s. 1 thereof which provides:

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely, ...

(b) the right of the individual to equality before the law and the protection of the law.^{IV}



The Lavell case of the early 1970s was lost at trial in the York County Court in 1971, but won on appeal in the Federal Court of Appeal later the same year. It went to the Supreme Court of Canada, where it was paired with the case of Yvonne Bédard, a woman from the community of Six Nations in Brantford and a member of the the Haudenosaunee (Iroquois) Confederacy who lost her Status when she married a non-Indian in 1964. After her separation from her husband, Bédard attempted to return to her reserve to live in a house left to her by her mother, but found that she and her children were no longer entitled to live on-reserve due to loss of Status. Fearing eviction, she brought legal action against her band and won the case based on the legal precedent set by the Lavell case.

In the Supreme Court of Canada, though, both Bédard and Lavell lost their cases – the “marrying out” rule of the *Indian Act* was upheld on the grounds that the law had been applied equally, which was the only guarantee in the *Canadian Bill of Rights*. In its judgment, the Supreme Court explained:

Equality before the law under the Bill of Rights means equality of treatment in the enforcement and application of the laws of Canada before the law enforcement authorities and the ordinary courts of the land, and no such inequality is necessarily entailed in the construction and application of s. 12(1)(b).^v

The issue of substantive equality that the cases raised was rejected, even though, in the decision, Justice Bora Laskin characterized the effect of the law as a kind of “statutory excommunication” whereby Status could never be regained.^{vi}

In addition, and as Pamela Palmater, Mi’kmaw from Eel River Bar First Nation and associate professor and chair in Indigenous Governance at Ryerson University, points out, for a long time:

The *Indian Act* had the effect of denying First Nations women their political voice. Unable to run in elections for chief and council, to live in their First Nations, to vote in referendums related to their reserve lands, to benefit from treaties, to access elders and other community supports or

even have a seat at the negotiating tables between First Nations and Canada, First Nations women were effectively denied the political voice to protest their exclusion and the abuse that followed as a result.^{vii}

Leah Gazan, an instructor at the University of Winnipeg who spoke as part of the Indigenous Determinants Wellbeing Panel during the Community Hearing in Winnipeg, commented on how the *Indian Act* undermined the role First Nations women played as leaders and decision makers.

Prior to colonization, most Nations lived in matrilineal societies. Our women, in particular, our grandmothers, were the main decision makers within our Nations. Equality was practised as our survival depended on all members fulfilling their roles and responsibilities. Women were powerful.... This rapidly changed with the imposition of patriarchal power structures brought over by colonists. The exclusion of Indigenous women in decision making eventually led to the cultural, social, economic, and political disposition of Indigenous women and girls that was and continues to be enforced through the *Indian Act*.^{viii}

Fay Blaney, who spoke as a Knowledge Keeper at the National Inquiry’s Human Rights Framework Expert and Knowledge Keeper Hearing in Quebec City, also commented on the impact of the *Indian Act* on women’s political representation:

Indigenous women are not represented in the political sphere and we often think it’s – you know, we blame ourselves for that and we don’t often look at the fact that the *Indian Act* denied us that right. We were not allowed to vote. We were not allowed to run in band elections and the men did that.^{ix}

Despite the loss in the court, many Indigenous women’s groups took up the call raised by these cases, and pushed forward to try to address the issue, under difficult circumstances. Sandra Lovelace Nicholas took her case to the United Nations Human Rights Committee (UNHRC), alleging that her marriage to an American and subsequent move away from her community should not disqualify her from



returning to the reserve and/or from receiving services, upon the end of that marriage. In 1981, the UNHRC found Canada in breach of the *International Covenant on Civil and Political Rights* (ICCPR).

Section 15 of the *Canadian Charter of Rights and Freedoms* came into effect three years after the rest of the *Charter*, giving governments the time to bring their legislation into compliance with section 15. Section 15 states that “every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.” In addition, section 28, which states, “Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons,” should, in theory, provide additional protection to women. Subsection 4 of section 35, which guarantees Aboriginal and Treaty rights, also guarantees these rights equally to women and men.^x

Partially as a result of these new rights guarantees, as well as the concerted action of women impacted by unjust legislation, the *Indian Act* of 1985 restored Status to those who had had Status removed through enfranchisement. It ended the “marrying out” rule under section 12(1)(b) that had brought forward Lavell’s action, restoring Status to women and their children disenfranchised under this rule. It also abolished section 12(1)(a)(iv), the “double mother” rule, which had been added in 1951 and excluded from registration at age 21 grandchildren whose mother and paternal grandmother both acquired Status through marriage to an Indian. The changes also terminated the acquisition of Indian Status through marriage, rather than descent. In its first five years, from 1985 to 1990, as researchers Megan Furi and Jill Wherrett report, “the status Indian population rose by 19% as a result of the amendments. Women represented the majority of those who gained status, particularly of those who had status restored.”^{xi}

While many people regained Status through this legislation, the amendments also created a new issue, under the revised section 6, which effectively created two “types” of Status Indians: those who

could pass Status onto their children, and those who couldn’t. This meant that any Status woman who had been reinstated under section 6 and “married out” could pass on section 6(2) Status only to her children. Those children could not pass on Status to theirs, impacting both women and men under the “second-generation cut-off.” As the Feminist Alliance for International Action explains:

Consigning women to 6(1)(c) status has devalued them, treated them as lesser parents, and denied them the legitimacy and social standing associated with full s. 6(1)(a) status. Throughout the years, the so-called “Bill C-31 women” have been treated as though they are not truly Indian, or ‘not Indian enough,’ less entitled to benefits and housing, and obliged to fight continually for recognition by male Indigenous leadership, their families, communities, and broader society. In many communities, registration under section 6(1)(c) is worn by Indian women like a ‘scarlet letter’ – a declaration to other community members that they are lesser Indians.^{xii}

For those asserting that the *Indian Act* is a tool of genocide, both paper and otherwise, the effect of section 6 to extend the termination of Status by one generation was still termination – just delayed.

Due to the lack of effective remedy, and the slowness of addressing these issues, other advocates pressed on. In 1994, Sharon McIvor brought a constitutional challenge to the sex discrimination in the registration provisions of the *Indian Act*. In its decision, the Supreme Court of British Columbia ruled that section 6 of the *Indian Act* violated section 15 of the Charter guaranteeing rights to women and other groups equally under Canadian legislation. In 2009, when Canada appealed, the British Columbia Court of Appeal ruled that although the *Indian Act* was discriminatory, the trial order had gone too far, and that it was not for the court to impose a solution that opened up Status to a larger group of people. It gave the government 12 months to fix the problem before the declaration of the lower court could have effect.^{xiii}

As a result of the decision, Sharon McIvor decided to take her complaint to the United Nations, as Sandra



Lovelace Nicholas had in 1981. She argued that, despite the changes, First Nations women with Status still could not pass on that Status in the same way as Status men. Her complaint engages the failure of the government to provide effective remedy to a situation that has been identified, even in an international forum, as an element of discrimination for decades.

In her complaint, Mclvor's team argued that the sex-based hierarchy established by the 1985 amendments violates articles 26 and 27 of the ICCPR, in conjunction with articles 2(1) and 3, because it discriminates against matrilineal or female descendants born before 1985 and against those First Nations women born before 1985 who "married out." Mclvor maintained that under section 2(3)(a), these women and descendants were entitled to effective remedy.

Under the violation of Article 26, Mclvor maintained, among other things, that the impacts of the exclusion constituted "a form of social and cultural exclusion," including her perception of a differential treatment of reinstated persons from those who were always considered Status under the Act. These had impacted her life, including her ability to access health benefits and educational funding for her children during their formative years.

Under Article 27 in conjunction with articles 2(1) and 3, Mclvor's team maintained that the capacity to transmit culture, as guaranteed by the ICCPR, had been violated by denying "their capacity to transmit their cultural identity to the following generations on an equal basis between men and women," and depriving them "of the legitimacy conferred by full status."^{XIV}

In its response, Canada maintained that the discrimination under successive versions of the Act prior to 1985 was inadmissible, and that any residual discrimination had been corrected by the 2011 amendments, made in response to the decisions concerning the Act in Canadian Courts. These amendments had modified the *Indian Act* so that grandchildren born after September 4, 1951, who could trace their Aboriginal heritage through their

maternal parentage could be registered. Still, under those amendments, those grandchildren born prior to 1951, or whose parents were not married before 1985, could not necessarily qualify, while those who trace their heritage through their paternal heritage could.^{XV} Canada also argued that some aspects of the claims made by Mclvor could not with certainty be blamed or attributed on the government's actions. It also argued that it was still in the process of examining its legislation to determine if further remedies could be applied, including the changes in Bill S-3, which came into force in December 2017, as a result of the Superior Court of Quebec's decision in the Descheneaux case.^{XVI}

In this case, the Superior Court of Quebec had ruled on a challenge by Stéphane Descheneaux, Susan Yantha, and Tammy Yantha. The plaintiffs claimed that the Indian registration provisions under section 6 of the *Indian Act* were unconstitutional and in contravention of the *Charter's* guarantees to equality, since the legislation still perpetuated different treatment between Status Indian women as compared with Status Indian men and their descendants. In its decision, the court found several parts of the Act that violated section 15 of the *Charter* and struck down the provision, giving the government a fixed period of time to respond. In her testimony, Leah Gazan said, about the ongoing impact of Bill S-3:

This violence has been affirmed through the *Indian Act* where, even today, we see the current Liberal government fail to make amendments to Bill S-3 to end discrimination against Indigenous women and girls residing [in] what some refer to as Canada. We have been raising our concerns to deaf ears for far too long; our voices often muzzled by powers of bureaucracy that have been designed to silence us as we fight for our survival; a story that has become all too common even at present as we try and find ways to ensure our safety in the future.^{XVII}

In January 2019, the UN Human Rights Committee ruled in Sharon Mclvor's favour, holding that the sex-based hierarchy created by section 6 of the *Indian Act* still exists, despite the amendments of 2011 and 2017, and that Canada was in violation of articles 3



and 26, read in conjunction with Article 27.^{xviii} The 2011 and 2017 amendments, and the *Indian Act* itself, continue to violate the equal right of men and women to the enjoyment of the rights guaranteed by the *International Covenant on Civil and Political Rights*, to which Canada has been party since the 1970s. Specifically, the UNHRC noted that Sharon McIvor's brother's children all have full Status under section 6(1)(a), while her own ability to pass on that "class" of Status is not the same. Given the fact that they shared the same lineage, the UNHRC noted, that difference in Status was attributable only to the legislation's discriminating on the basis of sex.^{xix} It further noted that the prohibition in discrimination applied not only in law, but also in fact, and so McIvor's argument about the impacts of the discrimination in her lived experience, as a "Bill C-31 woman," is significant.^{xx}

In the aftermath of this decision, many questions remain concerning how the government can untangle the complicated historical and contemporary issues around its assumption of authority in determining Status, and how Status has become associated with a sense of belonging or exclusion in many of the testimonies before the National Inquiry. As Darla-Jean L. stated about the impact of the *Indian Act* on her sense of self and belonging: "The federal government made us wards of the state through the *Indian Act* and we learnt helplessness. We became ashamed of our ourselves. We became – we believed what society was telling us."^{xxi} When asked to speak about the impact of the link between identity and the loss of Status through the *Indian Act*, Sylvia M. said, "Well, it makes you ... question yourself, you know, right?"^{xxii}

As the Feminist Alliance for International Action asserts:

As long as the *Indian Act* is in place, be it one year or twenty, the Act cannot discriminate on the basis of sex. Further, if the Act is replaced before eliminating the sex discrimination, the sex discrimination and injustice to Indian women and their descendants will infect any post-*Indian Act* regime.^{xxiii}

In her testimony, Fay Blaney spoke about how sex discrimination created by the *Indian Act* continues to play out in communities.

Men have been bestowed a whole lot of patriarchal privilege from the *Indian Act* and ... they've been taught very well how to be patriarchal in our communities. And I fear that men may not be willing to give up the patriarchal power that they have, and in fact some of them have claimed patriarchy to be a tradition, even though we know that culture comes from a matriarchal tradition. So they reinvent culture to align with what the *Indian Act* says they have, that they have patriarchal privilege now.^{xxiv}

Further, the question remains of how, given the existing guarantees under Canadian law, including the *Charter of Rights and Freedoms*, these kinds of exclusions can persist, and how domestic remedies can be better applied to resolve these exclusions. As some people have suggested, passing new legislation that substantively incorporates the guarantees under international conventions, such as the *Convention on the Elimination of all Forms of Discrimination Against Women* and the *United Nations Declaration on the Rights of Indigenous Peoples*, could strengthen these existing guarantees, ensuring that, under the international conventions, the issue of systemic discrimination, rather than individual discrimination, receives effective and timely remedy.^{xxv} At the same time, the continuing assumption that undergirds the process – that the Government of Canada, rather than First Nations themselves, should ultimately decide who accesses the rights guaranteed to First Nations – fundamentally dictates the fact that the resolution to this issue will involve reconsidering the foundations of the approach.

As Palmater argues, the McIvor decision of 2019 "is about more than Indian status; it is about restoring the political rights and powerful voices of First Nations women.... The law requires that Canada end sex discrimination against First Nations women and children. The question is whether Canada will choose to be an outlaw or put action behind its alleged commitment to reconciliation."^{xxvi}



- I Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women*, 12.
- II Ibid., 68.
- III Robinson, "Mary Two-Axe Earley."
- IV *Attorney General of Canada v. Lavell* [1974] SCR 1349.
- V Ibid., 1373.
- VI *Attorney General of Canada v. Lavell* [1974] SCR 1349.
- VII Palmater, "Will Ottawa heed."
- VIII Leah Gazan (Lakota), Part 1, Public Volume 10, Winnipeg, MB, pp. 82–83.
- IX Fay Blaney (Xwémalhkwu of the Coast Salish), Part 3, Public Volume 4, Quebec City, QC, p. 117.
- X Subsections 3 and 4 of Section 35 were further developed in 1983 and 1984, after important campaigns by Indigenous women's groups who insisted they had not been represented by organizations in the original discussions around the Charter, and who were still fighting for the repeal of sex discrimination under the *Indian Act*. For more on this, see Erin Hanson, "Constitution Act, 1982 Section 35," https://indigenousfoundations.arts.ubc.ca/constitution_act_1982_section_35/.
- XI Furi and Wherrett, "Indian Status and Band Membership Issues."
- XII Feminist Alliance for International Action Canada, "Equal Status for Women," 4.
- XIII For a more detailed examination of the McIvor decisions, see Lehmann, "Summary of the McIvor Decisions."
- XIV United Nations, Human Rights Committee, "Views adopted by the Committee under article 5(4)," 5.
- XV For more detail and information on the 2011 amendments, see Canada, Indigenous and Northern Affairs, "2011 Indian Act Amendments."
- XVI United Nations, Human Rights Committee, "Views Adopted," 6–7. For a more detailed examination of Bill S-3 and its impacts on specific exclusions under the *Indian Act*, see Canada, "The Government of Canada's Response to the Descheneaux Decision."
- XVII Leah Gazan (Lakota), Part 1, Public Volume 10, Winnipeg, MB, pp. 76–77.
- XVIII United Nations, Human Rights Committee, "Views Adopted," 16.
- XIX Ibid., 15.
- XX Ibid., 17.
- XXI Darla-Jean L. (First Nations), Part 1, Public Volume 1, Whitehorse, YT, p. 31.
- XXII Sylvia M. (Mi'kmaq), Part 1, Public Volume 56, Happy-Valley Goose Bay, NL, p. 33.
- XXIII Feminist Alliance for International Action, "Equal Status," 13. See also Palmater, *Beyond Blood*.
- XXIV Fay Blaney (Xwémalhkwu of the Coast Salish), Part 3, Public Volume 4, Quebec City, QC, pp. 134.
- XXV West Coast LEAF, Part 4, Final Written Submission, p. 29.
- XXVI Palmater, "Will Ottawa heed." See also James Anaya, "Report of the Special Rapporteur on the Rights of indigenous peoples," 2014. The report was developed on the basis of research and information gathered from various sources, including during a visit to Canada from October 7th to 15th, 2013.



Pathway to Violence: Social and Economic Marginalization

The cultural losses and familial disruptions created through various colonial systems take a significant toll not only on the emotional and spiritual well-being of Indigenous people, but also on the material (economic and social) facets of their lives. Without access to traditional ways of living on traditional territories, which included supporting others in times of hardship, many Indigenous people who shared their truths told stories about their struggles with poverty, homelessness, addiction, and other challenges – struggles that were often greatly compounded by the lack of access to familial, community, and cultural support, as well as by efforts and responses that often sought to erect even greater barriers to such supports.

As part of the truths they shared, witnesses also talked about the way poverty, homelessness, and other forms of socio-economic marginalization worked against them in their efforts to create and maintain family and kinship bonds, as well as cultural continuity. In particular, many witnesses talked about how poverty and other forms of economic and social marginalization were used by child welfare agencies to justify the apprehension of children from their families, mothers, and communities. As Nico Trocmé, director of McGill University’s School of Social Work and principal researcher for the Canadian Incidence Study of Reported Child Abuse and Neglect, observed, “I’ve certainly never seen any evidence from any of the research to indicate that there is something endemic to First Nations families that would explain a higher rate of placement. It has much more to do with the high rates of poverty and the difficult social and economic circumstances they’re living in.”⁵⁸

Expert Witness and Assistant Professor of Law at Dalhousie University Naiomi Metallic explained:

Often the provincial systems and laws don’t account for the poverty and the systemic issues that exist already in First Nations communities and so there can be certainly negative impacts.... [I]t was actually recognized in the child welfare decision from the Canadian Human Rights Tribunal that First Nations’ children are actually being taken because of reasons of neglect more so than abuse and that’s because I think also provincial child welfare rules often don’t, you know, specifically consider the socio-economic position and children again are [being taken] ... for neglect that is outside of the control of the parents.⁵⁹

Beyond these circumstances, the socio-economic jeopardy that many families find themselves in is only reinforced by other stressors. Research has shown that addictive behaviour links to “a strong inverse relation with socioeconomic status.”⁶⁰ Further, as researcher Mickie Jakubec explains, “For many Indigenous people, there are many layers of stressors – racism, poverty, poor education, unemployment, family instability, and residential instability.”⁶¹ All of these factors combined can increase the likelihood of child apprehension.



According to the 2003 Canadian Incidence Study of Reported Child Abuse and Neglect, housing conditions were deemed “unsafe” in 24% (an estimated 2,938) of substantiated First Nations child investigations, and “overcrowded” in 21% (an estimated 2,581). This compares with only 7% of substantiated non-Aboriginal child maltreatment investigations where housing conditions were described as “unsafe” and/or “overcrowded” (an estimated 5,948 and 5,924, respectively).

According to the same survey, the category of “neglect” accounts for over half of all substantiated First Nations child investigations, and incidents of domestic violence was the second most frequently substantiated category of maltreatment. Almost half of the substantiated child investigations concerned families who derived their income from social assistance, unemployment insurance, or other benefits, compared with only 20% for substantiated non-Indigenous investigations.⁶²

Nonetheless, in many instances, the living arrangements that Indigenous families create in order to protect and care for children and to navigate what is often severe poverty, food insecurity, and other challenges are translated or interpreted as “neglect” by non-Indigenous social workers, police, and others. These agencies and individuals are working within a child and family services system that maintains and operates upon the basis of a definition of care that is rooted in the dominant colonial system’s terms and beliefs, and that rarely takes into account the structural barriers that prevent Indigenous families from meeting these standards.

Speaking of child welfare agencies and their policies, Vanessa B. said:

I understand you have a mandate and you have policies. At the same time, you need to start – you need to start humanizing that this – this family went through this and ... these children will need this, and I shouldn’t have to wait for the federal government to decide that they have \$10 in their pocket and they want to throw it our way. I want to know that that \$10 is in your pocket right now and you’re passing it to me.... We need tangible kinds of honest efforts that are within our reach and not something that’s ridiculously beyond our reach because that’s – that’s one of the problems that happened with Tanya [her sister]. Every expectation, it just seemed, that she thought was reasonable ended up being non-tangible. It was so far without her reach.⁶³

These are important statements that can help to explain how poverty can undergird the violation of cultural rights, and how socio-economic disadvantage is interpreted by some institutions as a lack of fit parenting by Indigenous people. Following the murder of her daughter by her common-law partner, Robin R.’s other daughter was apprehended and she was prevented from seeing her until the murder trial was over – which took five years. Robin talked about how the staph infection her child had, which was used against her as an indication of neglect, was, in fact, the result of her tireless efforts to ensure her child had all she needed.

Yeah, my daughter had a staph infection but she had a staph infection because when I was raising my two children at 17 years old, I used to access three different food banks in the city and one of the food banks I accessed was extremely dirty. People used



needles. But I didn't care because if that meant that feeding my children, even to walk into an environment like that, I would do it. And I know that that's where we contracted the staph infection from.... It doesn't mean I was dirty. It means I did what I had to do to survive and we did pick up a staph infection. But that didn't make me a dirty human being.⁶⁴

Pathway to Violence: Lack of Will and Insufficient Institutional Responses

For many witnesses, the child welfare systems diminish Indigenous cultures and values in favour of non-Indigenous standards and models of parenting. In many cases, a lack of will to change the system in favour of embracing and understanding Indigenous values, or the institutional responses to investigating cases and substantiating child apprehensions, are viewed by Indigenous women as insufficient and racist, demonstrating a lack of respect for cultural rights.

In some testimonies, witnesses described how their own upbringing engaged the important cultural principles foundational to community life – principles that are directly threatened by removal from their families. Anastasia N. noted:

My childhood, I remember it as the most beautiful moment of my life. I was a very pampered child, with a lot of affection. I was surrounded by elderly people. I had my mother. My mother was a person, a caregiver who was caring for two people, who were both 80 years old. And then, she was the one who took care of me. And I had responsibilities to these two people.... Every night, I had to get up, get dressed, put on my little moccasins, and help the older person go out [to use the outhouse] and so on. I was empowered very young. I have always enjoyed the way I was raised.... It made me into a very autonomous and responsible person during my life.⁶⁵

This undertaking of responsibility at a young age prepared Anastasia for her life, by her own account. Yet, according to non-Indigenous child welfare standards, this kind of upbringing could fall under the description of “neglect.” These kinds of Indigenous principles of family life are threatened by a lack of will for foundational change to redefine parenting roles, and the roles of children, through Indigenous understandings.

These understandings, or misunderstandings, can contribute to creating an inaccurate child welfare evaluation, as well as discourage Indigenous people from seeking help or support. As one witness noted:

I want to be able to walk down the street with my grandkids without someone calling the social worker because they think I – oh, she yanked her kid there. She did something. I want to be able to go to the police and the police to be able to look at me and say, “Hey, Ms. M., how are you doing? What can we do to help you?” Not come in assuming and, you know, right away, call social services.⁶⁶



Other witnesses noted similar feelings regarding obstacles placed before them that they felt did not apply equally to non-Indigenous people. Vanessa B. argued:

Their criteria seemed to be set in such a damn way that, good Lord, I'd have to have great jumping legs to jump over each and every one of these – these hurdles and it's – it's constantly. It's a hurdle. You can't even get – get over that hurdle enough to – and then, you know ... the momentum of constantly jumping through the hoops and that's how Tanya [Vanessa's sister] always felt, that she had to jump through so many hoops for her children and it's not that she didn't try, but with addiction that struggle is real and this tells you how real it was for her, and, "You know, you tell me to behave this way. Okay, I'm – I'm behaving this way." "Well, you know what? You're not quite doing it right. You need to do it this way because that's just not enough." All the while these children were placed at one point in a home that had added to the damage. Now, these children are now damaged, you know, so – and it still exists, you know, [those] hurdles are still existing now and I'm feeling that now.⁶⁷

In the case of Robin R., the lengths she had to go to in order to be able to get her child back were so great that by the time she was finally permitted to see her daughter, it was too late. She said:

Those five years passed, the trial happened, and I went to the MCFD [British Columbia Ministry of Children and Family Development] and I said, "Give me my child back." No, they – I was irate and I was angry. I walked in there and they forced me to do anger management because I demanded that they give me a plan to get my child back. They said, "No, do anger management and get your certificate and come back and prove that you have done anger management before we talk."

I did the first anger management. It was eight weeks. I went back with my certificate, yelled at the social worker again, and she made me do another 12-week program. So for about five months I was in anger management.

"I BECAME A WARD OF THE GOVERNMENT AT THE AGE OF 14 YEARS OLD. FOR ME, THAT WAS ONE OF THE MOST HUMILIATING TIMES OF MY LIFE THE GOVERNMENT PUT ME THROUGH. THEY BROUGHT MY MOTHER INTO A PLACE, INTO THE COURTROOM, MADE HER SIGN PAPERS WHILE I STOOD THERE, PUT ME UP FOR ADOPTION. THAT'S – THIS IS GOVERNMENT.... THIS IS THE INSTITUTION THAT HAS NO HEART."

Noeline V.



Then, I finally bit my tongue and I walked in there. And they let me see my child. But I was just Robin at that time. Her mother was her foster mother. That was her family that she had grown to love. And I told myself I could never rip my child away from the family she loves so I made the decision right then and there to just let her go. It would be better for her mental state if she was raised in one family and not just keep jumping in and out of her life and demanding to get her back, because she will know now, she will see this Inquiry film and she will know the truth when she is ready.⁶⁸

Once children are apprehended, there are additional obstacles that can lead women who are trying to leave bad circumstances or situations back into dangerous ones. As Mealia Sheutiapik, an Inuk Expert Witness described of her experience:

I had to go through courts just to get my kids back and – my baby. And, I went through the courts, but Children’s Aid were too harsh on me and they didn’t really give me no chance. They didn’t even ask me any questions, if I’d like to get better or if I need help. [All] they were concerned about [was] my baby and tak[ing] him away. So, that kind of got to me and then I just went back on the drugs and being hard on myself.⁶⁹

We also heard about Métis experiences within the context of child welfare, where many children in care were taught to deny their Indigenous identities, or were convinced they didn’t have one. As Métis community therapist and social work professor Cathy Richardson/Kinewesquao notes, looking at child welfare in a Métis context means

understanding that the terrain for Métis people in Canada is full of potholes and pitfalls, and that the Métis make careful decisions about when and how to identify, knowing that they will often be misunderstood by others. For example, if identifying means that Métis families will receive adequately funded, culturally centered, and respectful social work services, then public identification is more likely. I once asked my son why he didn’t identify as Métis in his high school. He told me that if he did, they would put him in a class where he would have to make tipis out of popsicle sticks. Once you identify, the Métis become vulnerable to other people’s projections about who and what is Métis.”⁷⁰

“THE GOVERNMENT IS STILL TRYING TO KILL THE INDIAN IN THE CHILD. IT’S NEVER STOPPED. THEY ARE STILL AT WAR WITH OUR PEOPLE, AND I KNOW THIS. I’VE SEEN IT, AND THIS IS MY LIFE. THIS IS NOT SOMETHING I JUST READ OUT OF A BOOK OR I HAD TO LEARN IN UNIVERSITY. I SEEN IT, I LIVED IT, AND THEY’VE USED OUR PEOPLE AS SCAPEGOATS, AND THEY’VE CREATED SUCH A HATE TOWARDS ABORIGINAL PEOPLE AND CREATED SUCH A DIVISION AMONGST INDIGENOUS PEOPLE AND NON-INDIGENOUS PEOPLE. THERE IS NO EDUCATION OUT THERE ON THE IMPORTANCE OF OUR PEOPLE AND OUR CULTURE.”

Marilyn W.



In addition, ongoing discussions regarding the definition of Métis, and who may qualify for benefits under Métis-specific programs, complicate the context of addressing how best to serve the Métis and to affirm cultural rights in child welfare,⁷¹ as well as in other key services areas, such as health and education.

Regardless of the outcome of those discussions, the impact of child welfare on Métis families was a consistent theme through the testimonies. As Noeline V. shared:

I became a ward of the government at the age of 14 years old. For me, that was one of the most humiliating times of my life the government put me through. They brought my mother into a place, into the courtroom, made her sign papers while I stood there, put me up for adoption. That's – this is government.... This is the institution that has no heart.⁷²

Re-evaluating Helping Services

Many witnesses noted the lack of culturally responsive or appropriate services in key areas beyond child welfare that violated their cultural rights, particularly within support services centred on health. As health researchers Malcolm King, Alexandra Smith, and Michael Gracey note:

Many Indigenous people have little success with, and in fact often will not engage in, treatment that does not value their ways of knowing – especially those pertaining to health and wellness. This failure might account for, in part, the underuse of non-Indigenous specific mental health services by Indigenous people, despite their disproportionately high burden of mental illness.⁷³

Many witnesses also pointed out how, despite all of the recent work by organizations and advocates to educate the public, there is a continuing lack of awareness about Indigenous Peoples and their needs today. Ann M. R. said that “educating people and curing ignorance seems like a lifelong process.”⁷⁴ The work of educating people is an additional burden placed on those still healing from these wounds.

Marilyn W. observed:

The government is still trying to kill the Indian in the child. It's never stopped. They are still at war with our people, and I know this. I've seen it, and this is my life. This is not something I just read out of a book or I had to learn in university. I seen it, I lived it, and they've used our people as scapegoats, and they've created such a hate towards Aboriginal people and created such a division amongst Indigenous people and non-Indigenous people. There is no education out there on the importance of our people and our culture.⁷⁵



DEEPER DIVE

Media and Representation

Introduction: What's New about the News?

Throughout the testimonies presented before the National Inquiry, witnesses talked about the difficult realities of media representation of their loved ones that they perceived as unfair, inaccurate, or distorted. As Chief Commissioner Marion Buller explained:

We have heard from many people across Canada that they have chosen not to participate in this National Inquiry because of the way the media has portrayed their family members, their experiences, and others' experiences. We've also heard from participants in this Inquiry that they've chosen to testify only in private because they are fearful of how the media will portray them and/or their family members.^A

Joanne A., who testified in relation to two murdered aunts, explained how media coverage regarding their deaths revictimized the family.

I was just a kid at the time, but I remember her bloody, knife-torn clothing being displayed on the news. That image stayed with me since then. It traumatized me. I never understood why this was done. What purpose did it serve? None. This was only the beginning of the media circus that began and brought more suffering and pain to an already difficult situation.^B

In this case, this family finally wrote to the media to fight back against the hurtful way their family member was being treated, the "sensationalized journalism," and had an open letter published, but to no noticeable effect. The media treated her other aunt's murder in the same sensationalized way a few years later.

At the same time, and for some families, the counterpart of this – a lack of coverage – is also a painful reality. Delores S. shared how she looked to use media

to support her quest for justice for her loved one, Nadine, but that the process of doing so has led to retraumatization.

I've had to continually go to the media and replay the events that happened in her story over and over and over for the last two years to get somebody to listen, to get somebody to hear that this is a bigger problem, that these issues are bigger. That this is not just another Indigenous woman, but this is a problem that is arising in Canada with our Indigenous women being – going missing and being murdered. And, it's been traumatizing. It's been very traumatizing to have to take my family through this over, and over, and over, and over.^C

For those families, the fact that missing and murdered Indigenous women, girls, and 2SLGBTQQIA people receive disproportionately less media coverage than their non-Indigenous counterparts is a painful reality. The limited attention of the media to, and its framing of, missing and murdered Indigenous women, girls, and 2SLGBTQQIA people sends the message that Indigenous women, girls, and 2SLGBTQQIA people are not "newsworthy" victims, contributing to the Canadian public's apathy toward this crisis.

This Deeper Dive summarizes the existing academic literature on the media's representation of Indigenous women, girls, and 2SLGBTQQIA people, and incorporates new knowledge about media representation gathered from the National Inquiry's Truth-Gathering Process.

We outline the historical representations of Indigenous women in Canadian discourse and how these portrayals manifest in today's media representations of them. We discuss the framing, content, and coverage by traditional and non-traditional forms of media of Indigenous women, girls, and 2SLGBTQQIA people. This analysis examines how the media's representation contributes to and legitimizes the violence



toward them, suggesting important findings about the way forward for truthful representations in the Canadian media of Indigenous women, girls, and 2SLGBTQQIA people.

Historical Representations of Indigenous Women: Queen, Indian Princess, and Squaw

Negative sexist and racist representations of Indigenous women, girls, and 2SLGBTQQIA people are part of Canada's colonial history. Early representations of Indigenous women in Canada are intimately tied to the process of colonization.^D Although Indigenous women's connection to the land is used in both Western and Indigenous historical frameworks, the Euro-constructed image of Indigenous women mirrors Western attitudes toward land of "control, conquest, possession, and exploitation."^E North American images of Indigenous women have been constructed within the context of colonization and have evolved as three different stereotypes: the Queen, the Indian Princess, and the Squaw. All of the early representations of Indigenous women are overtly sexual and charged with colonialist goals and perceptions of land.^F

When settlers first encountered Indigenous women in the 16th century, they produced images of Indigenous women that encapsulated the beauty of the "New World."^G As scholar Joyce Green explains, representations of Indigenous women as the Queen were "exotic, powerful, and dangerous."^H The Queen was both militant and mothering. Indigenous women were presented as being "draped in leaves, feathers, and animal skins, as well as in heavy jewelry, she appeared aggressive, militant, and armed with spears and arrows."^I The Queen was seen as something to be both desired and feared.

As Europeans aspired to conquer more land, the Queen trope was replaced with that of the Indian Princess.^J Colonialist expansion of North America could work only if the Queen metaphor became more accessible and less powerful.^K Europeans began producing images of Indigenous women as the Indian Princess.^L The "mother goddess" representation of Indigenous women was replaced with a more girlish sexual figure.^M The Indian Princess was easily assimilated into European ideals of womanhood and, in that persona,

cooperated with settlers to colonize Indigenous land.^N This imagery of Indigenous women symbolized virgin land that was open for consumption to settlers.^O

However, once Indigenous Peoples in North America began to resist colonization, the archetype of Indigenous womanhood changed again.^P Europeans imposed the Squaw stereotype on Indigenous women to legitimize land acquisition, based on the principle that only civilized people should have or develop land.^Q The term "squaw" literally means dirty, immoral, and unworthy;^R it is the antithesis to the traditional Victorian woman.^S Portraying Indigenous women as Squaw has subsequently legitimized many forms of violence against Indigenous women.^T For example, the Squaw stereotype presents Indigenous women as unfit mothers.^U Therefore, if Indigenous mothers are portrayed as unfit to raise their children within the confinement of the Victorian family model, the Canadian government can legitimize the forcible removal of Indigenous children by child welfare services.^V As "Squaw," Indigenous women are seen to be unable to mother because of issues such as domestic violence and poverty. These are targeted policies of marginalization that are products of Canada's colonial history and live on into the present.

The narrative of Indigenous women as "easy squaws" was also used to describe Indigenous women's sexuality as "lewd and licentious"^W by government officials, law enforcement, and other colonial authorities. This manifestation of the Squaw stereotype was, and still is, used to excuse the violence Indigenous women and girls experience by white settler men.^X The narrative of "easy" Indigenous women was created to cover up white males' unmarried sexual activity.^Y Portraying Indigenous women as Squaw allows Indigenous women to be blamed for the sexual deviance of white settler men.^Z However, Janice Acoose, professor of Indigenous and English literature at First Nations University, argues that regardless of how Indigenous women are portrayed, as either Indian Princess or Squaw, they are sexualized and deemed accessible to white European men for consumption.^{AA}

Creating and Silencing the Violence in Media Framing

The historical stereotypes of Indigenous women manifest in today's media representations of Indige-



nous women, girls, and 2SLGBTQQIA people; they are still subject to representations as the Indian Princess or Squaw by the media. The representation of Indigenous women, girls, and 2SLGBTQQIA people in news media is different from that of their non-Indigenous counterparts in its content and framing. “Content” is the information included in a news article. “News media framing” is broadly understood as the selection of some aspects of information to make them more important.^{BB} Media frames are both persuasive and analytical tools; they are heuristics, or mental shortcuts, that allow complex issues and ideas to be understood.^{CC} Media frames can explicitly and implicitly shape attitudes and opinions based on what is included in the frame and how it is understood.^{DD}

Media representation is not neutral. Power is at the core of what is considered “newsworthy.”^{EE} News media representations of Indigenous women, girls, and 2SLGBTQQIA people, and of the violence against them, are linked to what is deemed worthy or unworthy of coverage.^{FF} Newsworthiness is “what makes a story worth telling.”^{GG} However, not all women who experience violence are treated equally by the media.^{HH} In determining which victims of violence are newsworthy, the news media often presents victims of violence as a binary of either “good” or “bad.”^{II} Like society, the binary that the news media depicts falls along racial and class lines.^{JJ} White, educated, and wealthy women are portrayed as “good” women who are worthy of saving and reporting on, whereas Indigenous women are portrayed as “bad” women who are unworthy.^{KK}

Consequently, the media’s binary portrayal of violence against women results in white missing and murdered women being framed more compassionately than Indigenous missing and murdered women. A case study of news media representation of missing and murdered Indigenous women by researcher Kristen Gilchrist compared with the representation of missing and murdered white women highlights the media’s unequal representation of victims of sexual violence. All six women in the case study were under the age of 30, attended school or were working, had close connections with friends and family, and had disappeared between 2003 and 2005.^{LL} None of the women in the case study were sex workers or had run away from their families.^{MM} However, the media highlighted the non-Indigenous

women’s personalities, families, ambitions, and hobbies.^{NN} In contrast, the details of the Indigenous women’s lives were scant.^{OO} Since the articles about the Indigenous women were significantly shorter than those about the non-Indigenous women, the media did not convey who these women were and what they meant to their families and communities in the same way it did for non-Indigenous women.^{PP}

Most often, news media emphasizes Indigenous women’s and girls’ criminal behaviour. Indigenous women are primarily framed as sex workers and criminals. “Never Innocent Victims: Street Sex Workers in Canadian Print Media,” a study of media representation of Indigenous sex workers from 2006 to 2009, found that two dominant narratives emerge from news media coverage.^{QQ} The first narrative that is perpetuated by the media is “vermin-victim.”^{RR} This narrative portrays Indigenous sex workers as dirty and as a nuisance to Canadian society.^{SS} Sex work is depicted as something that should be eradicated.^{TT} The second narrative that emerges from news media representation of Indigenous sex workers is that Indigenous women are to blame for the violence against them because they engage in “high-risk” lifestyles. The media continually refers to sex work as a “lifestyle,” suggesting that sex work is an individual choice, despite the fact that many women have no other employment opportunities available to them. Media discourse about sex work as individual choice suggests that Indigenous women who engage in sex work and experience violence as a result are at fault: by choosing to engage in a “high-risk” lifestyle, Indigenous sex workers must also accept the consequences of that lifestyle.^{UU}

Criminalized portrayals were cited in testimony before the National Inquiry. Elora S. shared with the National Inquiry:

I’m sure a lot of families have this in common, but what the media does in how they portray our sisters, our aunties, our daughters, it’s not in a very good light.... The one that is often portrayed in the media newspapers is not one that we want to remember her by.... The [photo] that has been all over in the newspapers was actually a mug shot of her, and that’s not how we want to remember her.^{VV}



As Jamie Lee Hamilton shared, “people are more than that. You know, their humanity is robbed from them when you just categorize them by those terms. And there’s no need for that.”^{WWW}

The repetitive representation of Indigenous women engaging in “high-risk” lifestyles normalizes the violence against them.^{XX} In emphasizing Indigenous women’s criminal activity in news media, there is no attention paid to Canada’s colonial history, which constrains and shapes some Indigenous women’s, girls’, and 2SLGBTQQIA people’s experiences and opportunities.^{YY} News media representation blames Indigenous women and girls for the violence against them and dismisses the unequal social conditions that contribute to some Indigenous women’s, girls’, and 2SLGBTQQIA people’s engaging in sex work or living in poverty.^{ZZ}

As Jamie Lee Hamilton shared on a panel before the National Inquiry, media coverage as related to 2SLGBTQQIA people can be challenging for different reasons, as well.

When we’ve had trans people – Two-Spirited, trans people that have been murdered, the police routinely would disclose to the media that they’re trans. And they have no right to do that because it sets in motion this defence that’s used, the panic. We call it the homosexual panic defence of, “Oh, the perpetrator was triggered because of this.” When in actual fact, they’re hate crimes. You know, there are individuals that go out and target.^{AAA}

As Kim M. shared, in relation to the media portrayal of her sister:

Media needs to be educated on how they report on missing and murdered Indigenous women and girls. They need to be respectful and honourable.... When media was trying to post pictures of my sister, they were not very representative pictures, and I actually phoned a number of places that were posting pictures and I said, “We’re sending you pictures. Use these.” Even the way how they described my sister when they first announced that she was murdered, they described her as a sex-trade worker. So, I phoned them and I said, “How can you – why are you calling her that?” So, media, get your facts straight and treat us with honour and respect.^{BBB}

As these examples demonstrate, many media outlets perpetuate a narrative that violence against Indigenous women is a result of individual choice, rather than social and structural inequalities.^{CCC} Consequently, the violence against Indigenous women, girls, and 2SLGBTQQIA people is “justified” because the media framing signals to the Canadian public that violence against them is not important.^{DDD} The silencing of violence against Indigenous women and girls is made worse in comparison with the media’s compassionate framing of white women.^{EEE}

A Curious Silence

In addition to the negative framing and content of news media representations of Indigenous women, girls, and 2SLGBTQQIA people, they constantly receive disproportionately less media coverage than their non-Indigenous counterparts do. Media coverage refers to the frequency of media representation – for example, the number of news articles and placement of newspaper stories.

In terms of frequency and placement of newspaper articles, there are more articles written about non-Indigenous women than Indigenous women, and these articles appear in a more prominent place in newspapers. On average, missing or murdered white women received three times more coverage than Indigenous women did.^{FFF} The comparative case study mentioned earlier found that articles about white women averaged 1.4 times more words than Indigenous women and that 37% of articles about white women appeared on the front page of newspapers, compared with 25% of articles about Indigenous women.^{GGG} Articles about the Indigenous women often appeared beside advertisements and soft news.^{HHH} Further, other less significant articles were given more prominent space when placed near the stories of missing or murdered Indigenous women.^{III} Poorly placed articles signal to readers that the stories in the articles lack urgency and social importance.^{JJJ} The placement of news articles about Indigenous women in the periphery of newspapers signals to readers that missing and murdered Indigenous women are not newsworthy.

Further, a study conducted in 2008 found that even Indigenous women who do not engage in “high-risk” lifestyles also receive limited news media coverage.



In 2004, Daleen Kay Bosse, a 25-year-old Cree university student and mother from Onion Lake First Nation, went missing from Saskatoon. There was only a total of 51 articles in the *Saskatoon StarPhoenix*, a daily newspaper serving the Saskatoon area, and *Regina Leader-Post*, a daily newspaper serving the Regina area, over a four-year time period about her disappearance and death.^{KKK} During the critical two-week period when Daleen first went missing, her disappearance received no news coverage, despite the fact that her family notified the police within 24 hours of her disappearing.^{LLL} Once her killer was identified, there was an increase in news coverage; however, the coverage focused on her killer, rather than on Daleen.^{MMM} The limited media coverage of Daleen creates and maintains a silenced discourse about her disappearance and murder. The number and timing of news articles suggest that Daleen's disappearance and death are not important.^{NNN}

Marilou S. shared about a friend's experience with media silence, in comparison with a non-Indigenous victim.

We met this one family where their little girl was chopped up into little pieces and thrown into the river in Manitoba. And it happened at the same time that this little girl in Toronto, a white girl, she was chopped up and put in a suitcase, and they found her on Centre Island. And the little girl in Manitoba didn't get any news time at all. But the little white girl was – it was all over the world what happened to her, you know?^{OOO}

Similarly, Rachelle W., testifying about the lack of media coverage around her cousin's murder, said:

It seemed like we didn't have any support. Even trying to get the media, like the *Interior News* or any kind of radio station, somebody to hear us, but our family had to chase after the media to say, "Hey, wait a minute. You guys have to listen to us because our family member's gone missing." And it seemed like it was just dead ends everywhere trying to look for Ramona.^{PPP}

Another issue in news media coverage is that stories on murdered and missing Indigenous women and girls before 1980 are largely absent. As Tanya Talaga, an Anishinaabe author and journalist, said, cases of

their being missing "in the 1950s, and 1960s and the 1970s ... were swept under the rug. ... There's so many cases of women that disappeared and there's hardly any information anywhere on them ... it's important that we remember those women."^{QQQ} Without information about murdered and missing Indigenous women and girls before 1980, the severity of violence against Indigenous women and girls, and how the media contributes to and silences this violence, cannot be fully understood. To help fill some of the knowledge gaps about the murdered and missing Indigenous women and girls in the news media, Tanya Talaga and a team of journalists at the *Toronto Star* created the series "Gone." The goal of the series is to investigate the disappearances and deaths of Indigenous women and girls to tell more honest and truthful stories of the women and to create a comprehensive database.

As Trudy S. shared, when asked if her sister's story was ever reported on in the media: "No. There was nothing. It was just like my sister was invisible, that nobody cared about her, and I'm the only one that really cared for her. I'm the only one that wants justice for Pauline."^{RRR}

Film, Sports, and Popular Culture

Indigenous women and girls are also misrepresented in popular culture. In movies, Indigenous women and girls are dehumanized and hypersexualized, and their agency is denied. Erotic images of Indigenous women as the historical stereotype of the Indian Princess persist today. For example, the Indian Princess archetype is manifested in Western representations of Pocahontas.^{SSS} In his analysis of the Disney movie *Pocahontas*, Jesse Wenthe, an Anishinaabe man and director of the Indigenous Screen Office, highlighted the oversexualization of Pocahontas. Wenthe commented that the Disney movie encapsulates "the maturation thinking that Indigenous women are somehow sexually active or mature at a very young age, compared to the regular population."^{TTT} Wenthe highlights "the myth that the movie paints about who Pocahontas was, that was actually not even her name, and she would have been a child when she met John Smith."^{UUU} He continues, "The Disney movie *Pocahontas* is probably the most widely watched piece of entertainment of Indigenous Peoples. She's portrayed scantily clad for most of the



film. And, the disconnect, I think, is both evidence of that overall in the media, but in particular, when it comes to the portrayal of Indigenous women.^{www} John Ford's 1956 film *The Searchers*, which has a slightly more nuanced portrayal of Indigenous women, is still dehumanizing. Throughout the movie, there are jokes made about Indigenous women's appearances, and they are traded as a commodity in the movie.^{www} Further, *Wind River*, a 2017 film specifically about missing and murdered Indigenous women, denies Indigenous women agency.^{xxx} The Indigenous women in *Wind River* are portrayed only as rape victims; they are not active in the movie's other narratives.^{yyy} Similarly, the 2015 Oscar-winning film *The Revenant* portrays Indigenous women as only victims of sexual assault and as sexual objects.^{zzz} Indigenous women's rape is used as a plot device as opposed to being central to the telling of the story.^{aaaa}

Misrepresentations of Indigenous Peoples are also prevalent in sports mascots. Jesse Wentz told the Inquiry that the ongoing use of depictions Indigenous Peoples as sports mascots is a clear perpetuation of racism.

Indigenous people are the only humans that are cast as mascots and as team names. You don't see this, actually, with other peoples. They are mostly named after animals, and it's important to consider that most of the negative effects and negative purpose of much of the mis-portrayals in the media are dehumanization of Indigenous Peoples, so that being named mascots suddenly becomes acceptable to the wider population. In fact, you see stories that these teams begin to tell themselves about why they did this. Usually, they refer to these as honouring ... that they honour Indigenous Peoples through these names. But, again, if you consider what was actually occurring to Indigenous Peoples when these names were created, I would suggest that is a dramatic disconnect, one reinforced by media at the time and ongoing now.^{bbbb}

A New Wild West: Social Media and Representation

Although social media can facilitate racist and sexist representations of Indigenous women, girls, and

2SLGBTQQIA people, it can also create a platform for Indigenous Peoples to present their voices.^{cccc} Unlike traditional forms of media, social media has no constraints as to what can be published; there is no overarching message that is being controlled by traditional media sources.^{dddd} In some ways, social media has the potential to mitigate racist and sexist portrayals of Indigenous women, girls, and 2SLGBTQQIA people by allowing Indigenous Peoples to contribute to their own stories. For example, the twitter hashtag #MMIW was used by many Indigenous groups to focus media attention on the stories of the women and the National Inquiry, rather than on sexist and racist portrayals of missing and murdered Indigenous women.^{eeee}

Missing from the academic literature is specifically how 2SLGBTQQIA people are represented and largely under-represented in the media. Fallon Andy, media arts justice facilitator with the Native Youth Sexual Health Network and a gender non-conforming Anishinaabe artist who uses they/them pronouns, told the Inquiry about how they use memes and GIFs to bring awareness to the violence against 2SLGBTQQIA people. They explained, "Heterosexuality is sort of the main sexuality category, it's very normalized, and you see it everywhere in media."^{ffff} Andy stressed the importance of having culturally specific memes of Indigenous 2SLGBTQQIA people. In reference to their memes, Andy stated that they "often send them to different places and communities and people will ask me to send them, like, PDF copies so that they can print and take it up and hang it somewhere. ... It's more, like, culturally specific."^{gggg}

Violence by Media Representation, Misrepresentation, and Under-Representation

Like historical representations of Indigenous women that legitimized early colonial violence, today's media misrepresentation and under-representation of Indigenous women, girls, and 2SLGBTQQIA people contribute to and legitimize the disproportionate and distressing amount of violence they experience. The limited news coverage of Indigenous women, girls, and 2SLGBTQQIA people sends the message that they are not newsworthy victims: the violence com-



mitted against them is not important. Media framing of Indigenous women as engaging in activities that increase their risk of violent crime places the blame and responsibility of their circumstances on themselves, rather than increasing support and advocacy amongst Canadians.^{HHHH}

Misrepresentation and lack of coverage also legitimize the Canadian government's lack of intervention and inadequate police investigations. Dr. Robyn Bourgeois, a Cree professor at Brock University, told the National Inquiry:

The hypersexualization of Indigenous women and girls, and the perception that we are inherently sexually available ... [means that] the violence that happens to our bodies doesn't count because – I mean, in really gross, kind of, pop culture terms that I've actually heard people say – we are getting what we asked for, we put ourselves in – you know, we were – by our very existence, we asked for it. And so, it exonerates that violence, and that's the source of the ideas. It's this inherent belief within the settler colonial system, which is the foundation of our current Canadian nation-state, that Indigenous women and girls are inferior, they're deviant, they're dysfunctional, and they need to be eliminated from this nation-state, and that's what makes it okay to abuse and violate Indigenous women and girls.^{IIII}

The under-representation and misrepresentation of Indigenous women, girls, and 2SLGBTQQIA people allow the Canadian government and public to maintain its apathy toward the ongoing crisis.

Consequently, the Canadian public's attitudes toward Indigenous women heighten the women's vulnerability to violence by non-Indigenous Canadians. Amnesty International's 2004 report *Stolen Sisters: Discrimination and Violence against Aboriginal Women in Canada* found that non-Indigenous Canadians' violence toward Indigenous women and girls is motivated by racism and sexism. The report also found that non-Indigenous men's violence toward Indigenous women is in part motivated by the Canadian public's indifference to the deaths and disappearances of Indigenous women and girls. The findings in *Stolen Sisters* are sobering when understood in the context of how the media informs Canadian public

opinion about murdered and missing Indigenous women and girls.

A 2018 study on Inuit women's responses to various Western media highlights the findings in *Stolen Sisters*. "We don't kiss like that': Inuit women respond to music video representations" found that Inuit women believed that the media's representation of Indigenous women legitimized the physical violence against them.^{JJJJ} The women in the study believed that the media's representation of missing and murdered women as victims of violence focused on their Indigeneity, rather than on the socio-economic and structural causes of violence.^{KKKK} One woman stated that the media portrays Indigenous women as "illiterate ... and dumb so that they can easily rape us or sexually abuse us."^{LLLL}

Media representation of Indigenous women and girls perpetuates the ongoing colonial violence against Indigenous women. As we heard, these stereotypes, as well as the lack of coverage that crimes against Indigenous women, girls, and 2SLGBTQQIA people receive, mean that some perpetrators feel as if these victims represent less "risk" to them in committing the violence. In addition to legitimizing the violence of non-Indigenous perpetrators, some witnesses shared, Indigenous men have accepted the media's stereotypes, viewing the victims as people no one cares about, or believing they won't get caught, or be prosecuted, because of that.

In the absence of appropriate representations of Indigenous Peoples in the media, misrepresentations become the accepted "truth."^{MMMM} The way that Indigenous women, girls, and 2SLGBTQQIA people are represented by the media affects how Indigenous Peoples see themselves and their cultures. As scholar Janice Acoose explains, "Stereotypic images of Indian princesses, squaw drudges, suffering helpless victims, tawny temptresses, or loose squaws falsify our realities and suggest in a subliminal way that those stereotypic images are [Indigenous Peoples]."^{NNNN}

Sandra L. stated, "I used to hate my people, like how come we were supposed to be these bums, but I didn't know ... I thought these people who were telling me about who we were as a people was the truth. It wasn't the truth, right?"^{OOOO}



The Path Forward: Telling Our Stories

The truth about missing and murdered Indigenous women and girls must be represented in the media. Indigenous women, girls, and 2SLGBTQQIA people have spirit: they are mothers, daughters, sisters, aunts, wives, valued community members. They matter, and their stories are important. The path forward to honest representations of Indigenous women, girls, and 2SLGBTQQIA people is not straight or easy, but there are several changes that the media can make to lead to more truthful representations that can ultimately contribute to change. As Sandra L., a witness before the National Inquiry, stated, “the thing about learning the truth is it'll set you free, but it's painful as hell going through the process.”^{PPPP}

A common recommendation in both the academic literature and the testimonial knowledge is that for fair media representation of Indigenous women, girls, and 2SLGBTQQIA people, Indigenous Peoples must be able to tell their own stories. Indigenous Peoples are the experts of their own lives, and their knowledge should be represented in the media. Connie Greyeyes, a member of Bigstone Cree Nation and advocate for missing and murdered Indigenous women and girls, told the National Inquiry that it is important for the families of missing and murdered Indigenous women to tell their own stories on their own terms.

Quite often when stories of a woman that has gone missing or has been murdered, there's a stereotype that's attached to it. And for a family to be able to go and tell their story, their truth of their loved one is so important because we are not what the media often portrays us to be. You know, we are mothers, grandmothers, aunts, sisters. We are ceremonial people. You know, I've seen so many stories of my own personal friends in the media and have been just disgusted by the way they've been portrayed.^{QQQQ}

Elora S., testifying about her loved one, implored the media to reach out to families.

Before you publish anything, I know it's for rates and whatever, but you know, reach out to the families, because we all – we'll help you. We want

to portray a positive image, not just what you guys want to put out there. And, I know for our story, it was just, come on, just be a little more sensitive, you know? Because the graphic details that they portrayed my auntie in were horrendous. And, that's all the public knows about her, was that – I'm not going to – I'm not going to share what was posted, what was said, but it was just dehumanizing.^{RRRR}

In some cases, this also means understanding and respecting cultural traditions and protocols of grieving. As Micah A. shared, her family's silence was interpreted by media as support for the perpetrator.

My relatives did not feel it was in their interest to speak on my behalf as the mother of the child, and they did not want to be interviewed by the media with their questions. At first I wasn't interested in being interviewed myself, but one of the questions was, became this: “Are the [A.'s family] supportive of murder, then? Because you won't reply?” That was one of the questions I was given.

In her testimony, Micah said she felt pressured to provide an interview, but when she did, she pointed out that the media should respect Inuit culture, “whereby you give the person grieving who experienced the loss, three days prior to contact for interviews or to answer questions.”^{SSSS}

Fallon Andy pointed out that one way for Indigenous Peoples to tell their stories is through social media because it allows them to represent their realities better.^{TTTT} The ability for social media to change the social and political landscape cannot be understated.

Part of the reason that the violence toward Indigenous women, girls, and 2SLGBTQQIA people is underrepresented and misrepresented in the media is that Canadian media is dominated by white settler men.^{UUUU} Jesse Wenthe explained, “The majority of Indigenous storytelling that occurs, or stories about Indigenous people that are seen on screens and in media are typically produced by non-Indigenous peoples.”^{VVVV} The lack of Indigenous representation in the Canadian media is problematic because the majority of the information Canadians receive about Indigenous Peoples and issues, and, consequently, how they form their opinions, is through the



media.^{wwwww} In contexts where Canadians have little knowledge, contact, or personal interactions with Indigenous communities, media plays an integral role in shaping perceptions of Indigenous Peoples.^{xxxx} In moving forward, the media should include Indigenous Peoples as a part of the creation of stories and the storytelling process. This can include, but is not limited to, Indigenous production teams, actors, writers, journalists, and directors.

In some cases, this is happening. For example, Jeffrey McNeil-Seymour, a Two-Spirit assistant professor at Ryerson University and band member at Tk'emlúps te Secwepemc First Nation, created a video art presentation that recorded 2SLGBTQQIA people in ceremony. McNeil-Seymour described the video in his testimony as “a way for there to be visual documentation of a particular ceremony for Two-Spirit people in my nation of Secwepemcul’ecw to look to and to be able to hopefully feel a sense of belongingness and attachment, because a lot of us grow up not necessarily having those strong feelings.”^{yyyy}

In addition, work from advocates has resulted in some changes in Manitoba in how Indigenous women, girls, and 2SLGBTQQIA people are portrayed in the media. As Member of the Legislative Assembly of Manitoba Nahanni Fontaine explained, activism from Winnipeg families finally convinced the Winnipeg Police Service (WPS) and the RCMP to stop using mug shots when releasing photos of murdered and missing Indigenous women and girls in Winnipeg. As Fontaine explained in an interview:

So actually, here in Winnipeg, there were a group of predominantly Indigenous women from a variety of different organizations that kept lobbying and fighting for the WPS and for the RCMP to stop releasing mug shots because what it does intrinsically is when that mug shot is released to the public, it doesn't really induce the public to that particular woman. Right, because we've got our own, you know, markers in respect of that she's criminalized and she's all these things. We actually lobbied for that for very hard. And now the WPS and the RCMP don't do that.^{zzzz}

Another way forward for truthful representation of Indigenous women, girls, and 2SLGBTQQIA people in the media is set out by the Truth and Reconciliation Commission's (TRC) Call to Action 84, “Media and Reconciliation.” The TRC states:

We call upon the federal government to *restore and increase funding to the CBC/Radio-Canada*, to enable Canada's national public broadcaster to support reconciliation, and be properly reflective of the diverse cultures, languages, and perspectives of Aboriginal peoples, including, but not limited to: (iii) Continuing to provide dedicated news coverage and online public information resources on issues of concern to Aboriginal peoples and all Canadians, including the history and legacy of residential schools and the reconciliation process. (emphasis added)^{aaaa}

Many of the witnesses for the National Inquiry testified about the importance of increasing funding for Indigenous media content. This could facilitate more Indigenous participation in media creation and content, leading to more honest representations of Indigenous women, girls, and 2SLGBTQQIA people.

Conclusion

This Deeper Dive has explained how early colonial representations of Indigenous women manifest in today's misrepresentation and under-representation of Indigenous women, girls, and 2SLGBTQQIA people. Today, through media coverage and content, media representations can legitimize violence and contribute to the targeting of Indigenous women by silencing their experiences.

As Jesse Wenthe explained, media should and can be an important outlet for improving outcomes, not making them worse. In responding to the idea that some families were afraid to testify, fearing the media portrayal they might encounter, Wenthe stated: “That should be a shameful blight, because that is not what journalism should be doing; the exact opposite.”^{bbbb} Tanya Talaga pointed out that, in some cases, these bad experiences work to colour Indigenous Peoples' perceptions of the media as a single entity.



That's really hard because, you know, families, they have a bad experience and then someone else hears about it. And so, it just gets magnified and not all journalists are bad, and not all journalists are insensitive, and some do work hard to be sensitive. So, it's difficult because when that happens, everyone gets painted with the same brush, and that's not necessarily fair.^{cccccc}

While witnesses pointed out, in many instances, the difficulties they faced with media, they also offered solutions that point to media's important role in shaping Canadian public opinion. While the media has, so far, contributed to a lack of public concern for the crisis of murdered and missing Indigenous women and girls, and has legitimized the Canadian government's inadequate intervention, it can also work to do something else entirely. The path forward should include Indigenous Peoples' telling their own stories on their own terms for truthful and fair media representations of Indigenous women, girls, and 2SLGBTQQIA people.



Jesse Wenté testifies about media and representation at the National Inquiry's hearing on racism in Toronto, Ontario.

Findings

- The media has not accurately portrayed First Nations, Inuit, and Métis women and girls in general, and 2SLGBTQQIA people in particular. As a result, the media has perpetuated negative stereotypes of Indigenous women, girls, and 2SLGBTQQIA people. These stereotypes perpetuate racism, sexism, homophobia, transphobia, and misogyny against Indigenous women, girls, and 2SLGBTQQIA people within the broader Canadian population.
- Media portrayal has resulted in the dehumanization of Indigenous Peoples, which in turn manifests and perpetuates views that Indigenous women, girls, and 2SLGBTQQIA people are “less than” non-Indigenous people; that they are not worthy of the same rights and protections as non-Indigenous people; and that they are burdens on Canadian society.



A	Tanya Talaga (Anishinaabe/Polish), Part 3, Public Volume 10, Toronto, ON, p. 171.	GG	Gilchrist, "Newsworthy Victims," 3; Gilchrist, "Invisible Victims"; Gilchrist, "Multiple Disadvantages."
B	Joanne A. (English River First Nation, Treaty 10), Part 1, Public Volume 24, Edmonton, AB, pp. 78-79.	HH	Gilchrist, "Newsworthy Victims," 3; Jiwani and Young, "Missing and Murdered Women," 901.
C	Delores S. (Saulteaux, Yellow Quill First Nation), Part 1, Public Volume 26, Saskatoon, SK, pp. 25-26.	II	Gilchrist, "Newsworthy Victims," 3; Gilchrist, "Multiple Disadvantages."
D	Jiwani, "Symbolic and Discursive Violence," 3.	JJ	Ibid.
E	Anderson, <i>A Recognition of Being</i> , 101.	KK	Acoose, <i>Neither Indian Princesses nor Easy Squaws</i> , 43; Gilchrist, "Newsworthy Victims," 3; Gilchrist, "Multiple Disadvantages."
F	Jiwani, "Symbolic and Discursive Violence," 3.	LL	Gilchrist, "Newsworthy Victims," 11.
G	Anderson, <i>A Recognition of Being</i> , 101; Green, "The Pocahontas Perplex," 702.	MM	Ibid.
H	Green, "The Pocahontas Perplex," 703.	NN	Ibid.
I	Ibid., 702.	OO	Ibid.
J	Anderson, <i>A Recognition of Being</i> , 101; Green, "The Pocahontas Perplex," 702.	PP	Ibid.
K	Anderson, <i>A Recognition of Being</i> , 101.	QQ	Strega et al., "Never Innocent Victims," 12.
L	Anderson, <i>A Recognition of Being</i> ; Carter, <i>Capturing Women</i> , 161; Green, "The Pocahontas Perplex," 702.	RR	Ibid.; Longstaffe, "Indigenous Women as Newspaper Representations," 239.
M	Anderson, <i>A Recognition of Being</i> , 101.	SS	Ibid.
N	Burnett, "Aboriginal and White Women," 105; Dean, "Moving Beyond 'Stock Narratives.'"	TT	Strega et al., "Never Innocent Victims," 13.
O	Anderson, <i>A Recognition of Being</i> , 101.	UU	Ibid.
P	Ibid., 103.	VV	Elora S., Part 1, Public Volume 10, Winnipeg, MB, p. 155.
Q	Ibid., 103.	WW	Jamie Lee Hamilton (Indigenous/Irish), Part 1, Public Volume 104, Vancouver, BC, p. 54.
R	Burnett, "Aboriginal and White Women," 105.	XX	Strega et al., "Never Innocent Victims," 21.
S	Anderson, <i>A Recognition of Being</i> , 103; Bourgeois, "A Perpetual State of Violence"; Burnett, "Aboriginal and White Women," 105; Carter, <i>Capturing Women</i> , 161; Razack, "Gendered Racial Violence," 99-100.	YY	Garcia-Del Moral, "Representations as a Technology of Violence," 46; Strega et al., "Never Innocent Victims," 20.
T	Bourgeois, "A Perpetual State of Violence," 260; de Finney, "Playing Indian," 172; Razack, "Gendered Racial Violence," 99.	ZZ	Garcia-Del Moral, "Representations as a Technology of Violence," 46; Gilchrist, "Newsworthy Victims."
U	Anderson, <i>A Recognition of Being</i> , 103.	AAA	Jamie Lee Hamilton (Indigenous/Irish), Part 1, Public Volume 104, Vancouver, BC, p. 53.
V	Ibid.	BBB	Kim M., Part 1, Public Volume 10, Winnipeg, MB, pp. 173-174.
W	Ibid., 104.	CCC	Garcia-Del Moral, "Representations as a Technology of Violence," 46.
X	Ibid.; Razack, "Gendered Racial Violence," 105.	DDD	Gilchrist, "Newsworthy Victims," 14.
Y	Anderson, <i>A Recognition of Being</i> , 104.	EEE	Ibid.
Z	Ibid.; Pierce, "Christian Stereotypes and Violence," 9.	FFF	Ibid., 7.
AA	Acoose, <i>Neither Indian Princesses nor Easy Squaws</i> , 45.	GGG	Ibid.
BB	Entman, "Framing," 51.	HHH	Gilchrist, "Newsworthy Victims," 9.
CC	Hallahan, "Seven Models of Framing," 207.	III	Ibid.
DD	Ibid.	JJJ	Ibid., 10.
EE	García-Del Moral, "Representations as a Technology of Violence," 35.	KKK	McKenzie, "She was not into drugs and partying," 148.
FF	Gilchrist, "Newsworthy Victims," 2; Gilchrist, "Invisible Victims"; Jiwani, <i>Discourses of Denial</i> , 38.	LLL	Ibid.
		MMM	Ibid.
		NNN	Ibid., 148-49.



OOO	Marilou S. (Bear Clan, Anishinaabe), Part 1, Statement Volume 563, London, ON, p. 18.	JJJ	Glennie, "We don't kiss like that," 109.
PPP	Rachelle W. (Wolf Clan, Gitksan Nation), Part 1, Public Volume 7, Smithers, BC, p. 77.	KKK	Ibid., 110.
QQQ	Tanya Talaga (Anishinaabe/Polish), Part 3, Public Volume 10, Toronto, ON, pp. 85-86.	LLL	Ibid.
RRR	Trudy S. (Mowachaht/Muchalaht First Nation), Part 1, Public Volume 95, Vancouver, BC, p. 11.	MMM	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON p. 21.
SSS	Green, "The Pocahontas Perplex," 704.	NNN	Acoose, <i>Neither Indian Princesses nor Easy Squaws</i> , 44.
TTT	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON, p. 17.	OOO	Sandra L. (Cree/Dakota), Part 1, Public Volume 41, Yellowknife, NWT, p. 187.
UUU	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON, pp. 16-17.	PPP	Sandra L. (Cree/Dakota), Part 1, Public Volume 41, Yellowknife, NWT, p. 187.
VVV	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON, pp. 16, 17.	QQQ	Connie Greyeyes (Bigstone Cree Nation), Mixed Parts 2 & 3, Public Volume 6, Quebec City, QC, pp. 29-30.
WWW	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON, p. 26.	RRR	Elora S., Part 1, Public Volume 10, Winnipeg, MB, p. 156.
XXX	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON, p. 17.	SSS	Micah A. (Inuit, Talurjuaq), Part 1, Public Volume 46(b), Rankin Inlet, NU, p. 13.
YYY	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON, p. 17.	TTT	Moeke-Pickering et al., "Understanding the Ways," 55; Fallon Andy (Anishinaabe, Couchiching First Nation), Part 3, Public Volume 8, Toronto ON, p. 131.
ZZZ	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON, p. 17.	UUU	McKenzie, "She was not into drugs and partying," 144.
AAAA	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON, p. 17.	VVV	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON, p. 20.
BBBB	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON, pp. 15-16.	WWW	Harding, "Historical Representations of Aboriginal People," 224.
CCCC	Moeke-Pickering et al., "Understanding the Ways," 55.	XXX	Anderson and Robertson, <i>Seeing Red</i> , 6; Harding, "Historical Representations of Aboriginal People," 224.
DDDD	Ibid., 58.	YYY	Jeffrey McNeil-Seymour (Tk'emlups te Secwepemc/English), Parts 2 & 3, Public Volume 3, Iqaluit, NU, p. 193.
EEEE	Ibid., 58.	ZZZ	CBC Radio, <i>The Current</i> , "MMIWG Winnipeg public forum."
FFFF	Fallon Andy (Anishinaabe, Couchiching First Nation), Part 3, Public Volume 8, Toronto ON, p. 236.	AAAAA	Truth and Reconciliation Commission of Canada, <i>Calls to Action</i> , 9-10.
GGGG	Fallon Andy (Anishinaabe, Couchiching First Nation), Part 3, Public Volume 8, Toronto ON, pp. 260-261.	BBBBB	Jesse Wente (Anishinaabe, Serpent River First Nation), Part 3, Public Volume 10, Toronto, ON, p. 172.
HHHH	Jiwani, "Symbolic and Discursive Violence," 2.	CCCCC	Tanya Talaga (Anishinaabe/Polish), Part 3, Public Volume 10, Toronto, ON, p. 174.
IIII	Dr. Robyn Bourgeois (Cree), Mixed Parts 2 & 3, Public Volume 17, pp. 36-37.		



Pathway to Violence: Denying Agency and Expertise in Restoring Culture

Of the many views expressed with reference to solutions, witnesses often pointed out that the answers must be self-determined. The right to culture and Indigenous understandings of culture are deeply rooted in their own identities, languages, stories, and way of life – including their own lands – and these ways of knowing must be recentred and embraced as ways to move forward. As Patrick S. asserted, this doesn't mean segregating cultures, but learning to respect the "other."

And we can learn a lot as cultures and grow together as cultures, you know, empower one another as cultures. But where one thinks they, you know, have all the answers for the other one, that's never going to work, you know. We don't have all the answers for you but you certainly don't have all the answers for us. The answers are in here – in here.⁷⁶



Elders Thelma Morrisseau and Stan LaPierre address the group gathered for the Knowledge Keeper and Expert Hearing in Winnipeg, Manitoba.

Improving Programs and Services through a Cultural Lens

Many witnesses shared ideas on how to improve systems and services in ways that can support culture and support families – a key component of preserving culture, according to international human rights instruments and to many Indigenous world views. Paula P. suggested:

If you supported the young mothers going to school and not have to pay that back, you would help our Native Nation. If you supported them where they could do outings with their children, if they submitted their receipts for regalia and got that money back, that's what they should do. And giving mothers money so that they can take their children to Pow-Wows and ceremonies outside. Making it – that's what new reunification looks like to me. You know? The reconciliation, that's what reconciliation looks like to me.⁷⁷



Ann M. R. suggested simplifying the process for applications to programs and properly funding organizations that offer programs through core and not project-based funding, while applying a cultural lens to the process.

I think government needs to fund cultural programs without the bureaucratic application processes. My life has been about filling in application processes. I mean, it's been so bureaucratic. There is no cultural lens to their application process. It's very difficult, very time-consuming, and you have organizations that do not have any money, with huge expectations. We're on the ground, there is a lot of work to be done, and we don't have time to fill in their bureaucratic process. It's very difficult. They need to change their applications. More or less, never mind an application, they need to provide core funding.⁷⁸

Part of this work, as witnesses pointed out, means approaching Indigenous Peoples and communities with a true desire to facilitate or help in terms that are of their own creation and self-determined. As Patrick S. reflected:

You know ... a real leader leads from behind. So, you know, if those people in power can – can learn that, you know, it's the most vulnerable, you know, that's where we need to shine the lens of equity, you know. We can't judge our people who are struggling with a burden, you know, of colonialism, of residential school, of foster care, of uncountable losses. You cannot judge them for, you know, doing whatever they can do to survive on a day-to-day basis, whatever that looks like.⁷⁹

As a related issue, Jackie Anderson, a Métis woman working with exploited and trafficked youth through the Ma Mawi Wi Chi Itata Centre in Winnipeg, Manitoba, maintains that new systems for funding these services must be in place. For instance, the only specialized option for sexually exploited children and youth in Manitoba currently requires that child to be in the care of Child and Family Services before they can receive a referral. This has forced parents to make the heart-breaking decision to voluntarily put their children into care to receive the services they need:

We had this amazing, powerful mother who, you know, was ... desperate to, you know, help her daughter and to get her the support that she needed, and unfortunately, other than addictions treatment centres, for her to be into a specialized program that specifically works with exploited young people, she was told that she couldn't access the service unless she signed a voluntary placement for her child. And even signing a voluntary placement, you also have to prove your income, because you may have to contribute to the care of your child, and that was a really huge challenge for her.⁸⁰



Self-Determined and Decolonized Systems

For many who testified before the National Inquiry, access to cultural safety is an important part of reclaiming power and place. It is also linked to the patriarchal systems that have been imposed, and reified, within legislation and in some Indigenous governance structures. They have resulted in an overwhelmingly male-dominated leadership today, in communities across the country. As Shelley J. explained:

Because of the *Indian Act* and Indian residential schools, the patriarchal system that comes with that, women are seen as and treated as less than. Our roles were diminished, if not completely erased. And I think all of that has brought us to why we're here, you know, why so many of our women and girls are missing and murdered.⁸¹

In explaining power imbalances within communities, witness Viola Thomas remarked that “many of our people are silenced to ... take action because of that imbalance of power within our communities and how sexism is really played out. And we need to look at strategies that can ... remind our men that they were born from Mother, they were born from Mother Earth.”⁸²

Gina G. similarly explained: “I walk into my community, into my band office and it's not very welcoming sometimes. There's some very negative people there and still yet, I go in, I hold my head high, I work with them, very respectful and professional to them.”⁸³

Recalling the sexism in her own family, Gail C. remembered:

When it came to gender equality or equity in the house, there was no such thing. The boys got everything and I got – you know, I got the peanuts, I got the little scraps in the end. So there's a lot of inequity in what was happening. It didn't matter how old or how young. I was right in the middle. I did not [get] the bikes, not this, second-hand clothes, clothes so big that when she [her mother] sewed them in at the waist to try and sort of just pass by, I had a ballooning, all this ballooning material on a pair of pants over my hips and my bum and everything. So – and, of course, it was a total embarrassment. My sister-in-law took me to – my dad's brother's wife, who did a lot of sewing. She sewed in clothes for me so that I would feel that I could actually walk in a school without being mortified, embarrassed and wanting to die.⁸⁴

“WE NEED TO GO BACK TO HAVING OUR CULTURE AND WE NEED TO GO BACK TO SPEAKING OUR LANGUAGE, AND WE NEED TO GO BACK TO WALKING GENTLY ON THIS EARTH AND NOT TAKING THINGS LIKE RESOURCES, DISRESPECTING THAT. THAT'S REALLY IMPORTANT BECAUSE WE NEED FRESH WATER. WE NEED OUR TRADITIONAL MEDICINES. WE NEED THAT CONNECTION TO THE LAND BECAUSE IT MAKES US STRONGER. WE NEED THAT CONNECTION TO OUR LANGUAGE BECAUSE IT MAKES US STRONGER. WE NEED THOSE CONNECTIONS TO OUR FAMILIES BECAUSE IT DOES MAKE US STRONGER. WE NEED OUR WOMEN TO BE VALUED. WE NEED OUR CHILDREN TO KNOW THAT THEY ARE VALUED, THAT THEY MATTER.”

Rhonda M.



But, as many witnesses pointed out, the keys still exist in communities and in individuals. As Ann M. R. explained, “We are Dena. We have a lot. Our culture is encoded in each of us. It’s something we will never forget. You just provide the environment, it will come to life.... You can never forget. That’s why we can never be assimilated because our culture is encoded in our DNA.”⁸⁵

Rhonda M. advocated:

We need to go back to having our culture and we need to go back to speaking our language, and we need to go back to walking gently on this earth and not taking things like resources, disrespecting that. That’s really important because we need fresh water. We need our traditional medicines. We need that connection to the land because it makes us stronger. We need that connection to our language because it makes us stronger. We need those connections to our families because it does make us stronger. We need our women to be valued. We need our children to know that they are valued, that they matter.⁸⁶

At the most basic level, respecting cultural rights means, as Viola said, “renewing our honour of our mothers and our grandmothers because they are the centre of our being.”⁸⁷ It means celebrating and embracing women, girls, and 2SLGBTQQIA people as sacred and as valuable, and teaching and communicating those values to individuals, to communities, and to the non-Indigenous world.

The pursuit of cultural rights and cultural safety is an important part of what many witnesses suggested can support healing. In many cases, witnesses focused on the importance of revitalizing language and tradition as a way of grounding what the right to culture might look like in certain communities or First Nations. Shara L. said:

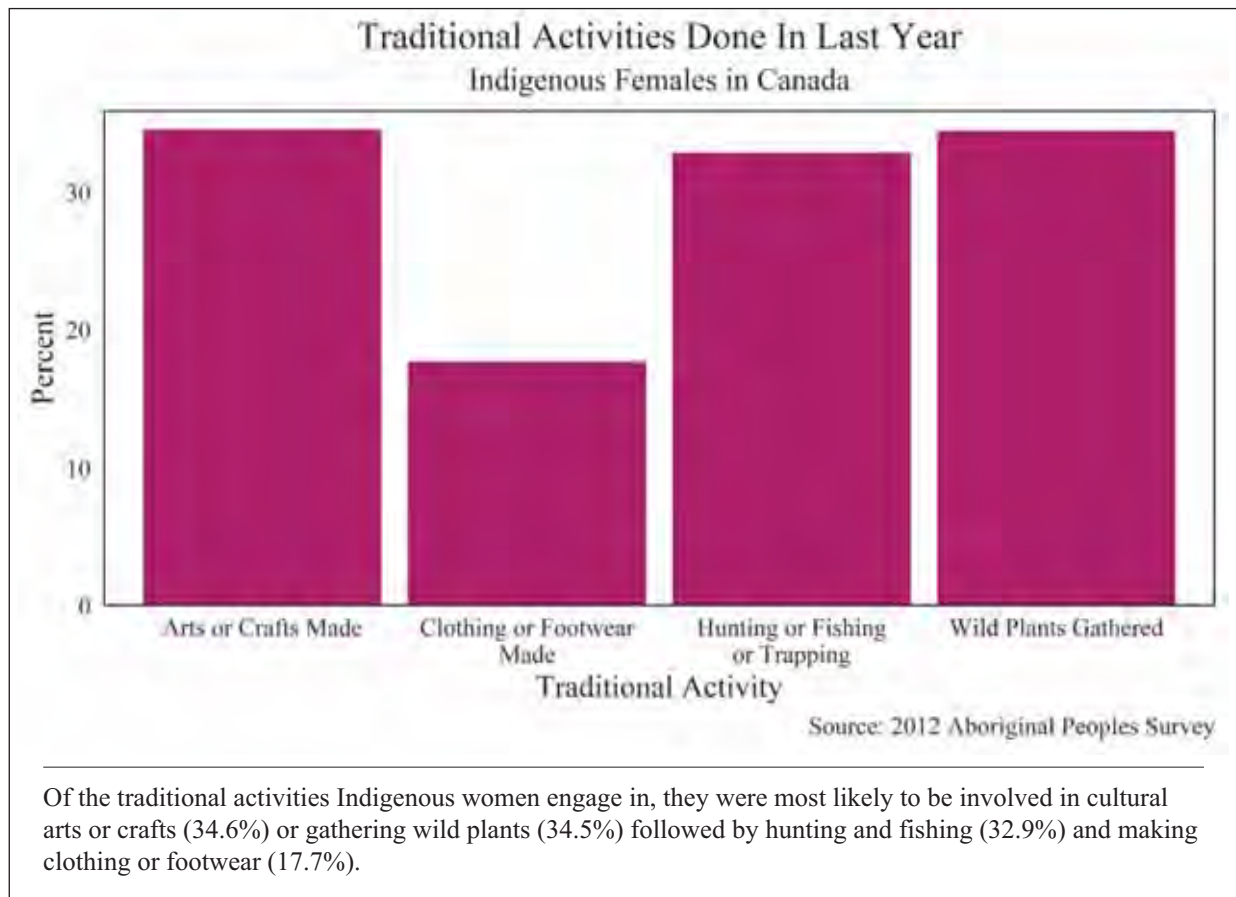
I want our future generations to acknowledge their history. Of all the things that have happened to our parents, our ancestors. I want my language back. I fought to keep my language. Now, I have – I can speak my language.... I want my kids to speak my language fluently. I want my homeland back. On the river where my grandparents raised me. I want to go home. I don’t want to be in the community. I want to be out on the land. I want to be where I should be. Close to my father – my dad’s buried out there. I want a home there. I want my kids to have roots. Yes. This is where my mom and dad live and my grandparents. This is where I belong. I want them to be strong. I don’t want them to be murdered. I don’t want them to be missing.⁸⁸

“MANY OF OUR PEOPLE ARE SILENCED TO ... TAKE ACTION BECAUSE OF THAT IMBALANCE OF POWER WITHIN OUR COMMUNITIES AND HOW SEXISM IS REALLY PLAYED OUT. AND WE NEED TO LOOK AT STRATEGIES THAT CAN REMIND ... OUR MEN THAT THEY WERE BORN FROM MOTHER, THEY WERE BORN FROM MOTHER EARTH.”

Viola Thomas



Reconnecting with culture as a way to belong and, ultimately, as a way to decrease violence was a key truth that we heard. As Darla-Jean L. explained, “We need more of our language. We need to focus on ... the wheel of life, birth to death ceremonies, coming of age ceremonies, which my family has practised, learning our songs and our legends.”⁸⁹



A key idea emerging from these testimonies is that of making or reclaiming space; the idea that cultural ideas, stories, and principles, such as those we explored in Chapter 2, can also provide a foundation for the creation of empowering spaces for women. At the Heiltsuk Women Community Perspective Panel, panellist Chief Marilyn Slett asserted:

We need some space for women – women that are in leadership roles to come together and talk. You know, because we – we were doing it, you know ... in caucus rooms, you know, having these conversations during lunch, you know, during some regional sessions or you know, over breaks, in very informal, but organic ways. But ... we knew that we had to create that space.⁹⁰



As Bryan J., and many others, expressed, Indigenous women, girls, and 2SLGBTQQIA people have a key role to play in reclaiming place and reasserting power: “When we talk about our women, we talk about our land. When we talk about our land, we talk about our spirits. We talk about our traditions, our people, our Elders, our children.”⁹¹

In some cases, this is also a process of learning to love oneself. Carol M. recalled:

I went to sweat lodge with this Elder, these two Elders. One has gone to the spirit world, and my grandmother used to always say she was waiting for me to come home. And I went to the sweat lodge. And of course, you know, Elders, they want to go eat, so we went to the restaurant. And I went to reach for something. And I noticed my hands and I said, “Wow.” I said, look at – and they were both sitting there, and I said, “Wow, look at my hands. They’re so brown. Look at them.” And I heard the Elder whisper to the other one. He says, “It sounds like she’s come home.” And right then and there, I knew what my grandmother was talking about. I’m still there looking at my hands. I realize I was a brown person. It looks so beautiful and so nice. So now, I know what my grandmother meant, you know, when she said she was waiting for me to come home.⁹²

As these examples illustrate, and as the link between culture and international human rights instruments will show, understanding the need to protect and promote culture in a self-determined way is key to addressing a number of the issues connected to trauma, marginalization, maintaining the status quo and ignoring the agency of Indigenous women, girls, and 2SLGBTQQIA people.

Linking Culture to International Human Rights Instruments

Witnesses who testified before the National Inquiry highlighted important moments and situations where their rights to culture and to the associated protections for families have been jeopardized. These encounters often engage government institutions and service providers bound by provincial, territorial, and domestic human rights legislation. In addition, the violation of cultural rights specifically ties to a number of public and international obligations that Canada has with respect to its commitment to human rights. These international human rights instruments address many of the ways in which witnesses told us their rights to culture were placed in jeopardy, through the disruption of relationships with land, the separation of families, the impoverishment of communities, and the lack of access to traditional knowledge, language, and practices that would have contributed to a sense of cultural safety.

The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) calls upon governments to “condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of elimination of racial discrimination in all its forms” (Article 2). This right also includes the idea that governments should not themselves engage in acts of racial discrimination against persons, groups of persons, or institutions – or any



aspect of their cultural identity. Article 2 further declares that governments should take measures to review all policies and to eliminate laws that are racially discriminatory, and that governments must work to prohibit any racial discrimination espoused by other people or groups.

In Canada, this could be interpreted to include policies such as those in the *Indian Act*, as well as the contemporary forms of these policies that continue to have a direct impact on Indigenous identity and community affiliation. Interpreted broadly, the wording also suggests that governments should work to prevent racial discrimination in all of its forms, including in its own systems and those it funds, such as child welfare.

The ICERD is not the only instrument to affirm cultural rights, or to link cultural rights to identity. As Expert Witness Brenda Gunn pointed out, “But now, today, we really talk about the interdependency and interrelatedness and you can’t exercise your civil and political rights if you don’t have economic, social and cultural rights. They all work together.”⁹³ *The International Covenant on Civil and Political Rights* (ICCPR), which deals with civil and political rights, affirms the rights of parents “to ensure the religious and moral education of their children in conformity with their own convictions,” including political and civil convictions (Article 18). It also identifies the family as the “natural and fundamental group unit of society,” due to its importance in transmitting education, morals, and values. On the issue of groups operating within larger nation-states, the ICCPR is clear: all communities have the right to “enjoy their own culture, to profess and practice their own religion, or to use their own language” (Article 27).

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) specifically cites cultural rights, and also notes, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (Article 1). Further, the ICESCR guarantees the access of these rights to men and women equally (Article 3) and emphasizes the importance of family to the education of children, in conjunction with the exercise of economic, political, and cultural rights (Article 10). Signatories to this covenant also agree that everyone has the right to take part in cultural life, and that steps should be taken by States Parties “to achieve the full realization of this right,” including “those necessary for the conservation, the development and the diffusion of science and culture.”

“WE NEED CANADA TO LISTEN AND TO START RESPECTING ... THE ORIGINAL PEOPLE OF THIS LAND, THE INDIGENOUS PEOPLE. WE’RE NOT THE STEREOTYPE THAT YOU WATCHED ON TV, THAT – YOU KNOW, WE’RE SCALPING PEOPLE AND GOING AROUND WITH – WITH BOWS AND ARROWS AND SETTING WAGONS ON FIRE. THAT’S HOLLYWOOD, PEOPLE. THAT’S NOT REAL LIFE. WE WERE THE ONES THAT HAD OUR CHILDREN TAKEN AWAY. WE WERE THE ONES THAT HAD OUR CULTURE ALMOST DESTROYED. WE WERE THE ONES THAT HAD OUR CEREMONIES BANNED. WE WERE THE ONES THAT WERE HARMED. WE DIDN’T HARM YOU. WE MADE AN AGREEMENT FOR YOU TO SHARE THIS LAND WITH US. ALL WE’RE ASKING FOR IS FOR YOU TO HOLD UP YOUR PART OF THE BARGAIN.”

Blu W.



As Brenda Gunn said, the committee that oversees the ICCPR has pointed out the interaction between access to economic, social, and cultural rights and gender-based violence, and has noted that “gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights on the basis of equality.”⁹⁴

The *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, which condemns discrimination against women, also has important implications for the protection of the cultural rights of Indigenous women, girls, and 2SLGBTQQIA people. For instance, CEDAW signatory states “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women” (Article 2). This includes taking measures to *prevent* violence against Indigenous women, girls, and 2SLGBTQQIA people, to the extent necessary and in all of the areas necessary to effect change.

The *United Nations Convention on the Rights of the Child (UNCRC)* also has a number of articles that deal with rights to culture and to identity. Specifically, it explains that all actions involving children undertaken in the context of social welfare, law courts, or other administrative or legislative bodies should be in the best interests of the child (Article 3). Within these contexts, States Parties are committed to protecting the right of the child to “preserve his or her identity, including nationality, name and family relations” (Article 8). Article 9 mentions that children should not be separated from their parents against their will, unless that separation is determined by the courts to be in the best interest of the child – which, in many cases involving determinations made against Indigenous families, is arguable. Finally, in relationship to Indigenous groups, UNCRC asserts that a child belonging to such a group can’t be denied the right “to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language” (Article 30).

Interpreted broadly, these protections require states to look, first, at how culture and identity are transmitted, and then, to take steps to preserve these measures and to strengthen them. Recognizing the importance of oral traditions and of learning within Indigenous families and communities, this right could also be interpreted as a right that can be enabled only through sound economic, political, and cultural policies designed to respect and to support self-determination, alongside policies intended to keep families and communities united.



KEY CONVENTIONS: RIGHT TO CULTURE

The National Inquiry considers as foundational to all human and Indigenous rights violations the conventions associated with genocide. In the area of culture, these relate specifically to causing serious mental harm, and forcibly transferring children from the rights-bearing group.

For reference, Article II of the *Convention on the Prevention and Punishment of the Crime of Genocide*, which provides a definition of genocide, includes "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group; and
- (e) Forcibly transferring children of the group to another group."

IESCR: <ul style="list-style-type: none">- right to self-determination- equal rights to men and women- widest possible protection to the family<ul style="list-style-type: none">- right to education- right to cultural life	ICCPR: <ul style="list-style-type: none">- respect for parents' liberty to ensure religious and moral education of their children- family is the natural and fundamental group unit of society- every child has right to protection, without discrimination	CEDAW: <ul style="list-style-type: none">- condemns discrimination in all forms- embraces equality under legislation- creates political, social, economic and cultural state obligations toward women	ICERD: <ul style="list-style-type: none">- condemns racial discrimination- pledges to prevent and prohibit all forms of apartheid and discrimination	CRC: <ul style="list-style-type: none">- best interest of the child is most important- child has the right to preserve nationality, name and family relations without unlawful interference- child shall not be denied right to enjoy their own culture or use their own language
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IESCR: International Covenant on Economic, Social and Cultural Rights

ICCPR: International Covenant on Civil and Political Rights

CEDAW: Convention on the Elimination of all Forms of Discrimination Against Women

ICERD: International Covenant on the Elimination of All Forms of Racial Discrimination

CRC: Convention on the Rights of the Child



KEY DECLARATIONS: RIGHT TO CULTURE

The following international human rights instruments hold States accountable in the area of culture.

<p>DEVAW:</p> <ul style="list-style-type: none">- women entitled to equal enjoyment and protection of all human rights	<p>UNDRIP:</p> <ul style="list-style-type: none">- Indigenous Peoples have the right to maintain distinct institutions- right to transmit languages, histories, and other forms of knowledge to future generations- right to establish educational systems and institutions to provide education that is culturally appropriate- includes the right not to be subjected to assimilation- all freedoms in UNDRIP guaranteed equally to men and women	<p>VIENNA PROGRAMME:</p> <ul style="list-style-type: none">- right to self-determination and economic, social and cultural development- the rights of women and the girl-child are inalienable, integral and indivisible from universal human rights	<p>BEIJING:</p> <ul style="list-style-type: none">- women's empowerment is fundamental to equality, development and peace- women's rights are human rights- need for good partnerships and relationships between women and men- need to prevent violence- need to eradicate poverty
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DEVAW: Declaration on the Elimination of Violence Against Women

UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples

Vienna Programme: The Vienna Declaration and Programme of Action

Beijing: The Beijing Declaration

Conclusion: “Stop making an industry out of me”

This chapter has addressed how the four pathways that maintain colonial violence prevent Indigenous women, girls, and 2SLGBTQQIA people from accessing and enjoying their cultural rights, conceived broadly as “way of life” rights, as well as rights related to families, language, health, and many other aspects of cultural safety. These rights have the potential to improve outcomes for Indigenous women, girls, and 2SLGBTQQIA people, as applied in self-determined ways, to improve services and programs so that they actually do help people, rather than perpetuate harm. Specifically, this chapter has addressed cultural rights violations and their



ongoing impacts within the context of residential schools, the Sixties Scoop, and child welfare, arguing that the inter-relatedness of cultural rights with social, economic, and political rights is necessary to preserving safety.

The need to uphold these rights isn't a matter of creating new ones, or of generating something that doesn't exist. As Sandra L. told us:

I haven't lost my power. I [had] it when I was writing the recommendations, and I just want to say this to Justin [Trudeau]: I do have my power. You just need to take the state blanket off of me. And it comes through state policy, state law, state acts, and it filters into organizations, and stop making an industry out of me.⁹⁵

Ultimately, and as many witnesses pointed out, the foundation of reclaiming power and place, and asserting rights to culture, is about relationships and about respect. As Blu W. set out:

We need Canada to listen and to start respecting ... the original people of this land, the Indigenous people. We're not the stereotype that you watched on TV, that – you know, we're scalping people and going around with – with bows and arrows and setting wagons on fire. That's Hollywood, people. That's not real life. We were the ones that had our children taken away. We were the ones that had our culture almost destroyed. We were the ones that had our ceremonies banned. We were the ones that were harmed. We didn't harm you. We made an agreement for you to share this land with us. All we're asking for is for you to hold up your part of the bargain. Share it with us peacefully. That's all we ever wanted, and equally, we need to get our halves back because you took more than just your half.⁹⁶

Restoring respect for cultural rights through the protection of families and through the preservation of language, way of life, and other cultural elements is part of the state's duty to its citizens. Respect for cultural rights is protected by international human rights instruments and manifested in domestic law. Protecting cultural rights isn't optional, or "extra"; as these instruments and the witnesses to the National Inquiry make clear, it is imperative to ensuring that Indigenous women, girls, and 2SLGBTQIA people can reclaim their power and place in a framework that has for so long sought to erase and eradicate them.

Respecting and upholding culture through self-determined solutions is an important precursor for the pursuit of other rights, and is a recurring theme through testimonies we also heard in relation to health, to security, and to justice, which we address next.



Findings: Right to Culture

- Assimilationist and genocidal government laws and policies as they relate to the expression and exercising of Indigenous cultural rights have directly led to the high rates of violence against Indigenous women, girls, and 2SLGBTQQIA people.
- Indigenous women, girls, and 2SLGBTQQIA people are denied their rights to learn, practise, and be part of the development of their own cultures, due to colonialism, racism, sexism, transphobia, homophobia, and misogyny.
- The intergenerational transmission of cultural knowledge has been broken or deeply fragmented because of the sustained and persistent policies of the Canadian state designed to oppress and eliminate Indigenous Peoples through their assimilation. This is a policy of cultural genocide.
- The *Indian Act* creates marginalization, alienation, displacement, and isolation of Indigenous Peoples. This is because the *Indian Act* is an ongoing tool of oppression and genocide that clearly aims to eliminate Indigenous Peoples. As a legal instrument, it puts into law the false assumptions, discriminatory practices, and colonial and genocidal policies that the Canadian government historically used to clear Indigenous Peoples' lands, and to control and eliminate Indigenous Peoples and their cultures. Its continued existence perpetuates racial and gendered violence. Regardless of amendments or improvements to "Indian" policy and law, the very existence of the *Indian Act* demonstrates racism, sexism, and a refusal to move toward self-determination for Indigenous Peoples. As a result, the *Indian Act* cultivates – and exposes First Nations women, girls, and 2SLGBTQQIA people to – more violence.
- Governments' role in determining cultural belonging through prescribing requirements for granting or denying Status, or membership within First Nations, Inuit, and Métis communities, is an infringement of the inherent rights of First Nations, Inuit, and Métis peoples and is a violation of Article 33 of the *United Nations Declaration on the Rights on Indigenous Peoples*. Specifically, the provisions of the *Indian Act* concerning Indian Status usurps First Nations' inherent right and ability to determine citizenship. Denial of self-determination and jurisdiction is a form of systemic violence that impacts the individual, the family, the community, and the Nation.
- The registration provisions of the *Indian Act* do not truthfully reflect concepts of citizenship and belonging of First Nations Peoples in relation to their communities. Importantly, the registration provisions of the *Indian Act* are discriminatory toward women and their descendants. The attempts to remedy the discrimination, to date, have not been sufficient. Further, Bill C-31 in 1985 also created new provisions: sections 6(1) and 6(2) work to assimilate all First Nations Peoples – women, men and gender-diverse people. The gendered discrimination over decades has disenfranchised women from their communities, broken up families, and caused great disparity in rights and benefits as between First Nations women and men. The laws and policies that exclude Indigenous women's citizenship within their Nations or



communities based on marriage or gender have largely contributed to the loss of culture and poor socio-economic outcomes for Indigenous women. These factors thereby contribute to the violence that First Nations, Inuit, and Métis women, girls, and 2SLGBTQQIA people experience.

- In addition to the *Indian Act*, any state laws or policies that deny the Indigenous identity of First Nations, Inuit, and Métis women, girls, and 2SLGBTQQIA people results in their exclusion from their community, which largely contributes to loss of culture and their social and economic marginalization.
- Creating Indian bands and maintaining governance over First Nations Peoples under section 74 of the *Indian Act* is yet another means to control First Nations Peoples and their distinct societies' cultures, governance, and organizations. The “one size fits all” approach that was originally taken under the *Indian Act* has had long-standing implications. This approach destroyed self-determination and the ability of Indigenous communities to uphold their customary laws, rules, and organizations. Further, it has been a tool to oppress and deny First Nations women their traditional leadership roles and their political rights.
- Restoration of family and community ties is key to the revitalization of culture and safety. Culture and belonging are key to safety because of how culture defines safe relationships. Reconnecting with distinctive languages, cultures, territories, and ways of knowing represents an important solution to healing, Nation rebuilding, and safety.
- Indigenous children and youth experience challenges and barriers in accessing education, particularly culturally relevant knowledge. Indigenous children and youth have the right to an education and to be educated in their culture and language. Most Indigenous children continue to be educated in mainstream education systems that exclude their Indigenous culture, language, history, and contemporary realities. A high-quality, culturally appropriate, and relevant education is the key to breaking cycles of trauma, violence, and abuse.

Notes

- 1 World Health Organization, “World Report,” 5.
- 2 Newfoundland and Labrador, “Defining Violence and Abuse.”
- 3 Holmes and Hunt, “Indigenous Communities and Family Violence,” 11, 15-16.
- 4 Sarah Clark, Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, p. 105.
- 5 For a fuller discussion of these themes, see Chapter 1.
- 6 Ellen Gabriel (Turtle Clan, Kanien'kehá:ka Nation), Mixed Parts 2 & 3, Public Volume 9, Quebec City, QC, pp. 7-8.
- 7 Xanthaki, “Cultural Rights.”
- 8 Xanthaki, “Indigenous Cultural Rights,” 355.
- 9 Xanthaki, “Indigenous Cultural Rights,” 356.
- 10 United Nations Economic and Social Council, quoted in Xanthaki, “Cultural Rights,” 17.
- 11 United Nations General Assembly, “Report of the Special Rapporteur.”
- 12 United Nations Population Information Network, “The Family.”
- 13 Patrick S. (Kwagu'ł, Fort Rupert, Qualicum), Part 1, Public Volume 102, Vancouver, BC, p. 30.
- 14 United Nations Office of the High Commissioner, “Cultural Rights.”



- 15 United Nations Office of the High Commissioner, “A Manual for National Human Rights Institutions,” 14.
- 16 *Ibid.*, 13.
- 17 United Nations Office of the High Commissioner for Human Rights, “Fact Sheet No. 33.”
- 18 Oster, et al., “Cultural Continuity.”
- 19 Patrick S. (Kwagu’t, Fort Rupert, Qualicum), Part 1, Public Volume 102, Vancouver, BC, pp. 26-27.
- 20 Coombe, “The Properties of Culture,” 272.
- 21 Ann M. R. (Kaska Dena), Part 1, Public Volume 3, Whitehorse, YT, p. 38.
- 22 Moses M. (Nuu-chah-nulth), Part 1, Public Volume 82, Vancouver, BC, pp. 4-5.
- 23 Michele G. (Musqueam), Part 1, Public Volume 84, Vancouver, BC, p. 17.
- 24 Carol B. (Ermineskin Cree Nation), Part 1, Public Volume 20, Edmonton, AB, pp. 75-76.
- 25 Gail C., Part 1, Public Volume 43, Yellowknife, NT, pp. 104-105.
- 26 Dr. Amy Bombay (Ojibway, Rainy River First Nations), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, pp. 151-152.
- 27 First Nations Information Governance Centre, “National Report,” 151.
- 28 *Ibid.*
- 29 Dr. Amy Bombay (Ojibway, Rainy River First Nations), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, p. 139.
- 30 Robin R. (Nakota Sioux), Part 1, Public Volume 92, Vancouver, BC, pp. 3-5.
- 31 Verna W. (Cape Mudge), Part 1, Public Volume 88, Vancouver, BC, p. 20.
- 32 Chrystal S. (Musqueam), Part 1, Statement Volume 385, Richmond, BC, pp. 27-28.
- 33 Dr. Amy Bombay (Ojibway, Rainy River First Nations), Mixed Parts 2 & 3, Public Volume 10, Winnipeg, MB, p. 139.
- 34 Shara L. (Dene), Part 1, Statement Volume 101, Edmonton, AB, p. 49.
- 35 Ann M. R. (Kaska Dena), Part 1, Public Volume 3, Whitehorse, YT, p. 31.
- 36 Elder Jal Tun, Part 1, Public Volume 3, Whitehorse, YT, p. 68.
- 37 Moses M. (Nuu-chah-nulth), Part 1, Public Volume 82, Vancouver, BC, p. 6.
- 38 Muriel D. (Cree), Part 1, Statement Volume 98, Edmonton, AB, p. 2.
- 39 Carol B. (Ermineskin Cree Nation), Part 1, Public Volume 20, Edmonton, AB, p. 79.
- 40 Corey O’Soup (Métis/First Nations from the Key First Nation), Part 3, Public Volume 6, Quebec City, QC, p. 123.
- 41 Carol B. (Ermineskin Cree Nation), Part 1, Public Volume 20, Edmonton, AB, p. 88.
- 42 Dr. Amy Bombay (Ojibway, Rainy River First Nations), Parts 2 & 3, Public Volume 10, Winnipeg, MB, p. 178.
- 43 Juanita D. (Dene), Part 1, Public Volume 87, Vancouver, BC, pp. 8-9.
- 44 Juanita D. (Dene), Part 1, Public Volume 87, Vancouver, BC, p. 9.
- 45 Darlene S. (Kingcome Inlet), Part 1, Statement Volume 353, Richmond, BC, pp. 51-52.
- 46 Carol B. (Ermineskin Cree Nation), Part 1, Public Volume 20, Edmonton, AB, pp. 76-77.
- 47 Danielle E. (Kawacatoose First Nation), Part 1, Public Volume 31, Saskatoon, SK, p. 86.
- 48 Carol M. (Nisga’a Gitanyow), Part 1, Statement Volume 357, Richmond, BC, p. 74.
- 49 Carla M. (Nuu-chah-nulth), Part 1, Public Volume 82, Vancouver, BC, p. 8.
- 50 Wendy L. (Squamish Nation), Part 1, Statement Volume 370, Richmond, BC, pp. 4-5.
- 51 Wendy L. (Squamish Nation), Part 1, Statement Volume 370, Richmond, BC, p. 8.
- 52 Wendy L. (Squamish Nation), Part 1, Statement Volume 370, Richmond, BC, p. 26. As Morellato points out, it is “important to distinguish between Indian status rights, which, in certain circumstances, will only be available to status band members, and Aboriginal rights more generally, which are those rights that extend to all band members regardless of their status under the Indian Act and which are guaranteed in the Canadian Constitution.” For more on this, see Morellato, “Memorandum on Indian Status,” 7.
- 53 Wendy L. (Squamish Nation), Part 1, Statement Volume 370, Richmond, BC, pp. 22-23.
- 54 Natalie G. (Mi’kmaq), Part 1, Public Volume 18, Membertou, NS, pp. 83-84.
- 55 Natalie G. (Mi’kmaq), Part 1, Public Volume 18, Membertou, NS, pp. 91-92.
- 56 Natalie G. (Mi’kmaq), Part 1, Public Volume 18, Membertou, NS, p. 86.
- 57 Natalie G. (Mi’kmaq), Part 1, Public Volume 18, Membertou, NS, p. 91.



- 58 Hyslop, “How poverty.”
- 59 Dr. Naomi Metallic (Listuguj Mi'gmaq First Nation), Part 3, Public Volume 4, Quebec City, QC, pp. 188-189.
- 60 Currie, “Exploring Risk and Protective Factors,” as quoted in King, et al., “Indigenous Health,” 79.
- 61 Jakubec, “AIDS-Related Stigma” as quoted in King, et al., “Indigenous Health,” 79.
- 62 Trocmé, “Understanding the Overrepresentation.”
- 63 Vanessa B. (Millbrook First Nation), Part 1, Public Volume 19, Membertou, NS, pp. 96-97.
- 64 Robin R. (Nakota Sioux), Part 1, Public Volume 92, Vancouver, BC, pp. 15-16.
- 65 Translation ours. Anastasia N. (Natashquan), Public Volume 35(a), Maliotenam, QC, pp. 16-17.
- 66 Carol M. (Nisga'a Gitanyow), Part 1, Statement Volume 357, Richmond, BC, pp. 95-96.
- 67 Vanessa B. (Millbrook First Nation), Part 1, Public Volume 19, Membertou, NS, pp. 95-96.
- 68 Robin R. (Nakota Sioux), Part 1, Public Volume 92, Vancouver, BC, pp. 19-20.
- 69 Mealia Sheutiapik (Inuit, Frobisher Bay), Mixed Parts 2 & 3, Public Volume 16, St. John's, NL, p. 16.
- 70 Richardson, “Métis-Astute Social Work.”
- 71 For more on this, see Carrière and Richardson, *Calling Our Families Home*.
- 72 Noeline V. (Dene/Metis), Part 1, Public Volume 40, Yellowknife, NT, pp. 125-126.
- 73 King et al., “Indigenous Health,” 78.
- 74 Ann M. R. (Kaska Dena), Part 1, Public Volume 3, Whitehorse, YT, p. 32.
- 75 Marilyn W. (Cree), Part 1, Public Volume 30, Saskatoon, SK, p. 25.
- 76 Patrick S. (Kwagu't, Fort Rupert, Qualicum), Part 1, Public Volume 102, Vancouver, BC, p. 30.
- 77 Paula P. (Cree/Lakota/Scottish), Part 1, Statement Volume 374, Richmond, BC, p. 43.
- 78 Ann M. R. (Kaska Dena), Part 1, Public Volume 3, Whitehorse, YT, p. 39.
- 79 Patrick S. (Kwagu't, Fort Rupert, Qualicum), Part 1, Public Volume 102, Vancouver, BC, p. 28.
- 80 Jackie Anderson (Métis), Part 2, Public Volume 3, Calgary, AB, pp. 95-96.
- 81 Shelley J. (Musgamagw Dzawada'enuxw First Nation), Part 1, Public Volume 114, Vancouver, BC, p. 26.
- 82 Viola Thomas (Kamloops Tk'emlúps te Secwepemc), Part 1, Public Volume 104, Vancouver, BC, p. 14.
- 83 Gina G. (Selkirk First Nation), Part 1, Public Volume 3, Whitehorse, YT, p. 88.
- 84 Gail C., Part 1, Public Volume 43, Yellowknife, NT, p. 99.
- 85 Ann M. R. (Kaska Dena), Part 1, Public Volume 3, Whitehorse, YT, p. 40.
- 86 Rhonda M. (Anishinaabe), Part 1, Public Volume 7, Smithers, BC, p. 30.
- 87 Viola Thomas (Kamloops Tk'emlúps te Secwepemc), Part 1, Public Volume 104, Vancouver, BC, p. 35.
- 88 Shara L. (Dene), Part 1, Statement Volume 101, Edmonton, AB, pp. 62-63.
- 89 Darla-Jean L. (First Nations), Part 1, Public Volume 1, Whitehorse, YT, p. 31.
- 90 Chief Marilyn Slett (Heiltsuk Nation), Part 1, Public Volume 90, Vancouver, BC, p. 50.
- 91 Bryan J. (Wolf Clan from Taku River, Tlingit First Nation), Part 1, Public Volume 3, Whitehorse, YT, p. 63.
- 92 Carol M. (Nisga'a Gitanyow), Part 1, Statement Volume 357, Richmond, BC, pp. 74-75.
- 93 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 52.
- 94 Brenda Gunn (Métis), Part 3, Public Volume 6, Quebec City, QC, p. 38.
- 95 Sandra L. (Cree/Dakota), Part 1, Public Volume 41, Yellowknife, NT, p. 212.
- 96 Blu W. (Cree/Mi'kmaq/Métis), Part 1, Public Volume 117, Vancouver, BC, p. 60.



Confronting Oppression – Right to Health

Introduction: Connecting Health and Safety

In Chapter 5, we explored how the destructive impact of colonial policies on culture, family, and community constitutes a form of cultural violence, which many people who shared their truths with the National Inquiry recognize as the starting point for other forms of violence that they or their missing and murdered loved ones have experienced in the past and continue to experience today. In this chapter, we build on this foundation, as told to us by families and survivors, to consider how colonial violence directed toward traditional cultural practice, family, and community creates conditions that increase the likelihood of other forms of violence, including, in particular, interpersonal violence, through its distinct impacts on the mental, emotional, and spiritual health of Indigenous Peoples. In sharing stories about the health issues they or their missing or murdered loved ones faced, the experiences they had in seeking health services, and the consequences of encounters that more often than not further diminished rather than promoted health and wellness, witnesses illustrated how addressing violence against Indigenous women, girls, and 2SLGBTQQIA people must also address their right to health.

This chapter begins by defining “health” as a human right according to international human rights standards, in order to explain how the right to health is directly connected with positive outcomes, both individually and in communities, for women, girls, and 2SLGBTQQIA people. In addition, we explore health as understood through distinctive First Nations, Inuit and Métis perspectives, to understand how Indigenous ways of being well are directly connected to maintaining safety. We then look more closely at the testimonies witnesses shared about physical, mental, emotional, and spiritual health, and the connections between health and violence, in the context of the four pathways that maintain colonial violence.

Then, we share testimony that explains and demonstrates how the impact of colonial violence on traditional culture, family, and community, as well as the ongoing disruption to cultural continuity through present-day iterations of colonial policies such as child welfare apprehensions,



environmental destruction, or gender-based discrimination within the *Indian Act*, carries significant health consequences for Indigenous people, often in the form of multigenerational and intergenerational trauma. Next, we consider how the socio-economic marginalization of Indigenous people and their communities further compromises their physical, mental, emotional and spiritual health, particularly by creating conditions that facilitate violence and that exacerbate trauma. We consider how, despite widespread recognition of the significant health problems faced by Indigenous Peoples – and widespread recognition of the significant health consequences all forms of interpersonal violence hold for Indigenous women, girls, and 2SLGBTQQIA people in particular – the systems and institutions that Indigenous people reach out to for health care-related support often fail to provide the support needed and, in doing so, often deepen these health concerns. We demonstrate how these failings within the health care systems to repair harm and restore health seem to demonstrate a willful ignorance of many alternative Indigenous health care and healing models that, through centring culture and cultural continuity at the same time, address and improve physical, mental, emotional, and spiritual health. As an example, we end by discussing how respecting the knowledge and agency Indigenous Peoples hold in terms of their own needs in the areas of physical, mental, emotional and spiritual health, and the steps that must be taken to create the conditions with which they can meet these needs, is an important part of addressing all forms of violence against Indigenous women, girls, and 2SLGBTQQIA people.

Ultimately, what we heard is this: when the right to health is in jeopardy, so is safety. Improving health services and delivery mechanisms can contribute in concrete ways to promoting community and individual health, safety, and healing, especially when it involves embracing effective and self-determined solutions that challenge racist, sexist, homophobic, and transphobic assumptions that all too often continue to shape how the health of Indigenous Peoples, and especially Indigenous women, girls, and 2SLGBTQQIA people, is valued.

Defining “Health”

In 1948, the World Health Organization (WHO), an agency within the United Nations system, defined “health” as a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”¹ Although the definition itself has not been amended since 1948, the United Nations and other international health organizations have since the 1990s acknowledged the particular importance of understanding health in a holistic context and in a way that includes Indigenous world views. As health researcher Odette Mazel argues, this recognition opened up new opportunities for viewing health as a legal entitlement and for recognizing it as a social justice issue with societal causes.²

Today, the WHO recognizes that “this definition extends beyond the traditional Western biomedical paradigm which treats body, mind and society as separate entities and reflects a more holistic understanding of health.” This includes the idea that “well-being is about the harmony that exists between individuals, communities and the universe.”³ Traditional health systems, as the Pan



American Health Organization/WHO has defined them, “include the entire body of ideas, concepts, beliefs, myths, procedures and rituals (whether explainable or not) connected with the maintenance of health or health restoration through the treatment of physical and mental illness or social imbalances in a particular individual, community or people.”⁴ Simply put, the context in which a person lives directly contributes to their health and well-being or takes away from it, and it is the interaction of all of these factors, which includes many of the themes reflected in our testimonies, that can be determinative of good or poor health.

FIRST NATIONS HEALTH AUTHORITY (BC): FIRST NATIONS’ RIGHT TO HEALTH

The First Nations Perspective on Health and Wellness visualization below is intended to serve as a starting point for discussion by First Nations communities on what they conceptualize as a vision of wellness for themselves and the First Nation Health Authority in British Columbia.

The Centre Circle represents individual human beings. Wellness starts with individuals taking responsibility for our own health and wellness (whether we are First Nations or not).

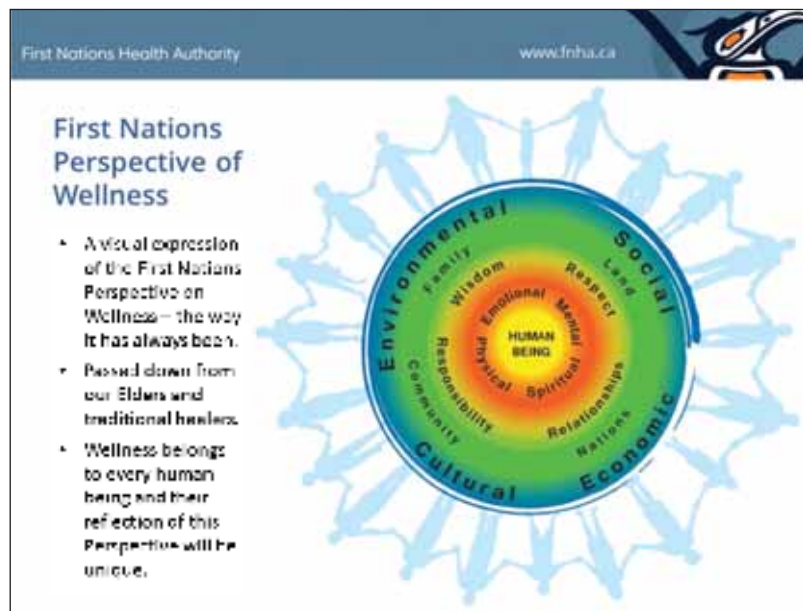
The Second Circle illustrates the importance of Mental, Emotional, Spiritual and Physical facets of a healthy, well, and balanced life. It is critically important that there is balance between these aspects of wellness and that they are all nurtured together to create a holistic level of well-being in which all four areas are strong and healthy.

The Third Circle represents the overarching values that support and uphold wellness: Respect, Wisdom, Responsibility, and Relationships.

The Fourth Circle depicts the people that surround us and the places from which we come: Nations, Family, Community, and Land are all critical components of our healthy experience as human beings.

The Fifth Circle depicts the Social, Cultural, Economic and Environmental determinants of our health and well-being.

The people who make up the Outer Circle represent the First Nations Health Authority’s vision of strong children, families, elders, and people in communities. The people are holding hands to demonstrate togetherness, respect and relationships, which in the words of a respected BC elder can be stated as “one heart, one mind.” Children are included in the drawing because they are the heart of our communities and they connect us to who we are and to our health.

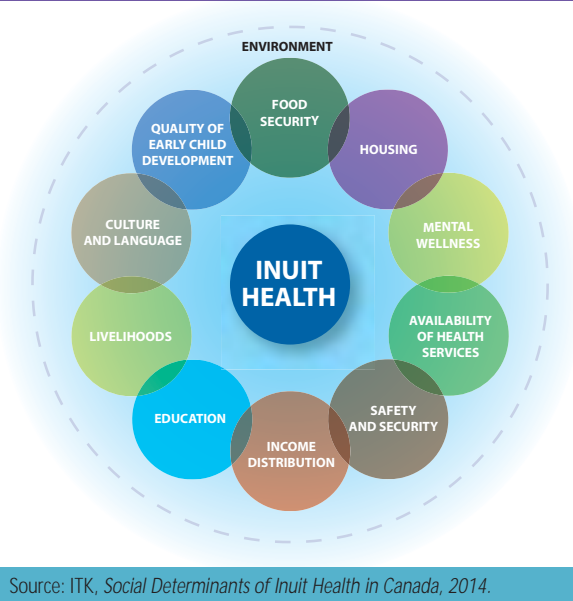


Source: Adapted from First Nations Health Authority Perspective on Health and Wellness, www.fnha.ca/wellness/wellness-and-the-first-nations-health-authority/first-nations-perspective-on-wellness.



In this chapter, we define “health” as a holistic state of well-being, which includes physical, mental, emotional, spiritual, and social safety and does not simply mean an absence of illness. The right to health is also a right to wellness,⁵ and is linked to other fundamental human rights such as access to clean water or adequate infrastructure in Indigenous communities, as well as the right to shelter and food security, which impact all Indigenous communities but have particular import in the North. These basic services, which also include access to medical care without the need to travel long distances, are key to the security and safety of Indigenous women, girls, and 2SLGBTQQIA people. The right to health also speaks to the prevention of danger and harm to others, to the health of children and families, and to all aspects of physical and mental wellness.

INUIT TAPIIRIT KANATAMI (ITK): SOCIAL DETERMINANTS OF INUIT HEALTH



Witnesses that shared with the National Inquiry also addressed how health challenges may be distinctive for particular groups. For instance, Timothy Argetsinger explained that Inuit social determinants of health include food security, housing, emotional wellness, availability of health services, safety and security, income distribution, education, livelihoods, culture and language, quality of early childhood development, and, finally, surrounding all of it, the environment. As he explained,

So there are ... a few aspects of this visual that make it different from other representations.... So the main one being the environment and the role that that plays within our Inuit culture and society, and every aspect of our lives. So that’s why it is surrounding the other determinants.⁶

The connection between health and violence against Indigenous women, children, and 2SLGBTQQIA people is important, because of the way in which many loved ones went missing or were murdered in circumstances that served to target them because of their physical, mental, emotional, and spiritual health and well-being. In addition, testimonies related to the issue of suicide, as well as to the issue of travelling for medical care to outside or foreign locations, made clear how the right to health is connected to the issue of violence, beyond the idea of preserving health as preserving life. In addition, as the United Nations Permanent Forum on Indigenous Issues has pointed out:

Children born into indigenous families often live in remote areas where governments do not invest in basic social services. Consequently, indigenous youth and children have limited or no access to health care, quality education, justice and participation. They are at particular risk of not being registered at birth and of being denied identity documents.⁷



This sense of dislocation and isolation, fed by insufficient or inadequate health policies and procedures, compounds the issues facing Indigenous communities, particularly within a remote context.

MÉTIS NATIONAL COUNCIL: MÉTIS INITIATIVES FOR HEALTH AND WELLNESS

In August of 2018, the Métis Nation Health Policy Session concluded with the signing of a Memorandum of Understanding (MOU) between the Government of Canada and the Métis Nation for the development of a 10-year accord designed to address the specific health needs of Métis people.

Elements of the Accord will include:

- Métis capacity to participate effectively in health care systems;
- Métis Nation research, surveillance, knowledge and evaluation;
- Métis Nation supplementary health benefits;
- Métis Nation participation in primary health and specialist care;
- Métis Nation home, community, long-term and palliative care models;
- Métis community and wellness hubs (i.e. Métis service/wellness access centres);
- Métis people within the health human resources sector;
- Healthy living and disease prevention and health promotion capacity;
- Cultural competency of the health care system;
- Intergovernmental coordination to adapt and to improve health care systems that reflect expanded roles of the Métis Nation;
- Climate change related health effects and risks mitigation, and associated data management; and
- Access to mental health supports

Source: Métis Nation, "Métis Nation Presses Health and Wellness, Family and Child Care Priorities at Policy Sessions in Ottawa," September 6th, 2018. <http://www.metisnation.ca/index.php/news/metis-nation-presses-health-and-wellness-family-and-child-care-priorities-at-policy-sessions-in-ottawa>

Further, the Inter-Agency Support Group on Indigenous Peoples' Issues (IASG) points out that, globally, Indigenous Peoples suffer from poorer health than non-Indigenous populations, and that "Indigenous women experience health problems with particular severity, as they are ... often denied access to education, land property, and other economic resources." In addition, the IASG asserts that "Indigenous youth and adolescents face particular challenges in the realization of their right to health that are often not adequately addressed, including sexual and reproductive health and rights, and mental health."⁸ Conditions that will support the right to health may include:

- physical and geographic accessibility;
- economic accessibility;
- information accessibility; and
- non-discrimination in accessing services.⁹



The National Inquiry heard about the lack of all of these conditions for health from our testimonies. In the sections that follow, we take a closer look at how the absence of many of these conditions manifests for Indigenous women, girls, and 2SLGBTQQIA people seeking help, support, and safe spaces, and fleeing violence.

Current Approaches to Health in Canada

One of the witnesses testifying for the National Inquiry shared important information regarding the current federal approach to health programs and services. As we saw briefly in our examination of Indian hospitals, federal responsibility for health in a First Nations context officially began as early as 1904, when the Department of Indian Affairs appointed a general medical superintendent to start medical programs and develop health facilities. Indian Health Services came under the umbrella of the Department of National Health and Welfare in 1945, and, in 1962, Indian Health and Northern Health Services came together as the Medical Services Branch. By 1974, the minister of National Health and Welfare tabled the Policy of the Federal Government concerning Indian Health Services, which rearticulated the Medical Services Branch's assertion that there existed no statutory or Treaty obligation to provide health services for Status Indian people. Still, in its own words, the federal government wanted to make sure that services were available, "by providing it directly where normal provincial services (were) not available, and giving financial assistance to indigent Indians to pay for necessary services when the assistance (was) not otherwise provided."¹⁰

As Expert Witness Dr. Valérie Gideon testified, the mandate of the First Nations and Inuit Health Branch (FNIHB) is still based in the 1979 Indian Health Policy that emerged from the 1974 document, which identified three pillars as the foundation of the branch. These pillars are: community development, recognition of a special relationship between the Crown and Indigenous Peoples, and interrelationships among systems at multiple levels of government, all intended to support the advancement of Indigenous health. As Gideon admitted, "It is a dated document. However, those three pillars continue to – to guide the mandate of the branch."¹¹ Although the policy was updated with broader and more relevant language in 2012, the basic foundations of the branch's approach remain unchanged. Gideon believes this is because, fundamentally, the branch's focus on supplementing access offered within territorial and provincial health services and systems is still the main focus of its work, along with developing health partnerships with First Nations and Métis leadership at the community or regional level.¹²

In her estimation, Gideon explained, the greatest barriers to health rest in how provincial and territorial health systems organize their services, rather than with the federal agency responsible for recognizing the direct relationship between Indigenous Peoples and the Crown or the interrelationships between systems and levels of government.



It's that it is absolutely important to collaborate with provincial and territorial health systems in order to be able to access those areas such as physician support, specialist support, and diagnostic technology, laboratory, pharmacy services, that really, within the FNIHB context, is not something that we have direct funding and responsibility for. So it's ... creating those linkages with provincial and territorial health systems that is extremely important in order to increase access to services and communities.¹³

INDIAN HEALTH POLICY, 1979

According to the First Nations and Inuit Health Branch (FNIHB), "The Federal Indian Health policy is based on the special relationship of the Indian people to the Federal Government, a relationship which both the Indian people and the Government are committed to preserving. It recognizes the circumstances under which many Indian communities exist, which have placed Indian people at a grave disadvantage compared to most other Canadians in terms of health, as in other ways."



Community Development: Socio-economic and cultural and spiritual development, to remove the conditions of poverty and apathy preventing community members from achieving full state of well-being.



Recognition of Crown-Indigenous Relationship: Federal government serves as an advocate for interests of First Nations and Inuit communities, promoting the capacity to achieve aspirations. Depends on good communicating and involvement in delivery of programs.



Canadian Health System: Divisions between jurisdictions are superficial in light of viewing the health system as related, and as a whole. System is interdependent and includes public health activities in communities, promotion of health, and mitigation of health hazards.



Source: Adapted from Government of Canada, *Indian Health Policy 1979*, <https://www.canada.ca/en/indigenous-services-canada/corporate/first-nations-inuit-health-branch/indian-health-policy-1979.html>.

The branch provides programs and services to First Nations and Inuit. Inuit-specific funding is directed to the area of mental health and healthy child development. This approach, Gideon explained, was developed with Inuit Tapiriit Kanatami (ITK) and the National Inuit Committee on Health in 2014 and is focused on working with land claims organizations, for instance, in Nunavut, where a tripartite partnership is working to address the needs of Inuit.¹⁴ There remain, however, significant gaps in services, including the lack of a hospital in Nunavik.¹⁵



In describing the process of allocating funding and determining priorities, Gideon described partnership tables composed of First Nations representatives assigned by leadership, including representatives like “community Chiefs, political territorial organizations ... as well as, of course, some FNHIB regional executives.”¹⁶ When asked if grassroots organizations had a seat at the table, or if urban organizations could participate, Gideon answered: “Well, I mean, anybody can absolutely contact us and sit with us to talk about what needs exist in context and what priorities, and we can bring that information and – and invite presentations at the partnership committee tables.”¹⁷

The FNIHB, like many government agencies, works through established leadership structures, such as the Assembly of First Nations, as well as elected chiefs in different communities, to determine these priorities; for some women, testifying from a grassroots perspective, this is tantamount to complete exclusion.

In speaking specifically on the Métis, Gideon explained that the branch has been approached by the Métis Nation with a draft memorandum of understanding to work collaboratively to look specifically at health priorities and to work toward a 10-year Métis Nation health accord.¹⁸ When asked about the application of Jordan’s Principle to Inuit, Métis, and non-Status people, Gideon noted that “the departmental position is not confirmed at this point.”¹⁹

While the branch notes a positive responsibility on it to fill gaps while respecting the roles of other jurisdictions, such as the provinces and territories, First Nations governments, and land claims agreements,²⁰ Gideon also pointed out that their programs and services did not flow from a rights-based perspective, but from a policy mandate that includes recognition of, but is not based in, rights instruments.²¹

Pathway to Violence: Intergenerational and Multigenerational Trauma

In her testimony, Sharna S. used the metaphor of a diseased tree to describe the many factors that negatively impact the physical, mental, emotional, and spiritual health of Indigenous people.

The way that I look at the National Inquiry and all the atrocities that have happened to my people, to me it’s like a tree that’s diseased. And the branches branch out.

One [branch] of it is for the residential school survivors; one of it is for the murdered and missing; you know, another branch is for the mental health and addictions and the fentanyl crisis. You know, the other ones are how the bands are treating their own members. The discrimination that happens, the racism that happens, you know, our loss of our culture, the Truth and Reconciliation Commission, all of this stuff.²²



In her description, Sharna identified many historical and contemporary factors impacting the health of Indigenous Peoples: residential school attendance, interpersonal violence, drug and alcohol addiction, lateral violence,²³ discrimination, racism, and the loss of culture. She also acknowledged that each of the branches on this tree “branch out” – that is, the physical, mental, emotional, and spiritual health impacts that each of these experiences carry cross generations in ways that create and contribute to intergenerational trauma.

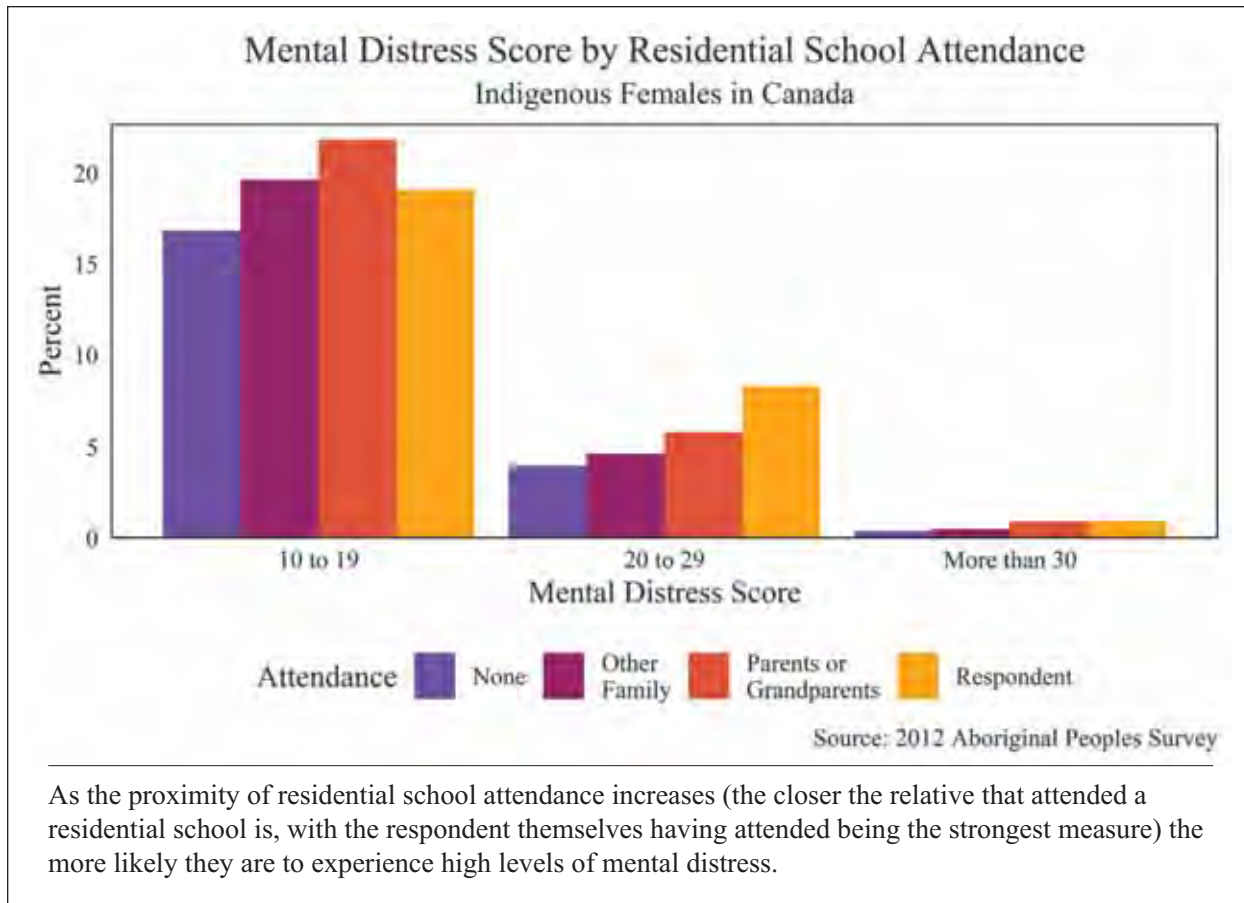
Like Sharna, many witnesses described how these acts of cultural, institutional, and interpersonal violence carry – among other things – significant health consequences for Indigenous people, including widespread trauma, suffering, and pain, which can, in turn, lead to further violence. For Indigenous women, girls, and 2SLGBTQQIA people, against whom these acts of violence are more frequently directed, the health consequences are severe and lasting.

In this section, we look more closely at what the families of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people, as well as others who shared their truths, had to say about their own and their loved ones’ health and wellness.

Long-Term Poor Health Standards: An Overview of Health and Wellness

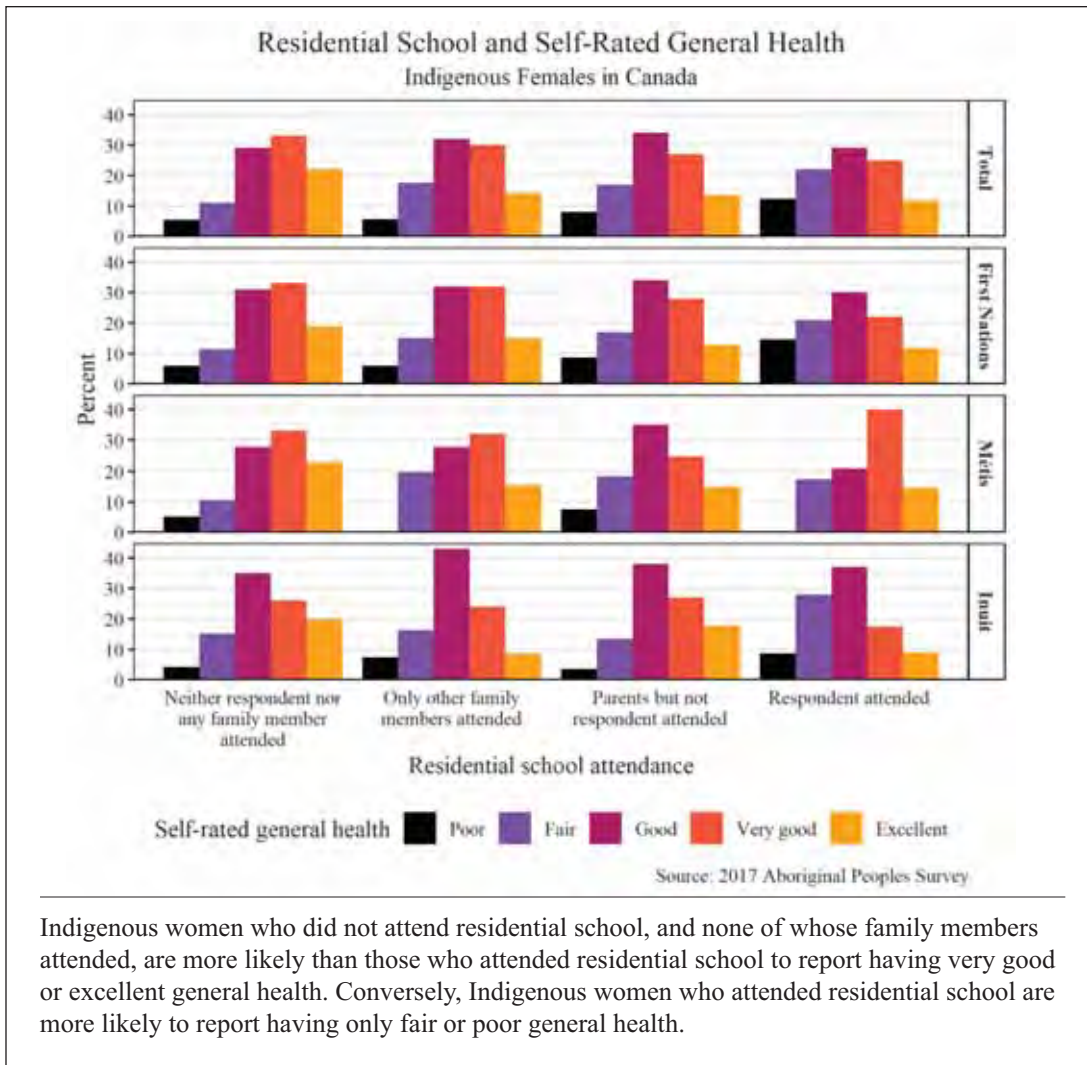
In describing their experiences of health and wellness, the families of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people, survivors, and others who spoke about the impacts of violence offered stories that demonstrate the resilience and strength Indigenous Peoples and communities cultivate in the face of the many barriers that compromise their wellness. Nonetheless, in many instances, their stories also illustrated what is widely recognized as the significant health disparities that exist between Indigenous and non-Indigenous populations in Canada.²⁴ For many witnesses, the long-term impacts of dispossession, of relocation, of harm inflicted at residential school, and of the many forms of social and cultural disruption are key drivers for these health disparities. As the First Nations Information Governance Centre (FNGC) explains in contextualizing the findings from its most recent First Nations Regional Health Survey (2015–16):

High rates of chronic health conditions do not occur in isolation, rather health inequalities are shaped by – and rooted in – the inseparable relationship between health and generations of racist colonial policies. The effects of colonization have resulted in a legacy of environmental dispossession, degradation of the land, substandard living conditions, inadequate access to health services, social exclusion and a dislocation from community, language, land and culture. These policies have been clearly linked to adverse health consequences for individuals and community.²⁵



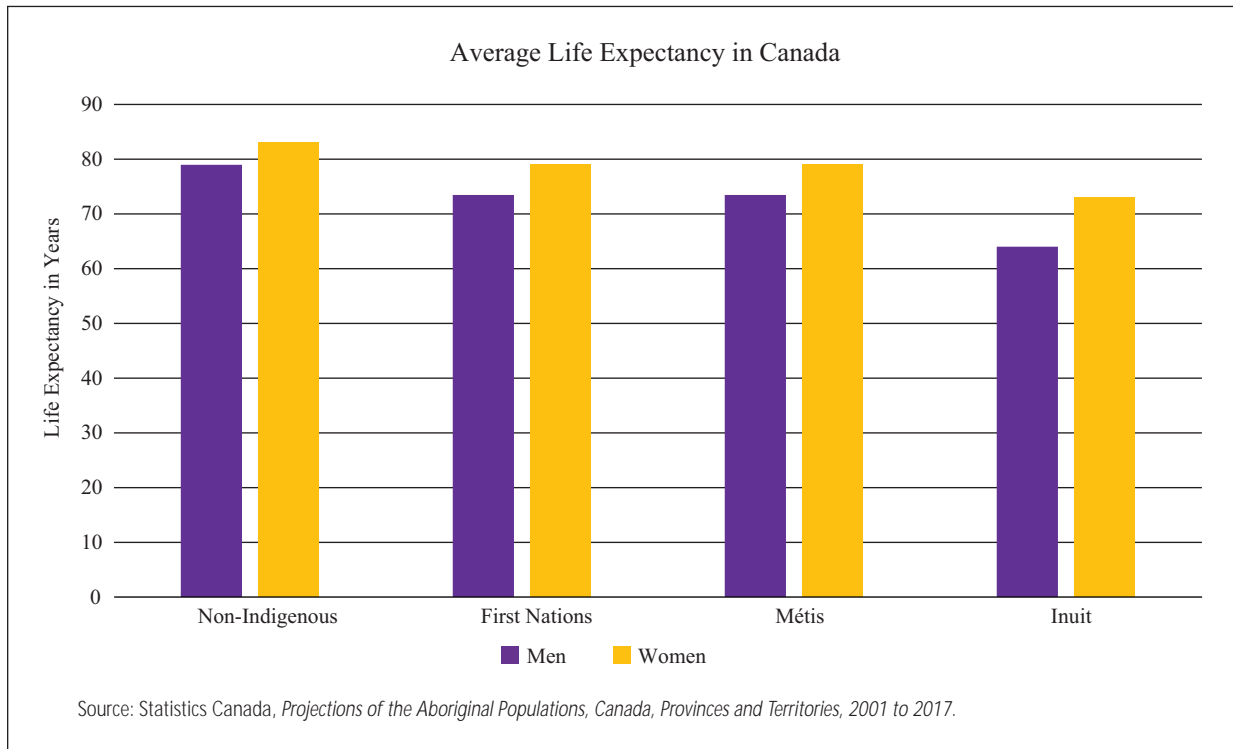
To André Picard, health columnist for the *Globe and Mail*, it is no wonder, given this context, that First Nations, Inuit, and Métis populations all experience poorer health than the non-Indigenous population.

The indigenous community is young and the fastest growing by far – more than 50 percent of indigenous people in Canada are under the age of 15. This is the time to stop generation after generation of disaster, poverty, isolation, addiction and suicide – we’ve created all that. We have an apartheid system designed to oppress people and it’s given the exact results it was designed to produce. Take away their culture, their language, their ability to earn money, their ability to have land, and then, oh, we’re surprised they’re the most unhealthy people in our country? It’s not a surprise at all.²⁶



In general, First Nations, Inuit, and Métis have a lower life expectancy than Canada's non-Indigenous population. According to the most recent data available from Statistics Canada, in 2017, the projected life expectancy for the Canadian population was 79 years of age for men and 83 years of age for women. For Métis and First Nations populations, this life expectancy is approximately five years lower for both men (73 to 74 years of age) and women (78 to 80 years of age) than the non-Indigenous Canadian population. The Inuit have the lowest projected life expectancy, at 64 years for men and 73 years for women.²⁷

Indigenous people represent the fastest growing population in Canada, as well as the youngest.²⁸ In part because of this young population, First Nations, Inuit, and Métis mothers are younger than non-Indigenous mothers. For instance, between 2003 and 2007, 34.3% of First Nations mothers were under 24 years of age and an additional 29.3% were under the age of 29.²⁹ The most recent data available on infant mortality rates also demonstrates significant differences between Indigenous and non-Indigenous populations, with infant mortality rates being more than twice as high



for First Nations, Métis, and Inuit populations than for the non-Indigenous population, and the rates of death from sudden infant death syndrome (SIDS) was more than seven times higher in First Nations and Inuit populations than in the non-Indigenous population.³⁰

Research on infant mortality demonstrates that when infant mortality occurs in the postneonatal period (from 28 days to one year after birth), it is more likely to reflect social and environmental factors than factors associated with access to obstetric and neonatal care, which is more likely to occur during the neonatal period (birth to less than 28 days). While postneonatal deaths make up about one-quarter of all infant deaths in the non-Indigenous population, they make up nearly half of infant deaths in the Indigenous population.³¹ This reality speaks to the urgent need to address those social and environmental factors that impact health – as many of the witnesses who described their experiences as mothers indicated – even in the earliest days.³²

Chronic Health Conditions

Indigenous children, youth, and adults more frequently live with chronic health conditions. According to the First Nations Regional Health Survey (2015–16), “nearly two-thirds (59.8%) of First Nations adults, one-third (33.2%) of First Nations youth, and more than one-quarter (28.5%) of First Nations children reported having one or more chronic health conditions,” such as diabetes, arthritis, high blood pressure, allergies, and chronic back pain.³³ More First Nations women (46.5%) than men (36.4%) report co-morbid conditions (two or more chronic health conditions



occurring at the same time) – a finding that underlines the need for health care supports, and the manner in which First Nations women are at a distinct disadvantage where a lack of health care supports exist, given that multiple chronic conditions are “often associated with complex health outcomes, clinical management and health care needs.”³⁴ For First Nations youth, among the most common chronic health conditions are those connected to mental health, including anxiety (8.3%) and mood disorders (6.6%).³⁵

In addition, higher adult obesity rates are found in Indigenous populations than in the non-Indigenous population: First Nations and Inuit, 26%; Métis, 22%; non-Indigenous population, 16%.³⁶

For Inuit, chronic conditions, as seen in 2012 among Inuit, included those such as high blood pressure, arthritis, asthma, depression, and diabetes in approximately 43% of the population, many of which can directly be linked to a changing way of life. Tuberculosis, a focus of colonial policy in previous decades, is also much more prevalent among Inuit: according to ITK, while it was 0.6 per 100,000 in Canada, the rate of tuberculosis as of 2018 was 181 per 100,000 among Inuit.³⁷

Like the Inuit and First Nations, Métis people also experience a high incidence of chronic conditions such as arthritis, high blood pressure, asthma, intestinal ulcers, and diabetes: according to 2016 data from the Aboriginal Peoples Survey (the most recent available), only 54% of the Métis population aged 12 and older reported a good state of general health.

For 2SLGBTQQIA people, health outcomes are less consistently measured or studied. Nonetheless, available research suggests that 2SLGBTQQIA people may experience higher rates of chronic health conditions, mental health issues, substance use, suicide, and violence than other Indigenous people and the non-Indigenous population.³⁸

Mental Health

In addition to chronic health conditions related to physical health, First Nations, Inuit, and Métis are also more likely to experience mental health concerns than the non-Indigenous population. For instance, 2012 data from the Aboriginal Peoples Survey shows that over one in five Indigenous individuals reported having suicidal thoughts. All First Nations age groups up to age 65 are at increased risk, compared with the Canadian population; males are at a higher risk than females. The suicide rate of Inuit is 10 times that of the rest of Canada, with the greatest difference between the Inuit and non-Indigenous population being among young to middle-age females.³⁹ Among Inuit females aged 15 to 24, the suicide rate is approximately eight times that of non-Indigenous people; for Inuit females aged 25 to 39, it is approximately five times greater.⁴⁰ In 2016, the Aboriginal Peoples Survey also reported that Indigenous youth are particularly at risk for poor mental health, with just over one in ten of off-reserve First Nations youth and 7.8% of Métis youth having a mood disorder. Further, “Rates of acute-care hospitalizations for intentional self-harm are high among Indigenous youth aged 10 to 19,” with the highest in Inuit Nunangat.⁴¹



Compounding the health issues, access to health services remains a barrier to health and wellness. According to Health Canada data for the period between 2006 and 2010, 39% of First Nations adults reported that they had less access to health services than the rest of the Canadian population, with the most common barrier being waiting lists for health services.⁴²

For many Inuit, and as we heard from several witnesses, access to health care in the Inuit population is an important determinant of health, and many who need treatment, including expectant mothers, are forced to leave the community for extended periods of time. The difficulties of access are exacerbated by problems with recruitment and retention of health professionals in Inuit communities. For example, in 2012, 59% of Inuit had seen or talked to a medical doctor, compared with 79% in the Canadian population.⁴³ Only 32% of Métis had access to traditional medicine or wellness practices in their own communities, with more and better services cited as being in larger urban areas.⁴⁴ Due to the relatively recent tracking of disaggregated data related to the Métis, there is not a great deal of data available to make comparisons over the longer term.⁴⁵

“THE INDIGENOUS COMMUNITY IS YOUNG AND THE FASTEST GROWING BY FAR – MORE THAN 50 PERCENT OF INDIGENOUS PEOPLE IN CANADA ARE UNDER THE AGE OF 15. THIS IS THE TIME TO STOP GENERATION AFTER GENERATION OF DISASTER, POVERTY, ISOLATION, ADDICTION AND SUICIDE – WE’VE CREATED ALL THAT. WE HAVE AN APARTHEID SYSTEM DESIGNED TO OPPRESS PEOPLE AND IT’S GIVEN THE EXACT RESULTS IT WAS DESIGNED TO PRODUCE. TAKE AWAY THEIR CULTURE, THEIR LANGUAGE, THEIR ABILITY TO EARN MONEY, THEIR ABILITY TO HAVE LAND, AND THEN, OH, WE’RE SURPRISED THEY’RE THE MOST UNHEALTHY PEOPLE IN OUR COUNTRY? IT’S NOT A SURPRISE AT ALL.”

André Picard



Understanding Youth Suicide

In testimonies before the National Inquiry, many witnesses cited the important barriers to rights that come with challenges in the area of mental health, particularly for youth. The epidemic of suicide, particularly among youth, represents a manifestation of many of the factors that have been outlined in this report, including intergenerational and multigenerational trauma, the apprehension rates within the context of child welfare, and the social and economic marginalization of Indigenous Peoples more broadly.

Contextualizing the Suicide Crisis in Remote Communities

In Saskatchewan's Advocate for Children and Youth Corey O'Soup's home province, the rates of youth suicide are epidemic. As he explained, "Indigenous youth suicide is an epidemic within our province. And I know it's not just Saskatchewan and I know it's not just Indigenous kids. It's all across our country in all areas of life but specifically we've targeted our Indigenous kids and mental health."ⁱ In Saskatchewan, Indigenous girls are 26 times more likely to die by suicide than non-Indigenous girls.ⁱⁱ

As award-winning journalist and author on the issue of youth suicide Tanya Talaga shared, in an interview with Anna-Maria Tremonti on CBC's *The Current*, part of the reason for the high incidence of youth suicide is the normalization of it: "What is so hard for someone, who doesn't live in that community and is not surrounded by suicide, to understand is, it becomes part of your normal everyday life." She cites her uncle, her mother's friend, and her friend as examples of people close to her that took their own lives. In the same interview, Talaga expressed how the foundational factor to all of these deaths is something that can be addressed in attending to the issue of inequality.

Growing healthy children, it's not really rocket science. You have to have safe housing, you have to have a family that loves you, someone who

tucks you in at night, to say to you, "You belong." You need nutritious food, you need access to an education, you need access to health care. And when you're growing up in a community that's missing all of these things, all these things that every other ... non-Indigenous Canadian enjoys in urban and rural settings – suicide is there, suicide becomes normal.ⁱⁱⁱ

In a study analyzing trends across 23 different studies of Indigenous youth suicide, researchers Henry G. Harder, Josh Rash, Travis Holyk, Eduardo Jovel, and Kari Harder found evidence to suggest that some of the factors raised by Talaga manifest themselves in mental health challenges and specifically, in depression. Their synthesis of existing literature found that the strongest risk factors to Indigenous youth suicide emerge as depression, and having a friend or someone close die by suicide.^{iv} This explains, in part, why youth suicides within Indigenous communities tend to appear in clusters, rather than as isolated incidents, particularly when the community is tight-knit or small. The next strongest factors included conduct disorder, defined as "violent behaviour, aggression, violent ideation, anger, delinquency, antisocial behaviour," and substance or alcohol abuse. The third most likely risk factor was the existence of another psychiatric disorder other than depression and suffering from childhood abuse or trauma.^v

Importantly, the same analysis also showed that the strongest protective influence against Indigenous youth suicide was "high support, whether social or familial.... Personality variables of high self-esteem



and having an internal locus of control further reduced the risk of suicide.”^{vi} As the researchers explain, “Individuals are likely to search for identity during developmental crises where psychological growth can be triggered through the experience of stressful life events.... If such meaning cannot be located and the struggle for identity cannot be resolved, then a serious period of hopelessness or depression occurs.”^{vii} The failure to find continuity or a sense of belonging can lead youth to adopt addictive lifestyles or to adopt unhealthy self-images leading to suicidal thoughts or attempts.

Compounding these problems is a perceived sense of isolation in some communities, and a lack of access to services that could help in a crisis situation. As O’Soup testified, the challenges in addressing mental health are particularly severe in northern and remote communities: “We have 15 child psychiatrists – and I’m just using this as an example – in Saskatchewan. One of them travels one day every two weeks to our northern communities. So I’m guessing that the actual wait list for them is longer than two years.”^{viii} In her testimony, Tanya Talaga highlighted a similar issue, citing the example of the community of Wapekeka, a community of approximately 400 people in northwestern Ontario, where youth experiencing mental health crises and needing to see someone “have to be flown away, flown away from their families, flown away from everything that they know, put in a hotel or put into the Sioux Lookout Hospital.... I mean, all by themselves, you know, without any support. And, these are children in crisis.”^{ix} In part, and as we heard in many testimonies, improving outcomes includes properly resourcing health services, including mental health services, for children and youth, to decrease these kinds of barriers to well-being.

Part of the problem, as O’Soup testified, is the way that mental health issues are treated in Canada today. He pointed out:

When you break your leg or you have a flu ... when something like that happens to you, what do you do? You go to the doctor. You go to the emergency room if it’s really bad. And the doctor sees you. They’ll give you some medicine. They’ll write you a prescription. If your leg’s broken,

they’ll set your leg. They’ll put a cast on it. And you’ll go away and you’ll feel like you’ve received some sort of help and, like, you’re on the way to getting better. But when you look at our mental health system, the challenges there exist. They’re real for our children and our youth.... You take the same child that’s suffering with mental health issues, whatever it is, you know, ADHD, anxiety, OCD, ODD, youth – there’s so many of these different diagnoses. If you take that same child into that same emergency room or that same health clinic, that child sits there for 10, 12, 14, 16 hours. And you know what happens? Someone on a phone says, send them home. So those kids go home. I’m telling you, we’re dealing with life-and-death situations when that happens.^x

Suicide among Inuit Youth

In the decades before the way of life based on the land and in geographic mobility was changed to a more sedentary life in centralized settlements as a result of colonization, Inuit suicide was a phenomenon reserved for a very few and older Inuit. Back then, Inuit who were suffering from illness, famine, or old age could decide which moment they wished to die. The choice by individuals to die by suicide was in keeping with the respect Inuit have for the autonomy of their fellow Inuit to make decisions about their own matters and lives.^{xi} However as societal changes occurred through colonization and settlement, the death of Inuit youth by suicide began to occur. While Indigenous groups across Canada have also experienced increased suicide rates among their youth, Inuit have seen very high suicide rates. Inuit youth suicides began in the 1970s followed by a dramatic increase in the 1980s, and Inuit youth suicide rates continued to rise since. In Inuktitut someone who chooses to end one’s life is *qivittuq* and more commonly now, *imminiartuq*, taking one’s own life.

According to the “*Learning From Lives That Have Been Lived*,” *Nunavut Suicide Follow-Back Study: Identifying the Risk factors for Inuit Suicide in Nunavut*, Nunavut, as in the three other Inuit regions of Canada, currently has a suicide rate 10 times higher than the Canadian suicide rate. Nunatsiavut and Nunavik suicide rates are similar to the Nunavut region.



Here are some facts: studies over the last five decades have consistently shown that more young Inuit men die by suicide than young Inuit women. The study above examined 120 cases of suicide completers in the period from 2005-2010, and compared them to another 120 who did not die by suicide. Of the 120 suicide completers, 99 (82.5%) were male and 21 female (17.5%). The average age was 23.6 years old. As for the level of education of individuals who died by suicide, they were 3.6 times more likely to have had less than seven years' education. Dropping out of school could be an indication of living in more difficult situations that could lead to suicidal behaviour.^{xii} Another fact was their contact with the legal system, showing a greater tendency to experience legal problems. Crowded houses, which impact many families in Inuit Nunangat, did not appear to be a factor linked to suicide. Adoption, whether it be adoption between kin, or adoption outside of kin showed there was no major difference between those of the suicide group and the comparison groups.

The study also demonstrates the close link mental health problems have with the suicidal behaviours, such as anxiety, depression and drug and alcohol abuse or dependence problems.^{xiii} The most important issue raised in the follow-back study was childhood maltreatment, which encompasses physical abuse, sexual abuse, emotional abuse and neglect during childhood.^{xiv} There are strong indicators that survivors of childhood abuse attempt or die by suicide in greater numbers than those not maltreated in their childhood. As well, childhood maltreatment could lead to serious issues impacting on mental and physical health and suicidal behaviour. The study found that almost half of those who died by suicide had been abused, physically and/or sexually, during their childhood compared to one third of the comparison group.^{xv} Another major factor was the state of mental health – 61% of those who died by suicide and 24% of those in the comparison group suffered from a major depressive disorder six months prior, and these rates were higher than the national average of 8%.^{xvi} Alcohol dependency or abuse was an indicator for higher risk for suicide, as the data showed that 37.5% of those who died by suicide had abused alcohol or had a dependence on it in the last six months of their lives.^{xvii}

As mental health researcher Eduardo Chachamovich concludes in his study on Nunavut:

The rapid increase in suicidal behaviour in recent decades, especially young people, is probably the result of a change in the intensity of social determinants – among them the intergenerational transmission of historical trauma and its results (increased rates of emotional, physical, and sexual abuse, violence, substance abuse, etc.)... Since difficult life experiences are associated with the onset of mental disorders (particularly if substance abuse is included in the definition of “mental disorder”), it is reasonable to deduce that there are elevated rates of mental disorders in Nunavut society.^{xviii}

The Inuit regions are well aware of the crisis among youth and are developing strategies for the prevention of suicide, such as the *National Inuit Suicide Prevention Strategy* created by the national Inuit organization Inuit Tapiriit Kanatami (ITK), which supports families and youth to be strong and resilient as the Inuit ancestors once were. Its Strategy addresses social inequity, community safety and cultural continuity to help create well-being in the Inuit communities. It expresses its vision of suicide prevention as a shared national, regional and community-wide effort, that collaborative and well supported policies and programs can and will make a difference. The Strategy defines priority areas such as creating social equity and cultural continuity, nurturing healthy Inuit children from birth, access to comprehensive mental wellness services for Inuit, healing unresolved trauma and grief and mobilizing Inuit knowledge for resilience and suicide prevention. These are themes that were consistently identified by Inuit witnesses testifying before the National Inquiry, as well. The *ITK Suicide Prevention Strategy* prioritizes the importance of Inuit perspectives and knowledge to bring about action in the Inuit communities. It is an example of self-determination, working with Inuit communities and regions, to acknowledge the crisis of suicide among Inuit youth and to help heal Inuit communities.



Engaging Children and Youth to Generate Solutions

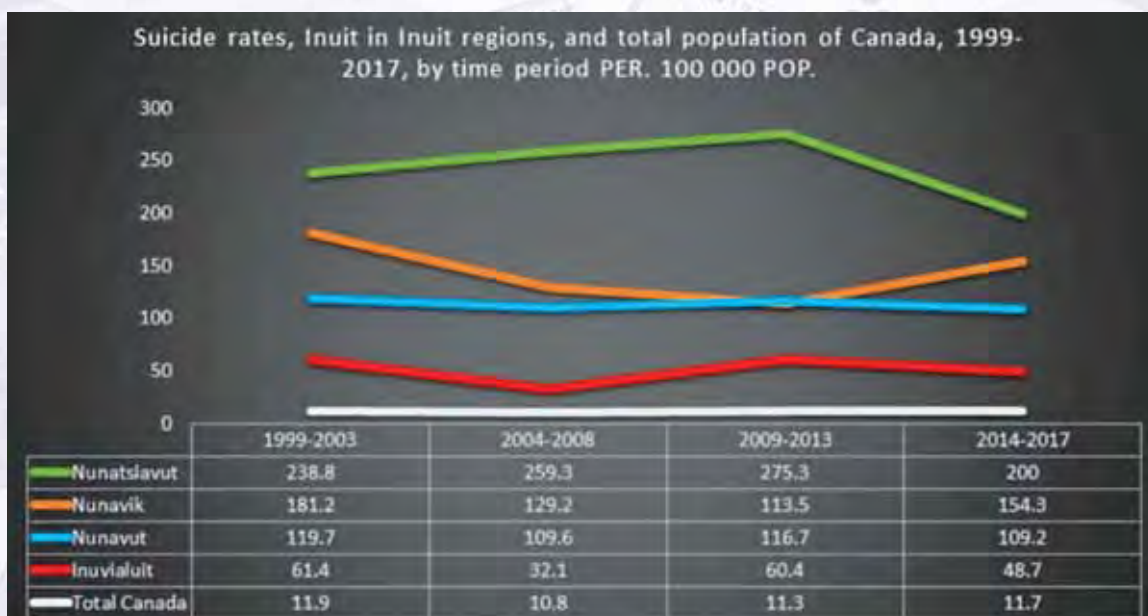
Part of the way forward begins with listening. As O'Soup contends, children and youth must be at the table in discussing the way forward: "It is their right to be at the tables when decisions are being made about them, when they are being discussed. They need to have a voice. And that voice just can't be me ... I believe that we can't get that voice without talking to our children and our youth."^{xxix} And, as he points out, children and youth are already talking about it "in chat rooms ... on social media and their phones ... at parties in basements. They're just not talking to us about it. And the data we have already shows us that they're already doing it."^{xxx}

This crisis is surmountable; as Cindy Blackstock insisted, "And so, when I see the suicide rates, I am horrified at the loss of every child, but I think it's an absolutely predictable thing to happen when you're treating children in this way as a country."^{xxxi} As the researchers conducting the survey of existing literature conclude, and as many of the studies they analyzed suggest, decision-makers should take seriously the way in which culture and bonding can mitigate these rates of self-harm:

The maintenance of culture and formation of social and familial supports are ingredients that may offset IYS [Indigenous Youth Suicide]. Social and family support positively influences the development of relational, occupational, and self-identity.... It was found to be the strongest protective factor reducing the risk of suicide among the studies examined.^{xxii}

Finally, and in reference to the report entitled *Shhh...Listen!! We Have Something to Say! Youth Voices from the North*, O'Soup talks about some important findings, with implications for decreasing youth suicide in all Indigenous communities.^{xxiii} As he explained, "Our kids ... state that in order for them to not think about suicide, they need a safer community. They don't want to be scared walking down their streets. They need to be safe and protected."^{xxiv}

Upholding cultural safety and belonging as well as physical safety, along with sufficient support services and the right to be heard, are important building blocks that can work to improve outcomes for youth by looking to those most impacted for solutions.



Source: Nunavik Regional Health Board. Used with permission.