



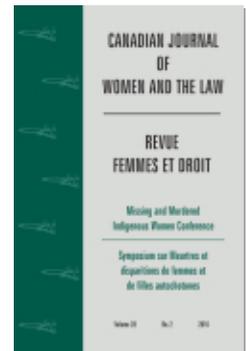
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Canadian Journal of Women and the Law, Volume 28, Number / numéro
2, 2016, pp. 253-284 (Article)

Published by University of Toronto Press



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Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence against Indigenous Women and Girls in the National Inquiry

Pamela Palmater

Le Canada a un problème de longue date avec le racisme social et institutionnel contre les peuples autochtones, surtout au sein du système de justice. Les rapports de nombreuses commissions et enquêtes nationales ont tous conclu que chaque palier du système de justice a floué les peuples autochtones. Les études les plus récentes indiquent que le racisme contre les peuples autochtones est particulièrement problématique au sein des forces policières du Canada. Pourtant, malgré les faits avérés, on a bien peu fait au Canada pour donner suite aux recommandations émanant de ces rapports. Ce manque d'action s'est traduit par l'incarcération disproportionnée des Autochtones, de nombreux décès d'Autochtones en détention policière et une crise nationale concernant la disparition et le meurtre de milliers de femmes et de filles autochtones. Le présent article jette une lumière sur le problème moins connu de la violence racialisée et sexualisée mettant en cause la police, et de la violence contre les femmes et les filles comme cause fondamentale du grand nombre de disparitions et de meurtres de femmes et de jeunes filles autochtones au Canada. L'auteure soutient qu'une enquête nationale sur le nombre élevé de femmes et de filles autochtones disparues ou assassinées devrait faire une analyse approfondie des disparitions, agressions sexuelles et meurtres de femmes autochtones mettant en cause la police. L'auteure espère qu'une telle enquête de portée nationale entraînera une analyse factuelle et des recommandations de changements aux lois et aux politiques qui soient en harmonie avec les protections des droits de la personne accordées aux femmes et aux filles autochtones, et avec les appels à l'action de la Commission de vérité et de réconciliation du Canada, de divers organes de droits de la personne des Nations Unies, ainsi que des familles, des communautés et des nations des victimes autochtones.

Canada has had a long-standing problem with both societal and institutional racism against Indigenous peoples, especially within the justice system. Numerous national inquiries, commissions, and investigations have all concluded that every level of the justice system has failed Indigenous peoples. More recent inquiries indicate that racism against Indigenous peoples is particularly problematic in

police forces in Canada. Yet, despite the evidence, little has been done in Canada to act on the recommendations. This has resulted in the over-incarceration of Indigenous peoples, numerous deaths of Indigenous peoples in police custody, and the national crisis of thousands of murdered and missing Indigenous women and girls. This article seeks to highlight the lesser-known problem of police-involved racialized and sexualized abuse and violence against Indigenous women and girls as a root cause of the large numbers of murdered and missing Indigenous women and girls in Canada. It is argued that an in-depth look at police-involved disappearances, sexual assaults, and murders of Indigenous women should be included in a national inquiry into the high rates of murdered and missing Indigenous women and girls. It is hoped that such an investigation under the national inquiry will result in evidence-based analysis and recommendations for legislative and policy-based changes that are consistent with the human rights protections afforded Indigenous women and girls and with the calls for action by Canada's Truth and Reconciliation Commission, various United Nations human rights bodies, and the families, communities, and nations of the Indigenous victims.

Introduction

On 17 August 2014, Tina Fontaine's body was pulled out of the Red River in Winnipeg, Manitoba, eight days after she had been reported missing.¹ Her name has since become synonymous with the crisis of murdered and missing Indigenous women and girls in Canada and our decades-long struggle to get the authorities to take action. The crisis of murdered and missing Indigenous women and girls raises many questions around why this crisis continues, who is responsible to address it, and what can be done to prevent any more deaths in the future. Tina Fontaine's tragic death raises more uncomfortable questions around the quality of care provided by provincial child welfare agencies, the problems within police forces in Canada, and the root causes responsible for putting these little girls in foster care or morgues. While a fifty-three-year-old man has since been charged with Tina's murder, the fact is that her murder was facilitated by a lethal form of racism that infects federal and provincial policies and service providers, including, in particular, the justice system. This crisis calls on all of us to shine a light on the dark places that, for the purposes of this article, are home to the sensitive issues of police racism, abuse, and sexualized violence against Indigenous women and girls.

Sadly, this article is not an exercise in hypothetical scenarios nor is it the story of a rogue serial killer or the tragic death of one young girl. It is an article about Canada's national crisis of murdered and missing Indigenous women and girls

1. "Raymond Cormier, 53, Charged with Murder in Tina Fontaine Death", *CBC News* (11 December 2015) <<http://www.cbc.ca/news/canada/manitoba/tina-fontaine-homicide-arrest-winnipeg-1.3361103>>.

where the root causes of the phenomenon have been overshadowed by victim blaming and where police actions as the instigators, perpetrators, and/or enablers of the phenomenon have been overlooked.² Indigenous women and girls are only 2 percent of the population in Canada, but they represent 16 percent of the women who are murdered or go missing.³ Even the term “missing” is a misnomer. It seems to imply these women and girls just got lost or ran away for a few days. The reality is that these women and girls are kidnapped, taken, or otherwise held against their will—a situation far more sinister than the word “missing” might imply. The more appropriate term would be “disappeared” because it represents the conscious act of others involved (usually men) in taking them from their friends, families, support networks, communities, and Nations.⁴

The over-representation of Indigenous women and girls that are murdered or disappeared at the national level is significant, but some of the provincial statistics present a much darker picture as Indigenous women and girls represent 55 percent of all of the women and girls that are murdered or go missing in Saskatchewan and 49 per cent in Manitoba.⁵ They are three times more likely to suffer violence and significantly more likely to be killed by an acquaintance than Canadian women.⁶ While domestic abuse is part of the story, Indigenous women are less likely to be killed by a family member than Canadian women,⁷ so this factor is not the whole answer. If we are to ever get to the “whole answer,” we need the recently announced national inquiry to finally get at all of the root causes of this phenomenon. However, getting to this stage was not easy.

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2. Pamela Palmater, “Ontario Policing: Gang Rapes, Murders and Child Porn”, *teleSUR* (1 February 2016) <<http://www.telesurtv.net/english/opinion/Ontario-Policing-Gang-Rapes-Murders-and-Child-Porn-20160201-0008.html>>.
 3. Royal Canadian Mounted Police, *Murdered and Missing Aboriginal Women: A National Operational Overview*, Catalogue No PS64-115/2014E-PDF (Ottawa: RCMP, 2014) at 9 <<http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf>> [RCMP, *Overview*].
 4. Pamela Palmater, “Canada’s Disappeared Indigenous Women”, *teleSUR* (25 May 2015) <<http://www.telesurtv.net/english/opinion/Canadas-Disappeared-Indigenous-Women-20150524-0022.html>>.
 5. RCMP, *Overview*, *supra* note 3 at 9.
 6. *Ibid* at 7, 12. See Statistics Canada, *Victimization and Offending among the Aboriginal Population in Canada*, by Jodi-Anne Brzozowski, Andrea Taylor-Butts & Sara Johnson, Catalogue no 85-002-XIE (Ottawa: Minister of Industry, 2006), vol 26(3) at 1 <<http://publications.gc.ca/Collection-R/Statcan/85-002-XIE/85-002-XIE2006003.pdf>> (between 1997 and 2000, the average homicide rate for Aboriginal people was “almost seven times higher” than for that of non-Aboriginal people).
 7. Statistics Canada, *Homicide in Canada, 2014*, by Zoran Miladinovic & Leah Mulligan, Catalogue No 85-002-X (Ottawa: Statistics Canada, 25 November 2015) at 13 <<http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14244-eng.pdf>>.
 8. Amnesty International, *Stolen Sisters: A Human Rights Response to Discrimination*

Getting to an Inquiry

The fact that these statistics are now widely known was a struggle in and of itself. Indigenous women and their allies had to work against many obstacles to bring national attention to this issue. They faced societal racism, victim blaming in the media, government indifference, and a lack of priority even within Indigenous organizations, which are largely dominated by male leaders. But they persisted. After many years of advocacy and working alongside human rights allies, they started to see success. Amnesty International and the Native Women's Association of Canada (NWAC) (working in collaboration with the families of victims) were able to garner national attention on the crisis after several key reports.⁸

Amnesty's "Stolen Sisters" highlighted the root causes of vulnerability, including the marginalization of Indigenous women, the way in which racism leads to societal indifference to Indigenous well-being, and the utter failure of police to protect them.⁹ The NWAC's "Sisters in Spirit" research and education campaign raises awareness about the violence against Indigenous women.¹⁰ Their joint research resulted in a database of more than 582 murdered or missing Indigenous women and girls. Their report to the families highlighted the stories of individual victims and showed that they were more than just statistics—they were mothers, aunties, wives, and sisters.¹¹ Their research findings were presented in a second report that included the analysis of the statistics, challenged the prevailing stereotypes, and emphasized the root causes and impacts of colonization on Indigenous women and girls.¹² Their work received national and international attention because their statistics countered the victim-blaming mentality and demonstrated that prostitution is not a cause of murder, that not all women are killed by their spouses, and

and Violence against Indigenous Women in Canada (Ottawa: Amnesty International Canada, 2004) <<https://www.amnesty.ca/sites/amnesty/files/amr200032004enstolensisters.pdf>>; Native Women's Association of Canada (NWAC), *Voices of Our Sisters in Spirit: A Report to Families and Communities*, 2nd ed (Ottawa: NWAC, 2009) <http://www.nwac.ca/wp-content/uploads/2015/05/NWAC_Voices-of-Our-Sisters-In-Spirit_2nd-Edition_March-2009.pdf> [NWAC, *Sisters in Spirit Report*]; Native Women's Association of Canada, *What Their Stories Tell Us: Research Findings From the Sisters in Spirit Initiative* (Ottawa: NWAC, 2010) <<http://www.nwac.ca/wp-content/uploads/2015/07/2010-What-Their-Stories-Tell-Us-Research-Findings-SIS-Initiative.pdf>> [NWAC, *Research Findings*]; "Sisters in Spirit: What Happened" (12 June 2012), *Voices-Voix* <<http://voices-voix.ca/en/facts/profile/sisters-spirit>>.

9. Amnesty International, *supra* note 8 at 2.
10. NWAC, *Sisters in Spirit Report*, *supra* note 8 at 3.
11. *Ibid* at 9.
12. NWAC, *Research Findings*, *supra* note 8 at i.
13. *Ibid* at 31, 29, 36.

that the causes included violence at the hands of state officials, such as death in police custody.¹³

Unfortunately, there was a change in government in 2006, and former Prime Minister Stephen Harper's Conservatives cut the funding for Sisters in Spirit once it garnered sustained media attention.¹⁴ However, Indigenous women, activists, families, and their human rights allies persisted and could not be stopped. Despite a Prime Minister who denied there was a problem and refused to engage in a national inquiry¹⁵ and despite a Minister of Indian and Northern Affairs Canada (INAC) who blamed the whole problem on First Nation men,¹⁶ the international community began to take notice. Various United Nations (UN) bodies called for Canada to investigate and address the crisis of murdered and missing Indigenous women and girls.¹⁷ The calls for a national inquiry grew stronger and stronger as did the will of the families, communities, and Nations who were impacted. Annual community events, walks, and vigils were held to raise awareness and demand action.¹⁸ The most significant change happened on 19 October 2015, when a new

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14. Kenneth Jackson, "Stephen Harper's Longest War: Missing and Murdered Indigenous Women", *APTN National News* (9 September 2015) <<http://aptn.ca/news/2015/09/09/stephen-harpers-longest-war-missing-and-murdered-indigenous-women/>>.
 15. Alex Boutillier, "Native Teen's Slaying a 'Crime' Not a 'Sociological Phenomenon', Stephen Harper Says", *Toronto Star* (21 August 2014) <http://www.thestar.com/news/canada/2014/08/21/native_teens_slaying_a_crime_not_a_sociological_phenomenon_stephen_harper_says.html>; "Full Text of Peter Mansbridge's Interview with Stephen Harper", *CBC News* (17 December 2014) <<http://www.cbc.ca/news/politics/full-text-of-peter-mansbridge-s-interview-with-stephen-harper-1.2876934>>.
 16. Mark Kennedy, "Valcourt Urges First Nations, Provinces to Take Action on Murdered Aboriginal Women", *Ottawa Citizen* (12 December 2014) <<http://ottawacitizen.com/news/politics/bernard-valcourt-rejects-inquiry-on-murdered-aboriginal-women/>>; Jorge Barerra, "Valcourt Used Unreleased RCMP Data to Claim Aboriginal Men Responsible for Majority of Murders of Aboriginal Women: Chiefs", *APTN National News* (25 March 2015) <<http://aptn.ca/news/2015/03/25/chiefs-say-valcourt-used-unreleased-rcmp-data-claim-indigenous-men-responsible-majority-indigenous-women-murders/>>; Alexandra Heck, "RCMP Blame Family Violence for Aboriginal Women Deaths", *NOW Toronto News* (22 June 2015) <<https://nowtoronto.com/news/rcmp-blame-family-violence-for-aboriginal-women-deaths/>>.
 17. See eg UN, Committee on the Elimination of Discrimination against Women (CEDAW), *Report of the Inquiry Concerning Canada of the CEDAW under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc C/OP.8/CAN/1, 30 March 2015 <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/CEDAW_C_OP-8_CAN_1_7643_E.pdf> [CEDAW].
 18. "Missing and Murdered Indigenous Women Remembered in Annual March", *CBC News* (4 October 2015) <<http://www.cbc.ca/news/canada/montreal/mmiw-mmaw-missing-murdered-indigenous-women-canada-march-1.3256366>>.

Liberal government was elected. Following through on his campaign promise to hold a national inquiry into the crisis of murdered and missing Indigenous women and girls, Liberal Prime Minister Justin Trudeau told the Assembly of First Nations Chiefs that it would be his first order of business.¹⁹

After so many years of advocating for a national inquiry, it was a surprise to many to hear critiques from several academics and a First Nations leader demanding that Indigenous men must be included.²⁰ Their argument is that because 71 percent of all murder victims are men they should be included. While this is true, and Indigenous men and boys suffer similar forms of racism and violence at the hands of the state, there has never been a commission or inquiry specific to violence against Indigenous women, while there have been many relating to state violence against Indigenous men.²¹ It is also important to note that violence against Indigenous women and girls is committed almost exclusively by men (Indigenous and non-Indigenous), which makes this a very gender-specific issue. This is about gendered, sexualized violence. Indigenous women and girls are victims because they are Indigenous and because they are female. Indigenous women stood alongside their men during the commissions investigating violence and racism against Indigenous men, and now Indigenous women and girls need their own focused inquiry. Most human rights advocates agreed.²²

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19. Susana Mas, "Trudeau Lays Out Plan for New Relationship with Indigenous People", *CBC News* (8 December 2015) <<http://www.cbc.ca/news/politics/justin-trudeau-afn-indigenous-aboriginal-people-1.3354747>>.
 20. On the Coast, "Missing Women's Inquiry Should Include Aboriginal Men, Says Ernie Crey", *CBC News* (22 January 2016) <<http://www.cbc.ca/news/canada/british-columbia/missing-women-s-inquiry-should-include-aboriginal-men-says-ernie-crey-1.3416631>>.
 21. Pamela Palmater, "How Canada Should Investigate Violence against Indigenous Women", *teleSUR* (7 March 2016) <<http://www.telesurtv.net/english/opinion/How-Canada-Should-Investigate-Violence-Against-Indigenous-Women-20160307-0016.html>>.
 22. Kathryn Baum, "National Inquiry Should Not Study Violence against Aboriginal Men: Experts", *Globe and Mail* (1 February 2016) <<http://www.theglobeandmail.com/news/national/national-inquiry-should-not-study-violence-against-aboriginal-men-experts/article28498467>>; Feminist Alliance for International Action (FAFIA) and Native Women's Association of Canada (NWAC), "Recommendations from the Symposium on 'Planning for Change: Towards a National Inquiry and an Effective National Action Plan'" (2016) 28:2 *Canadian Journal of Women and the Law* 408 at 410 ["Summary Report of the Symposium"]. Lara Yeo, "Three Issues a National Inquiry into Missing and Murdered Indigenous Women Must Address", *Ultra Vires* (1 March 2016) <<http://ultravires.ca/2016/03/three-issues-a-national-inquiry-into-missing-and-murdered-indigenous-women-must-address>>.

Focusing the Inquiry

Despite the relatively few early critiques, Minister of the Status of Women Patricia Hajdu, Minister of INAC Carolyn Bennett, and Minister of Justice Jodi Wilson-Raybould jointly announced and embarked on a national consultation process to hear from advocates, experts, families, and communities about their concerns and priorities with respect to determining the nature and scope of the national inquiry.²³ The next step is to make sure that the national inquiry conducts proper research and investigation into all of the relevant issues, of which there will be many. A national inquiry must look not only at the individual instances of murdered and missing Indigenous women but also at the root causes like child welfare rates, chronic poverty and homelessness, incarceration rates, domestic abuse, the residential school legacy, inter-generational trauma, the impacts of ongoing colonization and oppression, and systemic discrimination within Canada's laws and policies to name a few. The root causes are as important to understanding the crisis as are the individual statistics.

A symposium of Indigenous women experts, advocates, and allies, together with representations from various UN human rights bodies confirmed that the scope must be broad enough to consider all of these issues as well as focused enough to investigate problems that are relatively under-researched.²⁴ The report of the symposium, which is included as the final article in this special issue, highlights the importance of setting the analytical framework within the context of Indigenous laws and not just the current Canadian legal framework.²⁵ Equally important is the necessity of ensuring that the inquiry is conducted using a human rights approach that is not just about acknowledging the breaches but also about acting to remedy them.²⁶ The report emphasizes that Indigenous women should lead the inquiry and that it should have sufficient independence to conduct a full and impartial investigation of all of the issues.²⁷ In addition to the issues noted earlier, the experts also agreed that the inquiry must look at the state's involvement in racialized and sexualized violence against Indigenous women and girls, and it included the following recommendation:

23. Canada, Indigenous and Northern Affairs Canada, Government of Canada Launches Inquiry Into Missing and Murdered Indigenous Women and Girls (Ottawa: DIAND, 8 December 2015) <<http://news.gc.ca/web/article-en.do?nid=1023999>>; Liberal Party of Canada, "An Inquiry into Missing and Murdered Indigenous Women and Girls" (14 December 2015) <<https://www.liberal.ca/an-inquiry-into-missing-and-murdered-indigenous-women-girls>>.

24. "Summary Report of the Symposium", *supra* note 22 at 410.

25. *Ibid* at 411–12.

26. *Ibid* 412–13.

27. *Ibid* 413–16.

8.(c) Police and Justice System Response

The national inquiry must involve an in-depth review of policing institutions, including police forces and police oversight bodies, as well as of the judicial system, across federal, provincial, territorial, and First Nations jurisdictions.²⁸

While this may turn out to be an especially sensitive and even controversial issue, it is important for the safety and well-being of Indigenous women and girls that it be investigated, which is why it forms the focus of this article. For these reasons, this article shines a light into the darkness of police racism, abuse, and sexualized violence against Indigenous women and girls with a view to providing recommendations on how the national inquiry into murdered and missing Indigenous women must do the same.

The majority of incidents involving allegations of police sexualized violence against Indigenous women and girls (at least those that have been publicized) appear to have been addressed as employee discipline matters rather than being prosecuted as sexual assault crimes. We also have no formal statistics on how many women and girls generally, or Indigenous women and girls specifically, have been victims of police physical and/or sexual abuse or exploitation; how many have reported it; or the charge or conviction rate (impunity rate) among police forces for such crimes. The insular nature of police forces and the legislative frameworks that largely protect them from independent scrutiny make this a difficult task and will pose significant challenges for the national inquiry. The best that can be done within the limited space of this article is an initial analysis of media-reported incidents and an extrapolation of some of the best ways in which the national inquiry can investigate the problem of police racism, sexism, abuse, neglect, and sexualized violence as both a cause and barrier to addressing the crisis of murdered and missing Indigenous women and girls in Canada. It is important to remember that this work is done within the context of the extreme pain and devastation experienced by the family, friends, and communities of the victims. Each Indigenous woman or little girl was loved by someone—including Tina Fontaine, whose life could have been saved by all those whose job it was to protect her.

Tina Fontaine—Failed by Many

Tina Fontaine was a fifteen-year-old girl from Sagkeeng First Nation who was loved by many. Her family describes her as a loving girl with a big heart.²⁹ She lived with her great aunt and uncle, Thelma and Joseph Favel, for over a decade

28. *Ibid* at 418.

29. “The Case of Tina Michelle Fontaine”, *CBC News* <<http://www.cbc.ca/missingand-murdered/mmiw/profile/tina-michelle-fontaine>>.

as her father had been ill from cancer and then was beaten to death. Her aunt and uncle reported that Tina did well in school and loved to play with other children. The family reports that she did not start having any problems until she visited the city of Winnipeg to be with her birth mother. They could not get Tina back from the city and worried about her circumstances. She was in foster care under the protection of Manitoba's Child and Family Services (CFS) to protect her.³⁰ Her aunt and uncle had no idea that they would never see Tina alive again.

In the hours before her death, the Winnipeg Police found Tina in a vehicle with an intoxicated older man, ran her name through the system, but sent her out alone into the night at 3:00 am anyway. She was later found unconscious by paramedics who took her to the hospital for treatment and was then released into the care of CFS. CFS then put her in a hotel used to house foster children, from which she disappeared.³¹ Tina did not slip through the cracks. Tina was left unprotected by an entire system that is indifferent to the well-being of Indigenous women and girls. She was made vulnerable to well-known predators because those legally bound to protect her did not fulfil their responsibilities. No parent would ever consider leaving a young girl out on the streets alone at night, especially in such a dangerous city. Yet the province and their officials—who were acting as legal guardians for Tina—did just that.

The Winnipeg police officers who found Tina late that night are under an internal investigation, but, as is often the case, no charges are pending against the officers.³² That is not to say that those officers did not commit criminal acts, although neither the police nor the Crown counsel at the Manitoba Department of Justice felt that charges under the *Criminal Code* or *The Child and Family Services Act* were appropriate in this case.³³ Under the *Criminal Code*, parents and foster parents can be charged with failing to provide the necessities of life to a child under sixteen years old and for failing to protect the child in a way that endangers his or her health.³⁴ Tina was under sixteen years old and in the care of the province. The Winnipeg police were obligated to both prevent crime (take a minor child to safety) and enforce the laws of Manitoba, including child protection laws (return a child in

30. "Tina Fontaine Died Because Police, CFS Failed Her, Family Says", *CBC News* (25 September 2014) <<http://www.cbc.ca/news/canada/manitoba/tina-fontaine-died-because-police-cfs-failed-her-family-says-1.2777606>>.

31. *Ibid.* See also "Timeline: Tina Fontaine's Final Hours", *CBC News* (25 September 2014) <<http://www.cbc.ca/news/multimedia/timeline-tina-fontaine-s-final-hours-1.2778323>>.

32. "Winnipeg Police Officer Suspended without Pay in Tina Fontaine Case", *Toronto Star* (24 March 2015) <<http://www.thestar.com/news/canada/2015/03/24/winnipeg-police-officer-suspended-without-pay-in-tina-fontaine-case.html>>.

33. *Ibid. Criminal Code*, RSC 1985, c C-46; *Child and Family Services Act*, SM 1985-86, c 8.

34. *Criminal Code*, *supra* note 33, s 215(1)(a).

care to child and family services).³⁵ It is astounding that the police would release an under-age girl-child in care, alone into the night into Canada's most dangerous city (the highest murder rate in Canada)³⁶ and where the crisis of murdered and missing Indigenous women and girls is particularly acute (highest in Manitoba and Saskatchewan).³⁷

It would not be much of a stretch to argue that these officers were under a duty to provide the necessities of life to Tina and failed to do so. It is arguable that they were standing in the place of the province at the time they found Tina, and having failed to take reasonable steps to protect her, their actions or lack thereof contributed to her preventable death. Instead, the gross failure of these officers was treated as an issue of professional misconduct, not unlike a routine employment or human resource matter for which they may be disciplined. Both officers were originally placed on administrative leave pending an internal disciplinary investigation. Currently, one officer is suspended without pay pending the investigation, while the other is on active duty. Ironically, the officer who remains on active duty was subsequently charged with a criminal offence but not in Tina's case.³⁸ He was charged for stealing a pair of boots from his colleague. This is a damning example of the lack of value put on the life of an Indigenous girl-child versus a pair of police officer's boots. It is also representative of the culture of racism, abuse of power, and sexism within the police forces in Canada.

Inquiries and Reports on Police Racism and Violence towards Indigenous Peoples

One of the reasons why the phenomenon of murdered and missing Indigenous women and girls has been allowed to reach crisis levels in Canada is directly related to the culture of racism and misogyny in society that turns a blind eye to violence against Indigenous women and girls. The fact that racism against Indigenous peoples generally, and Indigenous women and girls specifically, has been normalized does not mean that society is not aware of the problem. There is no level of government today—federal, provincial, territorial, or municipal—that can deny that Canada has a serious racism problem, one that is killing Indigenous people.

35. *Police Services Act*, SM 2009, c 32, s 25(b): “[P]reventing crime and offences against the laws in force in the municipality.”

36. Statistics Canada, *Homicide in Canada, 2011*, Catalogue No 11-001-X (Ottawa: Statistics Canada, 4 December 2012) at 1 <<http://www.statcan.gc.ca/daily-quotidien/121204/dq121204a-eng.pdf>>.

37. RCMP, *Overview*, *supra* note 3 at 9.

38. “Winnipeg Police Officer in Tina Fontaine Case Arrested after Colleagues’ Stolen Belongings Found on Kijiji”, *CBC News* (26 February 2016) <<http://www.cbc.ca/news/canada/manitoba/winnipeg-police-theft-charges-1.3465906>>.

1989 Royal Commission on the Donald Marshall Jr. Prosecution

Donald Marshall, Jr., was a Mi'kmaw man who spent over a decade in prison after being wrongfully targeted by police and convicted of murder because the entire system was infected with racism against Indigenous peoples. In 1989, the Royal Commission on the Donald Marshall Jr., Prosecution found that the criminal justice system failed Marshall "at virtually every turn" due "to the fact that Donald Marshall, Jr., is a Native."³⁹ The findings were made public, and nearly every criminology class in universities across the country has studied the findings of this commission at one point or another. It has been referred to every time one asks the question about over-representation of Indigenous peoples in jail. His story inspired the book *Justice Denied: The Law Versus Donald Marshall* as well as the film *Justice Denied*.⁴⁰ There is no doubt that Canadians were made aware of the problem of racism within the police and justice system.

1996 Royal Commission on Aboriginal Peoples

In 1996, the Royal Commission on Aboriginal Peoples heard testimony from Indigenous women about police racism, even though that commission did not investigate police abuses specifically:

Our women face racism and systemic stereotyping at every turn. For Aboriginal women, this racism and stereotyping is rampant right through the system, from the police to the courts, child welfare agencies to income security.⁴¹

1999 Aboriginal Justice Inquiry of Manitoba

In 1971, Helen Betty Osborne was a Cree woman from Norway House First Nation in northern Manitoba. According to her friends, she was well liked and had planned

39. Nova Scotia, Royal Commission on the Donald Marshall, Jr, Prosecution, *Digest of Findings and Recommendations* (Halifax: Province of Nova Scotia, December 1989) at 1 <https://www.novascotia.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf>.

40. Michael Harris, *Justice Denied: The Law versus Donald Marshall* (Canada: Macmillan of Canada, 1986); *Justice Denied*, 1989, DVD (Montreal: National Film Board of Canada, 1989), YouTube <<https://www.youtube.com/watch?v=cziudlfPCU>>.

41. Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, vol 4 (Ottawa: Communication Group, 1996) at 434 <https://qspace.library.queensu.ca/bitstream/1974/6874/2/RRCAP4_combined.pdf>.

to go to college and become a teacher.⁴² She was forced to attend school off reserve in the town of The Pas because there was no secondary school in her First Nation. While walking down Third Street, she was kidnapped, sexually assaulted, and brutally murdered by four non-Indigenous men. It took sixteen years (1987) for only one of the four men involved to be charged and convicted. The other men were either not charged, not convicted, or received immunity.⁴³

Barely a year after the conviction in Osborne's case, an unarmed Indigenous man named J.J. Harper, was gunned down by Winnipeg police. John Joseph Harper was a leader from Wasagamack, an Oji Cree-speaking First Nation in Manitoba. He worked as the executive director of the Island Lake Tribal Council.⁴⁴ His death, together with the lone conviction in the Helen Betty Osborne case, led to calls for an inquiry to deal with the racism experienced by Indigenous peoples at the hands of the police—not only in terms of their failure to investigate crimes against Indigenous peoples but also in terms of police violence against Indigenous peoples.

An inquiry was eventually struck, and the subsequent report of the Aboriginal Justice Inquiry of Manitoba concluded in 1999 that “[t]he justice system has failed Manitoba's Aboriginal people on a massive scale.”⁴⁵ It went on to express particular concern for the experiences of Indigenous women and children:

Aboriginal women and their children suffer tremendously as victims in contemporary Canadian society. They are the victims of racism, of sexism and of unconscionable levels of domestic violence. The justice system has done little to protect them from any of these assaults.⁴⁶

These findings were also made public and garnered a great deal of media attention, but no concrete action was taken at the national level. Immediately following the inquiry, the Manitoba Legislature set up a scholarship fund in honour of Helen Betty Osborne, and Manitoba Minister of Justice Gordon Mackintosh issued a public apology to the Osborne family for the failures in the justice system.⁴⁷ A television mini-series was made about Helen Betty's case in 1991 called “Conspiracy of Silence.”⁴⁸ Similarly, in J.J. Harper's case, a book entitled *Cowboys and Indians*:

42. Helen Betty Osborne Memorial Foundation, “About Helen Betty: The Spirit of Inspiration” <<http://helenbetty.ca/home/about-helen-betty/>>.

43. Aboriginal Justice Implementation Commission, *Report of the Aboriginal Justice Inquiry of Manitoba* (Winnipeg: Province of Manitoba, 29 June 2001) ch 1 <<http://www.ajic.mb.ca/volumell/chapter1.html>>.

44. *Ibid.*

45. *Ibid* at 1.

46. *Ibid*, ch 13.

47. Province of Manitoba, “Helen Betty Osborne Scholarship Fund Established” (14 July 2000) <<http://news.gov.mb.ca/news/index.html?item=24626&posted=2000-07-14>>.

48. *Conspiracy of Silence*, 1991, DVD (Ottawa: CBC, 1992), YouTube <<https://www.youtube.com/watch?v=jFGSiu9G0Vc>>; <https://www.youtube.com/watch?v=f77zZ5_YCoc>.

The Killing of J.J. Harper was released in 1999, and a television movie with the same title was released in 2003.⁴⁹ Both cases and the inquiry received extensive publicity and attention but little concrete action.

2004 Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform

Shortly thereafter in 2004, the Saskatchewan Commission on First Nations and Metis Peoples and Justice Reform issued its findings in a comprehensive investigation in relation to “all components of the criminal justice system including, but not limited to: policing, courts, prosecutions, alternative measures, access to legal counsel, corrections including community corrections, youth justice, community justice processes, and victims services.”⁵⁰ As the commission began its work, it became obvious that the conflict between Indigenous peoples and the justice system was the result of poor socio-economic conditions.⁵¹ The report also emphasized that “racism is a major obstacle to healthy relations with the First Nations and . . . police organizations.”⁵² This report was widely publicized, especially in Saskatchewan and appeared to be timed around the release of an “explosive” inquiry in 2004 relating to the police-involved death of Neil Stonechild.⁵³

Neil Stonechild, was a young Cree man who died of hypothermia after being apprehended, hand-cuffed, and driven to a remote location out of town by police officers. This practice is known as a Starlight Tour—where police pick up Indigenous men, drive them to the outskirts of town (sometimes without their coats and shoes) to freeze to death in cold weather. There is no doubt that racism is at the root of this lethal practice, which, by recent accounts, is a practice used on Indigenous women as well.⁵⁴

49. Gordon Sinclair, *Cowboys and Indians: The Shooting of JJ Harper* (Toronto: McClelland & Stewart, 2000); *Cowboys and Indians: The JJ Harper Story*, 2003, DVD (Ottawa: CBC, 2003), YouTube <<https://www.youtube.com/watch?v=3nPYqEbwuDo>>.

50. Saskatchewan, Commission on First Nations and Metis Peoples and Justice Reform, *Legacy of Hope: An Agenda for Change: Final Report from the Commission on First Nations and Metis Peoples and Justice Reform* (Regina: Ministry of Justice, 21 June 2004), vol 1, Executive Summary <<http://www.justice.gov.sk.ca/justicereform/volume1.shtml>>.

51. *Ibid.*

52. *Ibid* at 5–6.

53. Saskatchewan, Commission of Inquiry into Matters Relating to the Death of Neil Stonechild, *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* (Regina: Ministry of Justice, October 2004) <<http://www.justice.gov.sk.ca/stonechild/finalreport/Stonechild.pdf>> [Stonechild Inquiry].

54. Andrew Russell, “Allegations Police Abused First Nations Women in Val d’Or Part of a National Problem, Observers Say” *Global News* (28 October 2015) <<http://globalnews.ca/news/2304898/allegations-police-abused-first-nations-women-in-val-dor-part-of-a-national-problem-observers-say/>>.

The Saskatchewan Commission's report got a great deal of media attention as the core recommendations highlighted the need for police to get better anger management training and cultural awareness training as it related to Indigenous peoples.⁵⁵ The inquiry also received attention when an author tried to release a book exonerating the police on the twenty-fifth anniversary of Stonechild's death.⁵⁶ The report was back in the media recently when Saskatchewan police tried to erase all online references to their practice of Starlight Tours from Wikipedia.⁵⁷ It is not like governments and Canadians alike do not know there is a problem of racism in the police and justice system—it is the denial or cover-up of the problem that allows it to continue.

2007 Ipperwash Inquiry

Again, only several years later, there was another inquiry for the police shooting of an unarmed Indigenous person in Ontario. This time it was the Ontario Provincial Police (OPP) who shot an unarmed land defender named Dudley George in 1995 over lands claimed by Kettle and Stony Point First Nation. The report of the Ipperwash Inquiry was released in 2007 and concluded that “cultural insensitivity and racism was not restricted to a few ‘bad apples’ within the OPP but was more widespread.”⁵⁸ This report was also widely publicized, and the case was documented in a book called *One Dead Indian: The Premier, the Police and the Ipperwash Crisis* in 2001.⁵⁹ The book was adapted into a television movie by the same name in 2006. Again, another inquiry that was followed by various forms of publication that ensured a wide audience beyond government or justice officials resulted in no change.

2013 Human Rights Watch Report

Human Rights Watch completed an investigation into stories of police abuse in northern British Columbia and detailed a shocking number of reports of physical

55. Stonechild Inquiry, *supra* note 53 at 213.

56. Jason Warnick, “Book Seeking to Clear Police in Neil Stonechild Case Was to Launch on 25th Anniversary of Teen’s Freezing Death”, *Saskatoon Star Phoenix* (23 November 2015) <<http://thestarphoenix.com/news/local-news/book-seeking-to-clear-police-in-neil-stonechild-case-was-to-launch-on-25th-anniversary-of-teens-freezing-death>>.

57. Meagan Campbell, “New Light on Saskatoon’s ‘Starlight Tours’”, *Macleans* (8 April 2016) <<http://www.macleans.ca/news/canada/new-light-on-saskatoons-starlight-tours/>>.

58. Ontario, Ipperwash Inquiry, *Report of the Ipperwash Inquiry*, by Sidney Lindon (Toronto: Publications Ontario, 31 May 2007), vol 2, at 272 <http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/report/vol_2/pdf/E_Vol_2_Full.pdf>.

59. P Edwards, *One Dead Indian: The Premier, the Police and the Ipperwash Crisis* (Toronto: McClelland & Stewart, 2003).

and sexual abuse committed by the police against Indigenous women and girls.⁶⁰ A common theme throughout the report was the fear of retaliation by the police if these children and women spoke out. The fear was so acute that the investigators likened it to the fear women have in post-conflict countries where state abuses are rampant: “The palpable fear of the police was accompanied with a notable matter of fact manner when mentioning mistreatment by police, reflecting a normalized expectation that if one was an indigenous woman or girl police mistreatment is to be anticipated.”⁶¹ The individuals that did participate in the investigation reported crimes of unprovoked police beatings, rapes, and even stalking against both adult Indigenous women and girls, all of whom were unarmed. Police have attacked unarmed girls with batons, attack dogs, and even tazers.⁶² One girl had her arm broken by the same police officer who had originally been called to protect her from an abusive older boyfriend.⁶³ Those that attempted to file complaints against the police have not received justice.⁶⁴ After many decades of this kind of behaviour, it is no wonder Indigenous women and girls are fearful of the police and hesitate to call them when they need protection from violent partners.

Statistics on Violence in Police Families

Studies on police violence in the United States have shown that rates of domestic violence are more than double in police families.⁶⁵ What is worse is that very few incidents of abuse are reported, and when they are reported, police are rarely arrested, prosecuted, or fired. Rather they are usually protected by their colleagues and superiors.⁶⁶ Female victims of police are particularly vulnerable as they know the police have guns, know where to find them using police databases, know the

60. Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (New York: Human Rights Watch, 2013) at 32 <https://www.hrw.org/sites/default/files/reports/canada0213webwcover_0.pdf>.

61. *Ibid* at 24, 34.

62. *Ibid* at 53–56.

63. *Ibid* at 51–53.

64. *Ibid* at 31–34.

65. See eg Peter Neidig, Harold Russell & Albert Seng, “Interspousal Aggression in Law Enforcement Families: A Preliminary Investigation” (1992) 15:1 *Police Studies: The International Review of Police Development* 30, cited in “Police Family Violence Fact Sheet”, National Centre for Women and Policing <<http://womenandpolicing.com/violenceFS.asp>> [“Police Family Violence Fact Sheet”].

66. “Police Family Violence Fact Sheet”, *supra* note 65; Victoria Hargan, *Police Personality and Domestic Violence: A Forensic Psychological Approach* (CreateSpace Independent Publishing Platform, 2012).

location of all shelters, and can cover up their own crimes.⁶⁷ While these studies related specifically to police in the United States, preliminary research seems to suggest that the problem of police violence within their own families is similar in Canada.⁶⁸ Clearly, if police officers are disproportionately likely to abuse their own families, their unchecked behaviour creates a significant risk for all women who report violence to them and with whom they come into contact. This is especially true for Indigenous women and girls given the added element of racism.

Governments have long known that there is a highly lethal racism problem in Canada, and the evidence suggests that Canada has failed to act. This failure has resulted in Indigenous women and girls bearing the brunt of racism as well as gendered exploitation and sexualized violence from police forces.⁶⁹ Indigenous women have literally become the targets of police sexualized violence and racism as the shooting target poster of an Aboriginal woman at the Saskatchewan Police College shooting range showed so clearly.⁷⁰

Denying the Problem: Normalization of Racism and Misogyny

The impact of not addressing racism within Canada's police forces and justice systems has been disastrous for Indigenous peoples. In addition to over-incarceration rates that have reached crisis levels, it also means reduced protection, increased violence, and even death by police forces.⁷¹ Unfortunately, most cases of police abuse seem to escape media coverage, with unions and managers making employee discipline matters confidential. Sometimes, the most blatant examples of police racism or abuse have been subjected to media blackouts for fear of reprisals by the community from which the victim originates.⁷² Rarely do we see police forces, their

67. *Ibid.*

68. Susanna Hope & Alex Roslin, "Police Wife: The Secret Epidemic of Police Domestic Violence", *Canadian Dimension Magazine* (31 October 2015) <<https://canadiandimension.com/articles/view/police-wife-the-secret-epidemic-of-police-domestic-violence>>.

69. CEDAW, *supra* note 17 at 23–24.

70. Canada, Standing Committee on the Status of Women, *Evidence*, 40th Parl, 3rd Sess, No 51 (21 January 2001) at 1115 (Muriel Venne) <<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4906717>>.

71. Canada, Office of the Correctional Investigator, "Backgrounder: Aboriginal Offenders: A Critical Situation" (Ottawa: Correctional Service of Canada, 16 September 2013) <<http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>>: "While Aboriginal people make up about 4% of the Canadian population, as of February 2013, 23.2% of the federal inmate population is Aboriginal (First Nation, Métis, or Inuit)."

72. Kirk Makin, "Kenora Police Framed Murder Charge", *Globe and Mail* (22 March 2004) <<http://www.theglobeandmail.com/news/national/kenora-police-framed-murder-charge/article1129516/>>. There was a publication ban on the court findings of police officers who framed an innocent man of murdering an Indigenous man to cover up the fact that it was the nephew of the investigating officer who committed the murder.

managers, or unions taking responsibility for their crimes even when they are charged, no matter how heinous the crimes.

Where media coverage is attempted, whether the officers are charged with gang rape, child pornography, or sexual assault, the common response from police chiefs, commissioners, and union presidents is that the officers are entitled to the presumption of innocence or that no comment can be made during an investigation.⁷³ Regardless of how widespread or serious the allegations, even mayors will side with the police rather than express sincere concern for the victims.⁷⁴

Where officials do comment in the media, they often downplay the actual offence and provide a counter-narrative that portrays them as hard-working men with lengthy service records and even as heroes. In one recent arrest in Toronto, the police officer accused of sexual assault was described as a “hero” in the report, which recounted how he had earlier saved someone from drowning. The report also focused on his lengthy twenty-three-year career, while little mention was made of the female victim.⁷⁵ In a case specific to police abuse against Indigenous women and girls, the police union in Val d’Or implied that these women were using the police as “scapegoats” for their difficult lives.⁷⁶

Just as police forces and many men in society have normalized the racist and misogynist views that Indigenous women and girls can be violated and exploited with little fear of prosecution, many Indigenous women and girls have normalized an expectation of racism and gendered violence from the police, without any hope of holding them accountable. The media has a large role to play in this as it has also normalized this gendered racism even in the way it covers the murders or disappearances of Indigenous women versus non-Indigenous women. It has been shown that a missing Indigenous woman receives far less attention than would a young, blonde Canadian woman who had gone missing.⁷⁷ One study concluded:

73. Wendy Gillis, “Four Toronto Police Officers Charged with Obstructing Justice, Perjury”, *Toronto Star* (29 January 2016) <<http://www.thestar.com/news/crime/2016/01/28/toronto-police-officers-charged-with-obstruction-of-justice-perjury.html>>.

74. “Four Toronto Police Officers Charged with Perjury, Obstructing Justice”, *CBC News* (28 January 2016) <<http://www.cbc.ca/news/canada/toronto/toronto-police-saunders-1.3423318>> (Mayor John Tory quoted as saying “he believes the case ‘will be dealt with appropriately’”).

75. Dan Taekema, “Toronto Police Officer Charged with Sexual Assault”, *Toronto Star* (2 March 2016) <<http://www.thestar.com/news/crime/2016/03/02/toronto-police-officer-charged-with-sexual-assault.html>>.

76. “Police Union Defends Val d’Or Officers, Warns Stories of Abuse Are Only Allegations”, *CBC News* (26 October 2015) <<http://www.cbc.ca/news/canada/montreal/union-defends-val-d-or-police-aboriginal-women-abuse-1.3289641>>.

77. Kristen Gilchrist, “‘Newsworthy’ Victims? Exploring Differences in Canadian Local Press Coverage of Missing/Murdered Aboriginal and White Women” (2010) 10:4 *Feminist Media Studies* 373 at 385 <<https://ipsmo.files.wordpress.com/2010/12/news-worthy-victims-gilchrist-2010-missing-murdered-aboriginal-women.pdf>>.

The Aboriginal women received three and a half times less coverage; their articles were shorter and less likely to appear on the front page. Depictions of the Aboriginal women were also more detached in tone and scant in detail in contrast to the more intimate portraits of the White women.⁷⁸

Women are presented in the media as good or bad and worthy of saving or not, based on deeply embedded racial constructs.⁷⁹ These constructs often result in victim-blaming discourse around Indigenous women and their “high-risk” lifestyles while ignoring the unequal socio-economic context from which they come.⁸⁰ This media coverage signals to the public that crimes against Indigenous women do not matter. Further, reduced media coverage of disappeared women actually hampers investigations that rely on tips from the public and, ultimately, delays or denies justice for Indigenous women.⁸¹

While government spin-doctors—also known as spokespeople—have tried to refocus the research and media headlines on domestic violence (blaming First Nations men)⁸² or the alleged high-risk lifestyles of the victims (blaming addictions or prostitution),⁸³ the root of the problem is far more complex. The factors that make Indigenous women and girls most vulnerable to being disappeared, murdered, or victims of violence are that they are (1) Indigenous and (2) female.⁸⁴ Simply being born puts them into this high-risk category because of the deep racism and sexism that exists in Canada and its laws, policies, and institutions. The blatant racism, exploitation, and sexualized violence committed against Indigenous women and girls at the hands of the police and the justice system is a symptom of normalized racism that has never been addressed. The failure to address it has compounded, and continues to compound, the crisis.

78. *Ibid* at 1.

79. *Ibid* at 3.

80. *Ibid* at 4.

81. *Ibid* at 3.

82. See note 15 in this article and accompanying text.

83. Terrance Nelson, “The Blame Game Can’t Strengthen First Nations”, *Winnipeg Free Press* (31 August 2015) <<http://www.winnipegfreepress.com/opinion/analysis/the-blame-game-cant-strengthen-first-nations-323399171.html>>. See also Organization of American States, Inter-American Commission on Human Rights, 144th Sess, *Missing and Murdered Aboriginal Women and Girls in British Colombia, Canada: Briefing Paper for the Thematic Hearing before the Inter-American Commission on Human Rights*, Doc OEA/Ser.L/V/II.Doc. 30/14 (2012) at 4 <<http://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>>; NWAC, *Sisters in Spirit Report*, *supra* note 8 at 96.

84. Native Women’s Association of Canada, *Social Determinants of Health and Canada’s Aboriginal Women* (Ottawa: NWAC, 2007) at 5 <<http://www.nwac.ca/wp-content/uploads/2015/05/2007-Social-Determinants-of-Health-and-Canada%E2%80%99s-Aboriginal-Women-NWAC-Submission-to-WHO-Commission.pdf>>; Thomas Isaac & Mary Maloughney, “Dually Disadvantaged and Historically Forgotten?: Aboriginal Women and the Inherent Right to Self-Government” (1992) 21:3 *Manitoba Law Journal* 453 at 457.

Moreover, when police abuses do hit the headlines, the public often expresses shock or disbelief, and nowhere is this more evident than in the racist comments against Indigenous peoples made by anonymous online posters.⁸⁵ Despite all of the evidence, some will still deny the facts in front of them, preferring to see the problem as random acts of violence or the work of serial killers. Even after the Human Rights Watch report in 2013, we still could not get the government to admit there was a problem with murdered and missing Indigenous women, let alone a particular problem within Canada's many police forces.⁸⁶ Former Prime Minister Stephen Harper's response to the murder of Tina Fontaine was to deny that murdered and missing Indigenous women was a sociological phenomenon, and, instead, he saw her death as simply a regular "crime."⁸⁷ When pressed about the many calls for a national inquiry, Harper replied: "It's not high on our radar to be honest."⁸⁸ Even when faced with the Royal Canadian Mounted Police (RCMP) report on the numbers of murdered and missing Indigenous women and girls (1,181), which nearly doubled the earlier estimates made by the Native Women's Association of Canada (NWAC) (600), the then Conservative federal government's response was more denial and victim blaming.⁸⁹ In fact, the former Minister of Aboriginal Affairs, Bernard Valcourt, blamed the crisis on First Nation men, alleging that "a lack of respect for women and girls on reserves" is the underlying cause.⁹⁰ Not unexpectedly, neither the RCMP report nor the federal government's responses acknowledged the police as part of the problem or put forward a plan to address it.

Notwithstanding the change in tone reflected in the decision of the new Liberal government to prioritize the national inquiry on missing and murdered Indigenous women and girls,⁹¹ and Minister of INAC Carolyn Bennett's insistence that the

85. Jennifer McGuire, "Uncivil Dialogue: Commenting and Stories about Indigenous People", Editorial, *CBC News* (30 November 2015) <<http://www.cbc.ca/newsblogs/community/editorsblog/2015/11/uncivil-dialogue-commenting-and-stories-about-indigenous-people.html>>; Charlie Angus, "Taking on the Trolls: Why the Online Race-Hatred against First Nations?", *Huffington Post* (16 July 2013) <http://www.huffingtonpost.ca/charlie-angus/aboriginal-online-commenters-_b_3600686.html>.

86. Human Rights Watch, *supra* note 60 at 34.

87. Alex Boutillier, "Native Teen's Slaying a 'Crime' Not a 'Sociological Phenomenon', Stephen Harper Says", *Toronto Star* (22 August 2014) <http://www.thestar.com/news/canada/2014/08/21/native_teens_slaying_a_crime_not_a_sociological_phenomenon_stephen_harper_says.html>.

88. "Full Text of Peter Mansbridge's Interview with Stephen Harper", *CBC News* (17 December 2014) <<http://www.cbc.ca/news/politics/full-text-of-peter-mansbridge-s-interview-with-stephen-harper-1.2876934>>.

89. RCMP, *Overview*, *supra* note 3; NWAC, *Research Findings*, *supra* note 11.

90. Mark Kennedy, "Valcourt Urges First Nations, Provinces to Take Action on Murdered Aboriginal Women", *Ottawa Citizen* (12 December 2014) <<http://ottawacitizen.com/news/politics/bernard-valcourt-rejects-inquiry-on-murdered-aboriginal-women>>.

91. Mas, *supra* note 19.

inquiry must address the root causes of what makes Indigenous women vulnerable,⁹² there is still a strong tendency for officials to look for answers that are easier to accept than the uncomfortable truth. For example, Minister Bennett made headlines shortly after the federal election, calling for action to protect Indigenous women from serial killers.⁹³ She was quoted as saying that the issue of serial killers targeting Indigenous women and girls was “hugely important,” despite the fact that serial killers accounted for only 1 percent of the overall victims.⁹⁴ While serial killers are sensational, they are not the primary factor contributing to murdered and missing Indigenous women and girls in Canada. Trying to get attention focused on police violence against Indigenous women and girls will be difficult in this context since we do not see any kind of regular reporting on the numbers of sexual or physical abuse claims filed by Indigenous women and girls against police or updates on how criminal complaints have been addressed. The problem of racialized gendered police violence is literally out of sight and out of mind, whereas serial killers are writing books and making movies.⁹⁵

Police Racialized and Sexualized Violence

Despite the many commissions, inquiries, and investigations, there still seems to be a wilful blindness to ongoing police violence, racism, and abuse of authority. While these first examples do not relate specifically to Indigenous women and girls, they do point to a very disturbing trend in policing that questions both the credibility of police officers and the unions that defend their increasingly racist and violent acts and abuses of authority.

Racialized Police Violence in Toronto

In early 2016, all of Toronto’s attention was on the bizarre conviction of Toronto police officer James Forcillo, who was found guilty of attempted murder in relation

92. Kristy Kirkup, “National Inquiry Must Go beyond Tally of MMIW: Bennett”, *Maclean’s* (16 February 2016) <<http://www.macleans.ca/politics/ottawa/national-inquiry-must-go-beyond-tally-of-mmiw-bennett/>>.

93. Kathryn Baum, “Action Needed to Protect Indigenous Women from Serial Killers, Minister Says”, *Globe and Mail* (26 November 2015) <<http://www.theglobeandmail.com/news/politics/action-needed-to-protect-indigenous-women-from-serial-killers-minister-says/article27505103/>>.

94. *Ibid.*

95. “Robert Pickton, Notorious Killer, Pens Book for Sale on Amazon”, *CBC News* (21 February 2016) <<http://www.cbc.ca/news/canada/british-columbia/pickton-book-amazon-outrage-1.3457989>>.

to the shooting death of Sammy Yatim.⁹⁶ Yatim was an eighteen-year-old Armenian man from Syria, who, possessing only a small pocket knife, was mortally shot three times in the heart by Forcillo. The officer then shot him six more times, after which he was joined by another officer who then tazered the deceased Yatim.⁹⁷ Only three days after the Forcillo verdict, four more Toronto police officers were arrested with seventeen charges related to planting evidence on a suspect and obstructing justice (lying), and they were all suspended with pay.⁹⁸ This scenario also received a great deal of media attention, but the three Toronto police officers charged in the gang sexual assault of a female member of the Toronto police force seemed to get very little attention in comparison.⁹⁹ The problem of police violence specifically against racialized people is so rampant in Toronto that the families of the victims have created an organization called Affected Families of Police Homicide, which helps advocate on behalf of the victims, many of whom are unarmed teenagers who have lost their lives at the hands of police.¹⁰⁰ Many of these victims come from Indigenous, Black, or other racialized backgrounds.¹⁰¹ However, it is important to note that while Toronto is a grim example of problems in policing, this is not a Toronto-only phenomenon, nor does it only involve police homicide against racialized men.

Police Sexual Violence: Examples from Ontario and Québec

Sexualized violence by police against women and girls in general is also increasingly coming to the surface. Last year, a York Region police officer who had

96 Wendy Gillis, “‘Mystery’ Charge Only One That Sticks in Sammy Yatim Slaying”, *Toronto Star* (25 January 2016) <<http://www.thestar.com/news/crime/2016/01/25/mystery-charge-only-one-that-sticks-in-sammy-yatim-slaying.html>>.

97. Alysha Hasham, “Forcillo Guilty of Attempted Murder in Shooting Death of Sammy Yatim”, *Toronto Star* (26 January 2016) <<http://www.thestar.com/news/crime/2016/01/25/jury-returns-in-murder-trial-for-const-james-forcillo-charged-in-shooting-death-of-sammy-yatim.html>>.

98. Wendy Gillis, “Four Toronto Police Officers Charged with Obstructing Justice, Perjury”, *Toronto Star* (29 January 2016) <<https://www.thestar.com/news/crime/2016/01/28/toronto-police-officers-charged-with-obstruction-of-justice-perjury.html>>.

99. Manisha Krishnan, Marco Chown & Wendy Gillis, “Three Toronto Police Officers Charged with Gang Sexual Assault”, *Toronto Star* (19 February 2015) <<http://www.thestar.com/news/crime/2015/02/19/three-toronto-police-officers-charged-with-sexual-assault.html>>. The accused officers were all suspended with pay.

100 Adam Carter, “Victim’s Rights Group Lobbying Province, SIU For Change”, *CBC News* (5 December 2013) <<http://www.cbc.ca/news/canada/hamilton/news/victim-s-rights-group-lobbying-province-siu-for-change-1.2451123>>.

101. Brendan Kennedy, “Police Knew of Mental Illness before Fatal Shooting, Family Says”, *Toronto Star* (31 August 2010) <http://www.thestar.com/news/gta/2010/08/31/police_knew_of_mental_illness_before_fatal_shooting_family_says.html>.

served on the force for thirty-one years was charged with sexual assault of a minor.¹⁰² His alleged victim was a little girl who was under twelve years old. Then there are the many officers reportedly involved in the making or possession of child pornography including: Peel Region Police Officer Craig Watier, who was charged with child pornography-related offences; OPP officer Mark Maltais, who was charged with a child pornography offence (and suspended with pay); and Toronto Police officer Darius Kisielewski, who was charged with making and possessing child pornography.¹⁰³

Recently, eight Quebec provincial police were suspended with pay due to numerous reports of abuse and physical and sexual assaults of Indigenous women.¹⁰⁴ At least one incident involved an officer driving a woman far from her house, breaking her cell phone, and throwing her shoes into the snow before driving away. Some of their stories mirrored the police abuse experienced by Indigenous men in Saskatchewan in Starlight Tours.¹⁰⁵ To know that Indigenous women are being subjected to the same type of Starlight Tours and, in addition, being subjected to sexualized violence shows that despite all of the commissions, inquiries, and reports to date, little has changed in the relationship between police and Indigenous peoples. To make matters worse, neither the police nor the federal, provincial, and territorial governments have stepped up to condemn either the large number of implicated officers or the targeting of Indigenous women. Instead, the police union in Val d'Or came out swinging against the suspension of the officers, implying that the officers were being used as "scapegoats" for the problems in First

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102. "York Regional Police Officer Charged with Sexual Assault Involving a Minor", *CBC News* (11 November 2015) <<http://www.cbc.ca/news/canada/toronto/york-police-1.3314053>>.
 103. James Moore, "Update: Former York Regional Police Sergeant Accused of Sexually Assaulting a Young Girl", *NewsTalk 1010* (11 November 2015) <<http://www.newstalk1010.com/news/2015/11/11/update-former-york-regional-police-sergeant-accused-of-sexually-assaulting-a-young-girl>>; "Peel Regional Police Officer Faces Child Pornography, Fraud Charges", *CBC News* (19 August 2015) <<http://www.cbc.ca/news/canada/toronto/peel-regional-police-officer-faces-child-pornography-fraud-charges-1.3197105>>; Leith Dunick, "OPP Sergeant Facing Possession of Child Porn Charge", *TBNewsWatch* (28 January 2016) <http://www.tbnewsWatch.com/News/380386/OPP_sergeant_facing_possession_of_child_porn_charge>; Tim Alamenciak & Jane Gerster, "Toronto Police Officer Charged with Making Child Pornography", *Toronto Star* (10 September 2013) <http://www.thestar.com/news/crime/2013/09/10/toronto_police_officer_charged_with_making_child_pornography.html>.
 104. Donald McKenzie, "8 Quebec Cops Suspended in Wake of Abuse and Sexual Assault Allegations", *Toronto Sun* (23 October 2015) <<http://www.torontosun.com/2015/10/23/8-quebec-cops-suspended-in-wake-of-abuse-and-sexual-assault-allegations>>.
 105. Les Perreux, "Quebec Police Pulled from Investigation into Alleged Abuse by Its Officers", *Globe and Mail* (23 October 2015) <<http://www.theglobeandmail.com/news/national/eight-quebec-police-officers-suspended-in-wake-of-assault-allegations/article26949490/>>.

Nations.¹⁰⁶ It went on to claim that the stakeholders are “fueling the popular condemnation of Sûreté du Québec police officers.”¹⁰⁷ Even worse was the response of the other officers in Val d’Or, who, in solidarity with their suspended colleagues, staged a sort of protest and called in sick for the weekend. All of this bad behaviour followed the director general of the Sûreté du Québec’s pronouncement that “there is no crisis in the town”—a statement eerily similar to that of former Prime Minister Harper and his denial of the crisis of murdered and missing Indigenous women.¹⁰⁸

Despite the degree of publicity these cases have received, there appears to be a high degree of impunity enjoyed by the police, and even when they are subject to discipline, many continue to be paid and have their legal bills covered. Currently, in Ontario alone, there are at least fifty police officers suspended with pay, at a cost of over \$4.5 million to Ontarians.¹⁰⁹ It should come as no surprise in this context that Canada has a crisis of murdered and missing Indigenous women and girls, when the police themselves have become the predators. There is almost no risk to an officer—the chances of getting caught are slim, financial repercussions are minimal, and the chance of conviction is extremely remote. Police corruption, while different from sexual crimes, is a behaviour that heightens the degree of impunity enjoyed by police. Such corruption enables police to cover up sex crimes in a way that ordinary citizens cannot. Police have a unique ability to manipulate evidence, solicit corroborating statements from their fellow officers, and intimidate victims with access to their personal information or threats of charges. In British Columbia, seventeen officers were recently charged with 148 counts of serious misconduct (including corruption and deceit).¹¹⁰ If police can do this, what message does this send society? Whether it is outright targeting of Indigenous women and girls for violence or the refusal to protect them by locating the missing individuals and investigating and charging the killers, police racism and violence is exacerbating the crisis.

The degree to which racism and sexualized violence has permeated police forces in Canada is alarming, but it is not as alarming as it would be if we knew the real numbers of all the women and girls who never came forward, all those who were turned away by authorities, and all those who filed complaints that were ignored. If

106. “Police Union Defends Val d’Or Officers, Warns Stories of Abuse Are Only Allegations”, *CBC News* (26 October 2015) <<http://www.cbc.ca/news/canada/montreal/union-defends-val-d-or-police-aboriginal-women-abuse-1.3289641>>.

107. *Ibid.*

108. “Val d’Or Police Allegations: First Nations Chiefs Outline Demands”, *CBC News* (27 October 2015) <<http://www.cbc.ca/news/canada/montreal/first-nations-chiefs-to-gather-in-val-dor-to-discuss-sex-abuse-allegations-1.3289808>>.

109. Mike Crawley, “At Least 50 Police Officers Currently Suspended with Pay in Ontario”, *CBC News* (28 January 2016) <<http://www.cbc.ca/news/canada/toronto/toronto-ontario-police-suspended-with-pay-1.3424010>>.

110. “17 B.C. Police Officers under Investigation for ‘Serious’ Misconduct Allegations”, *CTV News* (18 February 2015) <<http://www.ctvnews.ca/canada/17-b-c-police-officers-under-investigation-for-serious-misconduct-allegations-1.2241987>>.

the Human Rights Watch report is any indication, we are only seeing a glimpse of a massive problem. What we do know is that women and girls generally see little justice when it comes to sexualized violence committed against them. Even just reporting a sexual assault to the police leaves the vast majority of female victims (78 percent) feeling either abandoned or devastated.¹¹¹ Over 71 percent have reported that working with the police was a negative experience, with others feeling like it would not do any good.¹¹² This may be part of the reason why few sexual assaults are ever reported to police.¹¹³ Of the estimated 460,000 sexual assaults in Canada, only 15,200 (3 percent) are reported to police, only 5,544 (1 percent) lead to charges, only 2,824 (0.6 percent) are prosecuted, and only 1,519 (0.3 percent) end in conviction.¹¹⁴

The problem of racial and sexual violence by police is not isolated in the jurisdictions from which I have drawn examples. The problem is evident in police forces across Canada; therefore, who do we call when the local municipal or provincial police are the perpetrators and refuse to stand alongside the Indigenous women and young girls who are the victims? Some have suggested bringing in the RCMP to investigate complaints and oversee discipline. Yet the evidence suggests that this is not a safe option, as the RCMP itself has also been infected with racism, misogyny, and violence—particularly towards Indigenous peoples—since it was created.

Racism and Sexual Violence in the RCMP

The RCMP has been on the frontlines of the settlement project in Canada, keeping the lands cleared of Indigenous peoples by keeping them on reserve¹¹⁵ or quelling

111. Anna Paperny, “Why Don’t Women Report Rape? Because Most Get No Justice When They Do”, *Global News* (23 February 2015) <<http://globalnews.ca/news/1845136/whydontwomenreportrapebecausemostgetnojusticewhentheydo>>.

112. *Ibid.*

113. Statistics Canada, *Police-Reported Crime Statistics in Canada, 2014*, by Jillian Boyce, Catalogue No 85-002-X (Ottawa: Statistics Canada, 22 July 2015) at 17 <<http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14211-eng.pdf>>.

114. Craig Desson, “What Happens When Someone Is Sexually Assaulted? Statistics Canada Says Few Convictions”, *Toronto Star* (6 December 2014) <http://www.thestar.com/news/canada/2014/12/05/conviction_rate_for_sexual_assault_very_very_low_researcher.html>.

115. RCAP, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Communication Group, 1996), vol 1 at 169, 272–73 <https://qspace.library.queensu.ca/bitstream/1974/6874/5/RRCAP1_combined.pdf>. See also *The Pass System*, 2015, DVD (Toronto: Tamarack Productions, 2015) (investigative historical documentary); Joanna Smith, “‘The Pass System’ Explores Dark Chapter in Canadian History”, *Toronto Star* (10 January 2016) <<http://www.thestar.com/news/canada/2016/01/10/the-pass-system-explores-dark-chapter-in-canadian-history.html>>.

any attempts by Indigenous peoples to assert their Aboriginal and treaty rights to hunt and fish or protect their lands.¹¹⁶ The RCMP also played a central role in capturing and returning Indigenous children to residential schools where they were tortured and sexually abused.¹¹⁷ Many Indigenous peoples still question the extent to which the RCMP knew about the abuse in residential schools but allowed it to continue.¹¹⁸ Some might argue that all of this is in the past, but recent assessments of the RCMP today, such as an article entitled “Royal Canadian Disgrace” in *MacLean’s* magazine in 2011, are not much better.¹¹⁹ Even the RCMP’s own internal investigation has discovered more than 300 incidents of corruption within its ranks in the last decade, casting a dark shadow over the integrity of its members.¹²⁰ Their conduct *vis-à-vis* Indigenous women and girls is further evidence of a serious problem in policing.

In 2011, Manitoba RCMP Constable Kevin Theriault arrested an Indigenous woman at a house party for “intoxication,” locked her in a police cell, and showed up later in his street clothes and took her to his home with the intent of having a “personal relationship” with her.¹²¹ Fellow officers goaded him on, and even his

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116. Pamela Palmater, *Indigenous Nationhood: Empowering Grassroots Citizens* (Winnipeg: Fernwood Publishing, 2015).
117. RCAP, *supra* note 115 at 478; Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, Catalogue No IR4-7/2015E-PDF (Ottawa: Communication Group, 2015) at 61 <http://nctr.ca/assets/reports/Final%20Reports/Executive_Summary_English_Web.pdf>.
118. Royal Canadian Mounted Police (RCMP), *The Role of the Royal Canadian Mounted Police during the Indian Residential School System*, by Marcel-Eugène Lebeuf, Catalogue No PS64-71/2009E (Ottawa: RCMP, 2011) <http://epe.lac-bac.gc.ca/100/200/301/rcmp-grc/role_residential_school-ef/PS64-71-2009-eng.pdf>. The RCMP say their role and knowledge was limited: “Based on data collected, the researcher suggests that the RCMP only played a secondary role in supporting the school system, and while doing this, never initiated any proactive action” (at 172). However, residential school survivors remember it differently. Shari Narine, “Survivors Remember RCMP Involvement Differently” (2011) 29:9 *Windspeaker* 8 Aboriginal Multi-Media Society of Alberta <<http://www.ammsa.com/publications/windspeaker/survivors-remember-rcmp-involvement-differently>>.
119. Ken MacQueen, “The RCMP: A Royal Canadian Disgrace”, *Maclean’s* (18 November 2011) <<http://www.macleans.ca/news/canada/a-royal-canadian-disgrace/>>.
120. “Hundreds of Cases of Police Corruption, RCMP Study Says”, *CBC News* (18 May 2014) <<http://www.cbc.ca/news/canada/manitoba/hundreds-of-cases-of-police-corruption-rcmp-study-says-1.2646928>>.
121. “Outrage over Mountie Who Took Intoxicated Native Woman to His Home”, *Indian Country Today Media Network* (1 September 2015) <<http://indiancountrytodaymedia-network.com/2015/01/09/outrage-over-mountie-who-took-intoxicated-native-woman-his-home-158629>>.

senior officer said: “You arrested her, you can do whatever the fuck you want to do.”¹²² Only investigated three years later, the discipline deemed appropriate for this offence was the loss of seven days of pay.¹²³ In Nova Scotia, an RCMP officer was suspended for the sexual assault of co-workers.¹²⁴ In Alberta, a thirty-four-year veteran of the RCMP was charged in the sexual assault of a twelve-year-old girl.¹²⁵ In Ontario, two RCMP from the explosives training unit in Ottawa are being investigated (though not charged) for nudity, sexual touching, and harassment.¹²⁶ The four complainants allege that they tried to address these issues with RCMP investigators, but the investigators either did not want to talk about it or they tried to talk the complainants out of bringing complaints.¹²⁷ In British Columbia, the RCMP review board dismissed a complaint brought against an RCMP officer accused of having oral sex with a child because it was over a year since the officer was made aware of the allegations.¹²⁸ Although former provincial court judge David Ramsay was imprisoned for targeting and physically and sexually assaulting young Indigenous girls,¹²⁹ there are reports of as many as ten RCMP officers also implicated in the sexual abuse of Indigenous girls that were never addressed.¹³⁰

Meanwhile, in the Northwest Territories, one thirteen-year-old girl, who reported being sexually assaulted to the RCMP, was thrown in a jail cell for the night and not taken to the hospital for medical care, victim support, counselling, or the timely collection of evidence.¹³¹ Their failure to collect evidence in a timely way meant

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122. Holly Moore, “Mountie Takes Woman Home from Jail to ‘Pursue a Personal Relationship’”, *CBC News* (8 January 2015) <<http://www.cbc.ca/news/canada/manitoba/mountie-takes-woman-home-from-jail-to-pursue-a-personal-relationship-1.2893487>>.
 123. *Ibid.*
 124. “Nova Scotia RCMP Suspend Officer for Alleged Assault, Sexual Assault of Female Coworkers”, *Halifax Metro* (2 April 2015) <<http://www.metronews.ca/news/halifax/2015/04/02/nova-scotia-rmp-suspend-officer-for-alleged-assault-sexual-assault-of-female-coworkers.html>>.
 125. Pamela Roth, “High-Ranking Fort McMurray Mountie Charged with Cold-Case Sex Assault of Teen”, *Edmonton Sun* (15 April 2014) <<http://www.edmontonsun.com/2014/04/15/high-ranking-fort-mcmurray-mountie-charged-with-cold-case-sex-assault-of-teen>>.
 126. Alison Crawford, “Allegations of Sexual Touching, Bullying Investigated at Police College Run by RCMP”, *CBC News* (18 February 2016) <<http://www.cbc.ca/news/politics/rcmp-canadian-police-college-review-1.3453903>>.
 127. *Ibid.*
 128. Human Rights Watch, *supra* note 60 at 32.
 129. “Ramsay Gets 7 Years for Sexual Assault”, *CBC News* (1 June 2004) <<http://www.cbc.ca/news/canada/ramsay-gets-7-years-for-sexual-assault-1.479237>>.
 130. Human Rights Watch, *supra* note 60 at 31.
 131. Richard Gleason, “NWT Judge Questions RCMP’s Treatment of 13-year-old Sexual Assault Victim”, *CBC News* (29 March 2016) <<http://www.cbc.ca/news/canada/north/hay-river-sexual-assault-victim-13-years-old-1.3510347>>.

that the RCMP felt they could not proceed with charges. Their actions did not result in any discipline, but, instead, they received “operational guidance.”¹³²

While the evidence clearly demonstrates a problem with gendered violence within the ranks of the RCMP, little has been done by the federal government, Justice Canada, the RCMP itself, or the Department of Public Safety to address the concerns of victims or prevent these offences from recurring. The report of the Missing Women Commission of Inquiry in British Columbia should have been a wake-up call for the RCMP.¹³³ Commissioner Wally Oppal found that both the RCMP initiation and conduct of investigations into the murdered and missing women in British Columbia were filled with “gross systemic inadequacies” and amounted to “a blatant failure.”¹³⁴ The reality is that cultural awareness training is not going to combat such an extensive problem. Unfortunately, the response of the RCMP Commissioner to the Human Rights Watch report was to tell his 29,000 RCMP members: “My message to you today is—don’t be worried about it. I’ve got your back.”¹³⁵ However, this strategy of closing ranks to defend the status quo (which for Indigenous peoples means failure to investigate or protect Indigenous women and girls or their over-incarceration, rape, and murder) is increasingly under fire.

The old excuses that these are bad apples or isolated incidents were permanently shattered by the class action suit filed against the RCMP by nearly 400 female officers and staff.¹³⁶ This is not just a court case about gender discrimination in hiring or promotional practices. It includes numerous claims of serious sexual and physical assaults, including rape, that have left some of the women with psychological injuries or unable to work.¹³⁷

132. Hilary Bird, “RCMP Botched NWT Sex Assault Investigation, Documents Say”, *CBC News* (29 March 2016) <<http://www.cbc.ca/news/canada/north/rcmp-botched-assault-investigation-documents-1.3509942>>.

133. British Columbia, Missing Women Commission of Inquiry, *Forsaken: The Report of the Missing Women Commission of Inquiry*, by Wally Oppal (Victoria: Distribution Centre-Victoria, 19 November 2012) <<http://www.missingwomeninquiry.ca/obtain-report/>>.

134. *Ibid* at 26.

135. CEDAW, *supra* note 17 at para 151.

136. Andrea Woo, “Sexual Harassment Claims against RCMP Reach 336”, *Globe and Mail* (18 July 2014) <<http://www.theglobeandmail.com/news/british-columbia/sexual-harassment-claims-against-rcmp-reach-336/article19669218/>>. See also Natalie Clancy, “More Women Alleging Harassment Want to Join Lawsuit against RCMP”, *CBC News* (31 May 2015) <<http://www.cbc.ca/news/canada/british-columbia/more-women-alleging-harassment-want-to-join-lawsuit-against-rcmp-1.3089534>>.

137. *Ibid*.

Justice Denied: Indigenous Women's and Girls' Fear of Reporting

Experts tell us that the conviction rates for sexual assaults against women worldwide are very small.¹³⁸ Add to this the palpable fear of police held by many Indigenous women and girls, making it highly likely that the majority of assaults committed by police are not even reported, let alone seen through to conviction.¹³⁹ The lack of independence of police investigations also contributes to a lack of accountability on the part of the police and, ultimately, a lack of justice for Indigenous women and girls. This situation has not gone unnoticed.

The Committee on the Elimination of Discrimination against Women (CEDAW) specifically addressed this issue in their 2015 report on Canada.¹⁴⁰ They noted the Human Rights Watch report that detailed the abuse of Indigenous women and girls at the hands of the police, judges, and lawyers that has left behind a “legacy of fear and mistrust of law enforcement agencies and officials.”¹⁴¹ Those police forces that do have semi-independent oversight bodies do not always include a mandate to consider claims of sexual harassment or sexual offences committed by police officers.¹⁴² This leaves Indigenous women and girls with few pathways to justice. CEDAW expressed concern about the effectiveness and independence of the RCMP investigating itself:

The prevailing distrust among aboriginal women is compounded by reports that the oversight bodies that investigate and punish police misconduct, abuse of authority and any other act contrary to police ethics are sufficiently independent and effective. . . . During the country visit, it emerged that aboriginal women experienced difficulties in accessing and understanding the different oversight mechanisms of different police forces.¹⁴³

The committee found that Canada had failed to ensure that complaint processes against police abuses are available and accessible to Indigenous women and girls. Without this guarantee, police cannot fully protect Indigenous women and girls.¹⁴⁴ These are critical issues to be addressed in the national inquiry.

Recommendations

The problem has never been that we do not know what the issues are—rather, it is that Canada (federal, provincial, and municipal governments and police forces) has

138. Holly Johnson, Natalia Ollus & Sami Nevala, *Violence against Women: An International Perspective* (New York: Springer, 2008) at 146.

139. Human Rights Watch, *supra* note 60 at 66.

140. CEDAW, *supra* note 17 at paras 151–58.

141. *Ibid* at para 151.

142. *Ibid* at para 154.

143. *Ibid* at para 156–57.

144. *Ibid* at para 158.

failed to take action to address them. Law enforcement agencies in Canada have remained insulated, such that the police have been able to commit violent acts against Indigenous women and girls with near total impunity. Therefore, any national inquiry into murdered and missing Indigenous women and girls must, at a minimum, include the following actions:

- It must include the full participation of national, provincial, territorial, and municipal governments, with unfettered access to all of the statistical and other information necessary to conduct a full inquiry into the issue of police racism, abuse, and sexualized violence against Indigenous women and girls.
- It must include an extensive investigation into police violence against Indigenous women and girls, noting all filed complaints, investigations, charges, and prosecutions.
- The RCMP, provincial and territorial police, as well as municipal police must be included in the inquiry, with special attention to known problem agencies, with unfettered access to all statistical and other data necessary to determine the extent of police racism, abuse, and sexualized violence against Indigenous women and girls and their failure to initiate and investigate complaints related to the murdered and missing.
- The research cannot be done by police agencies, unions, consultants, or discipline/oversight agencies since they are in large part the reason for such high levels of impunity.
- A complete review must be made of all police acts, laws, regulations, and policies related to prevention, investigation, and discipline for acts of racism and violence against women generally and Indigenous women and girls specifically.
- A complete review must be made of all oversight mechanisms and entities (police-based or independent) for systemic problems related to the proper and complete investigations of police abuse of Indigenous women and girls, including failures to initiate and investigate complaints.
- A review must be made of Canada's domestic and international human rights obligations in regard to the protection of Indigenous women and girls from racism and violence committed by state actors, such as law enforcement, lawyers, and judges.
- Consideration must be given to the impact that police racism and violence has on the victims, their families, communities, and Nations and how to properly compensate them.
- Consideration must be given to the supports and protections, or lack thereof, for victims who wish to report police racism and violence, running from the original complaint and onwards through the complaint and investigation process.
- A specific review should be made of assaults, sexual assaults, and other misconduct by police against Indigenous women and girls at every stage of police custody—initially stopped/called, arrests or detentions, inside police

vehicles, and in jail cells—as well as any complaints not acted upon or where evidence was not collected or could not be collected due to delay.

- Special investigations should be made of the vulnerabilities associated with Indigenous children in care, runaways, and homeless Indigenous women and children to police racism and sexualized violence.

Evidence of the widespread nature of police violence against women in general is staggering. However, the mounting evidence of police racism and violence against Indigenous women and girls seems to indicate that they are targeted for their particular vulnerabilities. The implication of police forces all over Canada in the violence committed against Indigenous women and girls makes the crisis of murdered and missing Indigenous women and girls far more complex than many realize. Relying on Canada’s police forces to investigate murdered and missing Indigenous women is like sending a rabbit to a wolf for protection from other wolves. We have a rampant and systemic problem within Canada’s law enforcement that operates with drastically insufficient oversight and accountability. A national inquiry into murdered and missing Indigenous women and girls will be woefully incomplete if federal, provincial, and municipal police forces are not fully scrutinized. Any failure by the inquiry to investigate police racism, abuse and sexualized violence against Indigenous women and girls will do more harm than good.

Conclusion

Racialized violence against Indigenous peoples has proven to be disastrous to First Nations. Gendered violence is an added element experienced by Indigenous women and girls that is not only overlooked by police but also in fact committed by them. These omissions and commissions significantly affect, and, in some cases, reinforce, discriminatory societal views about the value of Indigenous lives. Just about anyone can dismiss the crimes of a serial killer or psychopath as being abnormal and outside the realm of what is socially and legally acceptable in any given society. But what if the rapists or killers are police? In many ways, the police represent those exceptional individuals chosen to keep the peace, prevent crimes, and protect victims. They are supposed to help enforce laws that allegedly represent society’s values, including the significance of human life and our right to live in safety.

Yet many police forces in Canada have committed crimes against Indigenous women and girls with relative impunity. While, in recent days, they appear to be desperately seeking support from male-dominated First Nations organizations ahead of the national inquiry, these political tactics should not detract from the serious issue that needs to form part of this national inquiry.¹⁴⁵ Instead of calling

145. A Prest, “Police Chiefs Urged to Open Hearts to Indigenous People: ‘We Learn from the Past, We’re Not Going to Live There’”, *Winnipeg Free Press* (1 June 2016) <<http://www.winnipegfreepress.com/local/police-chiefs-urged-to-open-hearts-to-indigenous-people-381538731.html>>.

out the police on their racialized and violent actions against Indigenous women and girls, Assembly of First Nations (AFN) National Chief Perry Bellegarde referred to the police as his “allies” and “colleagues” and counselled them to get their “statistics together” in order to prepare to defend themselves against the finger-pointing to come from the inquiry.¹⁴⁶ The police, for their part, continue to either directly or indirectly blame Indigenous women. The Canadian Association of Chiefs of Police likened Indigenous women to “planes” that need to be fixed or they will crash, while at the same time ignoring the role of racism in police forces and society that leads to murdered and missing Indigenous women and girls.¹⁴⁷ A lack of education does not rape little Indigenous girls—men and police do. There is a vast difference between the vulnerability of a victim and the targeted act of a perpetrator. Neither the AFN nor any police force have the power to, nor should they be attempting to, pre-empt the findings of the national inquiry nor the consequences of those findings.

This is all the more reason why this national inquiry must focus on police racialized and sexualized violence against Indigenous women and girls—one that ensures freedom from political influence by police or male-dominated First Nations organizations. Racist, sexist, and violent police behaviour towards Indigenous women and girls creates many ripple effects in society that make the phenomenon of murdered and missing Indigenous women and girls exponentially worse. When the police fail to properly investigate the murder of Indigenous women or fail to investigate missing Indigenous girls, through their example, they help create a society that devalues Indigenous women and send clear signals that others in society can abuse them with relative impunity. When the police themselves engage in the physical and sexual abuse and exploitation of Indigenous women and girls, then we are faced with a more significant and devastating impact on society. Not only do they indirectly encourage violence against Indigenous women and girls, but they also create situations where Indigenous women and girl victims are reluctant to call the police for help in situations of domestic violence. The fear of receiving the same treatment from police means that these women are left vulnerable in situations of domestic abuse with no one to call for help.

Predatory police forces have put themselves in a Catch-22 situation since vigorous and thorough investigations of sexual assaults, kidnappings, or murders of Indigenous women and girls may implicate them or their police colleagues. Thus, there is an obvious hesitation to probe fully. A properly structured investigation into police

146. CBC News, “National Chief Perry Bellegarde to Police Forces: Don’t Wait for End of MMIW inquiry” (1 June 2016), CBC News <<http://www.cbc.ca/news/canada/manitoba/bellegarde-police-chiefs-1.3610510?cmp=rss>>.

147. CBC News, “MMIW Cases Won’t Stop until Root Causes Addressed, Says Canadian Association of Chiefs of Police” (31 May 2016), CBC News <<http://www.cbc.ca/news/canada/manitoba/mmiw-saskatoon-police-indigenous-reconciliation-chiefs-of-police-1.3609056?platform=hootsuite>>.

forces in Canada must examine police racism, sexism, abuse, neglect, and sexualized violence as the root causes of, and the major barriers to, addressing the crisis of murdered and missing Indigenous women and girls in Canada. We have a chance to make this the last inquiry ever needed on racialized and sexualized violence of police against Indigenous women and girls. It is long past time to shine a light on all of the dark places within Canada's police forces and ensure that the national inquiry exposes the problem so we can work together on the solutions. Nothing less will suffice if we are to move towards true reconciliation.