MASTER THESIS

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„ Examining the connection between Canada's history of systemic discrimination and anti-Indigenous sentiment in the Maritime Provinces"

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Abstract

The sociological study of discrimination has typically focused on empirically unobservable motives to illustrate inequalities pertaining to class, gender, and race. The objective of this research is to analyze scholars' articles on historical systemic discrimination in Canada and the associated cultural and racial ambivalence against Aboriginal people today.

The outcome objective of this research is to determine whether there is a correlation between underlying and ingrained beliefs and popular culture in white settler states, that shifts into direct contempt when Indigenous People resist or benefit from significant progress in their legal rights, which is happening right now in Canada's Maritime provinces, and which reflects current global trends in acceptance of nationalism and identarian politics in United States, South America and Europe.

In analyzing scholars' articles on systemic discrimination in Canada and cultural and racial ambivalence against Aboriginal people, the impact objective is to provide a case for further research and changes to policymaking regarding its connection to the rise of antipathy toward First Nations. Aside from the moral and legal questions around discrimination and human rights, there is widespread condemnation of anti-Indigenous groups and their virulent intolerance, but their existence is undeniable.

Discrimination is illegal according to the Civil Rights Act of 1964[1] and morally offensive to the concept of civilization and this paper will examine its relevance and relation to anti-Indigenous sentiment in a modern Eastern Canadian setting.

[1] *Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241 (1964).*

Kurzbeschreibung

Die soziologische Studie über Diskriminierung hat sich typischerweise auf empirisch nicht beobachtbare Motive konzentriert, um Ungleichheiten in Bezug auf Klasse, Geschlecht und Rasse zu veranschaulichen. Ziel dieser Forschung ist es, wissenschaftliche Artikel über systemische Diskriminierung in Kanada und die damit verbundene kulturelle und rassische Ambivalenz gegenüber Aborigines zu analysieren.

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Bei der Analyse von Artikeln von Wissenschaftlern über systemische Diskriminierung in Kanada und die kulturelle und rassische Ambivalenz gegen Aborigines besteht das Ziel darin, einen Fall für weitere Forschung und Änderungen der Politikgestaltung in Bezug auf den Zusammenhang zwischen systemischer Diskriminierung und dem Anstieg der Antipathie gegenüber First Nations zu liefern. Abgesehen von den moralischen und rechtlichen Fragen gibt es eine weit verbreitete Verurteilung rassistischer Gruppen und ihrer virulenten Intoleranz, aber ihr Aufstieg ist immer noch unbestreitbar.

Diskriminierung ist nach dem Civil Rights Act von 1964 illegal und moralisch beleidigend für das Konzept der Zivilisation, und dieses Papier wird seine Relevanz und Beziehung zu anti-indigenen Gefühlen in einem modernen ostkanadischen Umfeld untersuchen.

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Index of Acronyms and Abbreviations

CAHWCA	Crimes Against Humanity and War Crimes Act
CBC	Canadian Broadcasting System
CERD	The Committee on the Elimination of Racial Discrimination
CHRA	The Canadian Human Rights Act
CRC	Convention on the Rights of the Child
DFO	Department of Fisheries and Oceans
DIAND	Department of Indian and Northern Affairs
ECHR	European Convention on Human Rights
FSC	Food, Social and Ceremonial Licences
IAP	Independent Assessment Process
ICCPR	International Covenant on Civil and Political Rights
ICPPCG	The International Convention of the Prevention and Punishment of Genocide
ILOC	International Labour Organization Convention
IMCRT	The Integrated Mobile Crisis Response Team
IPC	The Indigenous Peoples Court
IRSSA	Indian Residential Schools Settlement Agreement
FPIC	Free, prior and informed consent
MMIWG	Missing and Murdered Indigenous Women and Girls
NBHRC	New Brunswick Human Rights Commission
NCTR	National Centre for Truth and Reconciliation
PANB	Provincial Archives of New Brunswick
RCMP	Royal Canadian Mounted Police
RCAP	The Royal Commission on Aboriginal Peoples
SCC	Supreme Court of Canada
TRC	Truth and Reconciliation Commission
UNB	University of New Brunswick
UNDRIP	The United Nations Declaration on the Rights of Indigenous Peoples
UNPFII	The United Nations Permanent Forum on Indigenous Issues

Chapter 1. Approaching Key Concepts

Canada's history of accommodation and respect was marred by its first century ethic of assimilation and exclusion of its first inhabitants, the Aboriginal Peoples. Chief Justice of Canada, the Right Honourable Beverley McLachlin, P.C.[2] said, "One problem, more than any other, dominates human history – the problem of how we deal with those who are different than us. Why does difference dominate? How can we better manage difference?" Canada, not unlike countries, has wrestled with these questions.

Justice Rosalie Abella[3] wrote in the Royal Commission report in 1984, "Equality is, at the very least, freedom from adverse discrimination. But what constitutes adverse discrimination changes with time, with information, with experience, and with insight. What we tolerated as a society 100, 50, or even 10 years ago is no longer necessarily tolerable." Discriminatory behaviours and traditional social norms permitting overt racism and segregation that were the norm 100 years ago in Canada have, for the most part, given way to a modern norm of egalitarianism.

Although the sociological study of systemic discrimination has typically focused on empirically unobservable motives to illustrate inequalities pertaining to class, gender, and race, one of the root causes is deeply held beliefs and values shaped by a larger social and cultural context, often the legacy of past discrimination. Key elements that constitute systemic discrimination are evident in examples of past discriminatory behaviours by our institutions and examples of discriminatory rulings by Canadian Courts in a system seemingly created to produce advantage for people who are marked as white. Internalization of societal values and beliefs means an individual adopts the world view of

[2] McLachlin, *The Civilization of Difference*, Remarks of the Right Honourable Beverley McLachlin, P.C. Chief Justice of Canada, https://www.scc-csc.ca/judges-juges/spe-dis/bm-2003-03-07-eng.aspx, (accessed July 30, 2021).
[3] Abella, R., 2014, Employment Equity in Canada: The Legacy of the Abella Report (AGÓCS C., Ed.). Toronto; Buffalo; London: University of Toronto Press, http://www.jstor.org/stable/10.3138/j.ctt7zwc0n, (Accessed July 15, 2021).

the society in which they were raised without examining the assumptions on which that view was based, so cultural stereotypes are accepted. In their article *Rethinking Theoretical Approaches to Stigma*, Martin, Lang and Olafsdottir[4] define stigma as 'a mark separating individuals from one another based on the socially conferred judgement that some groups are inferior'. It leads to acceptance of stereotypes, prejudice, and an inclination to exclude or discriminate against those who have been stigmatized.

The essence of stigma is found in the rules and conventions that guide people's behaviour by defining what is acceptable, customary, normal or expected. Stigma may be implicitly understood and agreed upon rather than being openly discussed. Courts have shaped our ideas of systemic discrimination through rulings that established intent was not necessary for discrimination to occur like in the 1985 Simpson Sears case[5] the Supreme Court of Canada's judgement equating in severity adverse and intentional discrimination.

The New Brunswick Human Rights Commission[6] says, 'Canadian courts have recognised that discrimination may be direct, involving an intentional difference in treatment, usually motivated by bigotry, prejudice or stereotypes. However, it may also be unintentional, as in the case of "systemic" or "adverse effects" discrimination that occurs when a uniform practice has a disproportionately adverse effect on a disadvantaged group and the needs of the group are not reasonably accommodated.'[7] Several types of mechanisms have been identified at the root of systemic discrimination: individual, interpersonal, organizational, social and historical. These mechanisms combine to reflect the transnational nature of intolerance in North America, beginning with anti-Catholicism and growing into a complex

[4] Pescosolido, Martin, Lang, Olafsdottir Rethinking theoretical approaches to stigma: a Framework Integrating Normative Influences on Stigma (FINIS). Soc Sci Med. 2008 Aug;67(3):431-40. doi: 10.1016/j.socscimed.2008.03.018. Epub 2008 Apr 22. PMID: 18436358; PMCID: PMC2587424
[5] Ont. Human Rights Comm. v. Simpsons-Sears, 1985 CanLII 18 (SCC), [1985] 2 SCR 536, https://canlii.ca/t/1ftxz , (accessed 15 February 2021).
[6] New Brunswick Human Rights Commission, Government of New Brunswick, https://www2.gnb.ca/content/gnb/en/departments/nbhrc.html, (accessed 15 February 2021).
[7] The New Brunswick Human Rights Commission, The New Brunswick Human Rights Act Explained, https://www2.gnb.ca/content/gnb/en/departments/nbhrc.html, (accessed 15 February 2021).

social process involving the rise in extremism and its associated acts of violence. Dr. David Hofmann[8], an expert in far-right extremism and hate crimes in the Maritimes, has been studying the attraction to hate groups and the complex social process that appeals to the disenfranchised who find in a group mentality a sense of belonging, meaning, and the ability to engage in something greater than themselves. "Group identity can also be a bad thing," Beverly McLachlin[9] wrote, about its negative and self-reinforcing aspects, "with its implication that those different from us are less worthy."[10]

Political change and resistance to immigration may be factors that flame the desire to protect an idealized national identity and racial heritage. Impassioned groups have always existed but the tie to social media and the contemporary form of extremism is extremely strong, allowing individuals struggling to reach an audience the ability to connect and share ideas on a wider scale, online and away from the public eye. It is enabled by *The Canadian Human Rights Act* (CHRA) [11], the central federal legislation that protects the right of individuals, including the far right-wing, to freely participate without unlawful discrimination in all key aspects of society.

This paper will examine how categorization and institutional discrimination have combined to lay way for the continuation of anti-Indigenous sentiment seen on Canada's East coast today.

[8] Hofmann, D., *The study of terrorist leadership: where do we go from here? Journal of Criminological Research, Policy and Practice, ISSN: 2056-3841, Article publication date: 18 September 2017, (accessed 20 September 2020).*
[9] Supreme Court of Canada, The Right Honourable Beverley McLachlin, P.C., C.C., https://www.scc-csc.ca/judges-juges/bio-eng.aspx?id=beverley-mclachlin, (accessed 1 June 2020).
[10] McLachlin The Civilization of Difference Remarks of the Right Honourable Beverley McLachlin
[11] Canadian Human Rights Act (R.S.C., 1985, c. H-6), https://laws-lois.justice.gc.ca/eng/acts/h-6/index.html, (accessed June 1, 2020).

Chapter I.1. Indigenous origins in Canada

Until the arrival of explorers from other continents, First Nations people lived within a vibrant legal pluralism consisting of treaties, intermarriages, trade and commerce contracts, and mutual recognition and respect. Wide systems of diplomacy were used to maintain peace though councils, along with complex and significant unifying protocols such as smoking the peace pipe, holding a Potlach[12] and other inter-societal activities between first nations to bridge distance and discord. All legal traditions are subject to interpretation and disagreement is endemic, however these particular traditions constituted legal arrangements that contributed successfully to extended periods of peace and it is in this subtle yet elaborate socio-legal landscape which Europeans found themselves when they first arrived on the continent.

Chapter I.2. Arrival of the Europeans

'July 7, 1534

Jacques Cartier sailed into a large bay and opening which he later named "Baye de Chaleur" (Chaleur Bay). He encounters Mi'kmaq in canoes and, 3 days later, trades iron utensils for fur - marking the first recorded exchange with Europeans'.[13]

In the early stages of the European occupation, extreme genocidal practices were used to establish control over the Indigenous population. The Beothuk of Newfoundland[14] were wiped out as a result of European encroachment, slaughter and diseases to which they had no natural resistance, and proclamations for the scalps of Mi'kmaw men, women and children were issued by Nova Scotia governor Edward Cornwallis (1749) following the

[12] Gadacz, R. R., The Canadian Encyclopedia, Potlatch, 2019, https://www.thecanadianencyclopedia.ca/en/article/potlatch, (accessed 20 July 2021).
[13] Virtual Museum of Canada, New Brunswick, Our Stories our people, Heritage Branch, Province of New Brunswick, 2002, https://www1.gnb.ca/0007/Culture/Heritage/VMC/NBHistory.asp, (accessed 9 July 2021).
[14] Tuck, James A., 2006, The Canadian Encyclopedia, Beothuk, https://www.thecanadianencyclopedia.ca/en/article/beothuk, (accessed 10 June 2021).

footsteps of United States Massachusetts governor William Shirley (1744)[15]. By the time Canada was created in 1867 the techniques of eradication had been refined and, replaced with a more subtle and pervasive methodology like severe malnutrition, neglect and germ warfare, proved innovative and effective in their goal of weakening the Indigenous population.

In 1763, the British, under Jeffrey Amherst,[16] used blankets exposed to smallpox as germ warfare in an attempt to subdue the First Nations resistance. Indigenous populations were notoriously vulnerable to contagious diseases. Scientists have theorized that the Asians who migrated over the Bering Land Bridge[17] millennia ago were exposed to such intense cold that the weaker diseased travellers died en route. Isolation from Eurasia and Africa insulated North and South America from such contagious killers as bubonic and pneumonic plague, smallpox and tuberculosis but were susceptible to cancer, arthritis and tooth decay.

> *"No regime bent on exterminating another peoples will describe their intent in so many words, since such intent is imbedded in the very operation of the system of extermination. On the contrary, the actions of the agencies of murder are enough proof of such intent, and therefore when the transporting of people into the conditions of disease and death is condoned and facilitated by a government, and when these crimes are concealed from the scrutiny of the world of the same government or other agencies, it can be safely asserted that this regime intends to*

[15] We Were Not the Savages, Scalp Proclamation 1749, http://www.danielnpaul.com/BritishScalpProclamation-1749.html, (accessed 10 June 2021).
[16] Spaulding, William B., Foster-Sanchez, Maia, The Canadian Encyclopedia, Smallpox in Canada, https://www.thecanadianencyclopedia.ca/en/article/smallpox#:~:text=In%201763%2C%20the%20British%20under%20Jeffrey%20Amherst%20used,troops%20besieging%20Quebec%20City%20were%20stricken%20with%20smallpox, (accessed 10 June 2021).
[17] National Park Service, History of the Bering Land Bridge Theory, https://www.nps.gov/bela/learn/historyculture/the-bering-land-bridge-theory.htm, (accessed 10 June 2021).

annihilate the targeted people and is guilty before the world of crimes against humanity." - Robert Jackson, chief American prosecutor, Nuremberg Trials[18]

Chapter II: Colonialization

Professor Emerita, Andrea Bear Nicolas[19] writes that in the traditional native view there is no such thing as rights. There is no related specific word in the Malecite language, only words that imply a person's obligations or responsibility to others. In the aboriginal view, 'all of creation is a circle in which there are only responsibilities inherent in the nature of each being, human and non-human, born and unborn, living and not living.'[20] All things are part of creation, she writes, and they all have a responsibility to maintain the harmonious relations that were established in the beginning by the Creator.[21] The idea of rights though, is focused on the individual and contrary to the aboriginal view, most European languages point to rights as an idea owned by or owed to the human individual.

The words 'rights' and 'responsibilities' perfectly articulate the fundamental differences between aboriginal culture and the dominant immigrant culture in North America. The differences are made even more poignant by the fact that many other words and concepts in the native languages are not found in European languages and likewise, some European concepts and words simply don't exist in the Aboriginal lexicon. The word 'culture' for example, for Indigenous Peoples means not just the clothing, music, food and beliefs a

[18] Robert H. Jackson Center, Nuremberg Trial, International Military Tribunal, 1945-1946, https://www.roberthjackson.org/nuremberg-timeline/, (accessed 17 July 2021).
[19] Professor Emerita, Bear Nicholas, Andrea, BA (Colby), BEd (STU), MEd (University of Maine, Orono), Native Studies, Chair of Studies in Aboriginal Cultures of Atlantic Canada, Professor Emerita https://www.stu.ca/nativestudies/faculty/, (accessed July 17, 2021).
[20] Bear Nicholas, A., Human Rights in New Brunswick, A New Vision for a New Century, Responsibilities Not Rights, A Native Perspective, p.32.
[21] Smith, D. G., The Canadian Encyclopedia, Religion and Spirituality of Indigenous Peoples in Canada, April 2018, https://www.thecanadianencyclopedia.ca/en/article/religion-of-aboriginal-people, (accessed July 17, 2021).

group traditionally practices and enjoys, but 'the way a people see the word, think about it, respond to it and survive in it,' Bear writes.[22]

Fundamental to native cultures in North America was the idea that all of creation, both living and not living, human and non-human, had a spirit and was to be treated with solemn respect. Particularly special is the honour that is accorded to those beings and things that give life, namely women and the Earth.

In the view of the Aboriginal People, land, like water and air, does not belong to anyone, but every single being belongs to the land. For the short and honourable extent of time they are alive and able, and have the opportunity, humans are simply the humble protectors of the land and all life. Sharing and giving, in individual relations or community-wide, are the essential ways in which obligations are fulfilled and harmony and values maintained. All beings are of the Creator, a revered and well-intentioned power or being that has created the world and everything in it, but who is dangerous if treated carelessly or with disrespect, and no one individual has the authority to put himself in a position of lawful control over others but there is an obligation on everyone to see consensus and to consider and respect the opinions of everyone before decisions are made.

A great part of this obligation is to the unborn, and every action was considered and seen through a future retrospective lens, and with a predilection for what will be best for the next generations. The Seventh Generation Principle[23] is based on an ancient Iroquois philosophy that believes the decisions we make today should result in a sustainable world far into the future. Naturally and in keeping with the ongoing trend of white settler cultural expropriation, this prescient philosophy is currently being exploited as an environment-

[22] Bear Nicholas, A., Human Rights in New Brunswick, A New Vision for a New Century, Responsibilities Not Rights, A Native Perspective, p.33.
[23] Indigenous Corporate Training Inc., Working Effectively with Indigenous Peoples®, What is the Seventh Generation Principle?, May 30, 2020, https://www.ictinc.ca/blog/seventh-generation-principle, (accessed 20 July 20 2021).

friendly marketing stratagem to sell everything from diapers to sports cars. Finally then, the wisdom of how to survive in the world is drawn from the experience of the ages and passed down from elders to the younger generations in oral lessons, the intricacies of which were imbued into the future citizens. Their responsibility, along with all human beings in every generation is to learn, live and pass on the cumulative wisdom for the survival of all. Native culture, which saw humans as only a small part of the total world order contrasted dramatically with early European cultures which saw humans as separate from the world order and capable of obtaining and maintaining power over it.

The European emphasis on individualism was embodied in the philosophy of capitalism which encouraged profiting in order to become rich and powerful and to achieve advantage and maintain positions of authority over others. Increasingly contrary to the Indigenous peoples' holistic perception of creation, European culture perceived animals to be at the bottom of the social hierarchy, certain humans to be lower than other humans and in some cases to be subjugated to a less-than-human status.

In this way the concept of ownership and exploitation of the land, of animals and of other human beings was promoted and the concept begat a number of written laws, enacted to protect the right of certain individuals to own and or exploit at will, whatever could be conquered. The concept of rights was central to capitalist societies, which gave rise to sexism, racism, slavery and dictatorship and conversely, while unique to capitalist societies, the idea of human rights was more of an afterthought arising from the troublesome and new need to protect individuals from the excessive exploitation of the very sexism, racism slavery and dictatorship it promoted. From the beginning of European exploration and colonization, the motivation was capitalism- and imperialism-inspired, and exemplified in the drive to build colonies and exploit land and people to build empires and enrich monarchs back in Europe. Colonialism and imperialism were based on violence and the idea that might, comprised of wealth and power, makes right, and justifies the assumption of authority over others. The countries that had the wealth and power to get to the Americas

first had the right to claim and defend huge areas of native territories from other imperial powers and even from the native people themselves – hence the terms New Brunswick, New Scotland (Nova Scotia), New Denmark, New Glasgow and New England, to name a small number of Anglified land renamed to honour a saint, a king, a white settler or their country. Despite people having lived for more than 10,000 years along the Wolastoq river, when Samuel de Champlain visited the mouth of it on the feast day of John the Baptist in 1604, he renamed it the Rivière Saint-Jean, now known in English as the Saint John River, the largest watershed east of the Mississippi and the St. Lawrence and home to the remaining one percent of the Appalachian Hardwood Forest. Many waterways in the system retain their original pre-European names like the Magaguadavic, Meduxnekeag, Nashwaak, Nepisiguit, Oromocto, Restigouche and Tobique Rivers. The Maliseet called it the Wolastoq, meaning 'bountiful, good and beautiful river" and as Wolastoqiyik, or "People of the River", they seek today to restore its original Indigenous name.

 [24]

Table 1: St. John River Valley, or Wolastoq

[24] Poitras, J., CBC, New Brunswick, Maliseet want name of St. John River changed back to 'Wolastoq', June 8, 2017, https://www.cbc.ca/news/canada/new-brunswick/maliseet-river-naming-wolastoq-st-john-pronunciation-1.4150289, (accessed July 20, 2021).

II.1. Treaties

Canada is a country born from treaties with Indigenous peoples.

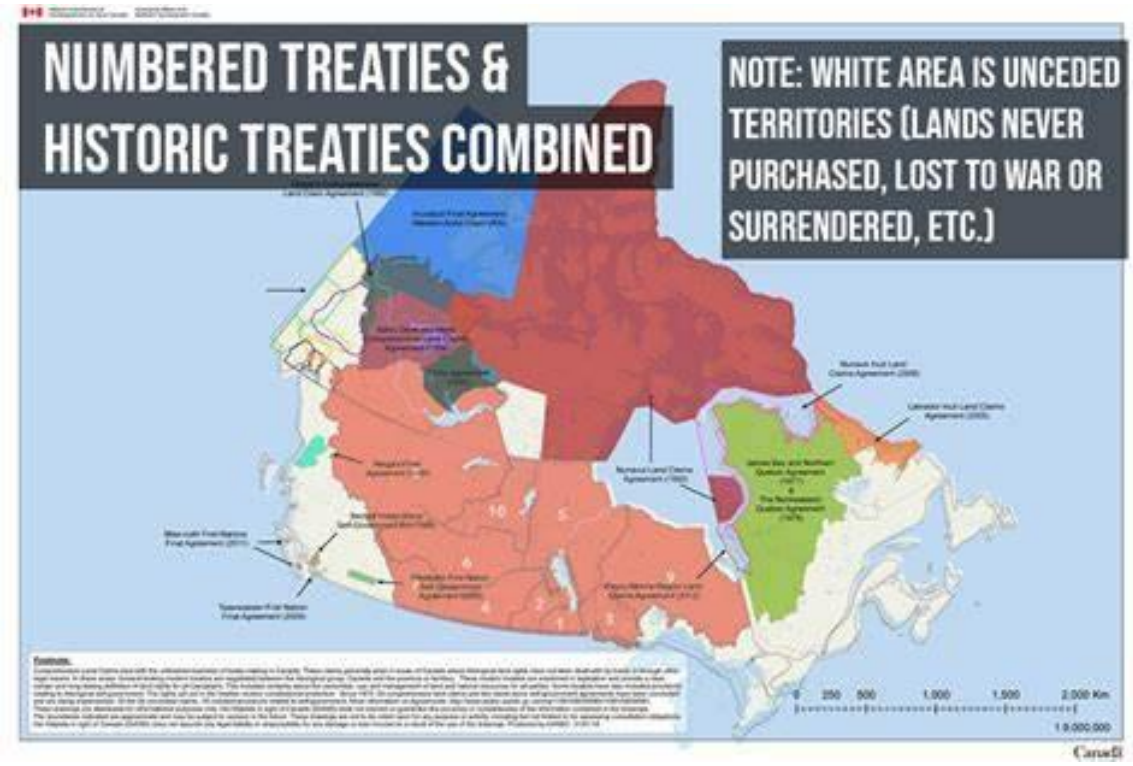
The Royal Proclamation of 1763[25] created the treaty system, which enabled the British Crown to take possession of vast amounts of Indigenous land in western and northern Canada. The baffling agreement, written in a foreign language, ignored the oral traditions of the Indigenous peoples but aligned neatly with the Western European system which emphasized the ownership of land and the value of the written word. The treaty negotiations became incrementally complex and there is no indication that Indigenous people knew the written texts they signed differed from the oral agreements they made.

The treaty was subject to wild interpretation in its promises to provide education, housing, and other benefits and removed crucial freedoms of movement, self-governance and autonomy. The post-confederation Numbered Treaties 1 to 11[26] were made during a relatively short period of time from 1871 to 1921 between First Nations Peoples and the British Crown, and enabled large areas of already occupied land to be subsumed by the Crown in exchange for reserve lands.[27]

These treaties are legally binding agreements between sovereign nations but the Canadian government consistently struggles to live up to the promises stipulated in these covenants.

[25] Hallowell, G., The Oxford Companion to Canadian History Oxford University Press 2004, https://www.erudit.org/fr/revues/uhr/2006-v34-n2-uhr0608/1016017ar.pdf, (accessed 21 July 2021).
[26] W. Benais and M. Equay, The Numbered Treaties, Western Canada's Treaties were intended to provide frameworks for respectful coexistence, April 30, 2018, https://www.canadashistory.ca/explore/settlement-immigration/the-numbered-treaties, (accessed 1 June 2021).
[27] Canada, Justice Laws Website, Possession of Lands in Reserves, https://laws-lois.justice.gc.ca/eng/acts/i-5/page-5.html#h-332093, (accessed 1 June 2021).

Table 2: Numbered and Historic Treaties



[28]

II.2. Unceded Land

A number of international human rights bodies have been successful in elaborating legal principles and standards designed to protect Indigenous Peoples' rights resulting in a strong and effective regime emerging at an international level. Two rights are key - the right to self determination and the right to collectively own ancestral lands.

In Canada though, despite the titles having been relinquished to the government by First Nations by treaty, coercion or otherwise, much of Canada, including all of the Maritime provinces and ninety-five percent of British Columbia, is on unceded traditional First

[28] K. Edwards, Kapyong Barracks Discussion - Page 13 - SkyscraperPage Forum, Numbered Treaties and Historical Treaties Combined, https://th.bing.com/th/id/OIP.iAvOuNZA9vRRwaaWPVmxJwHaE7?pid=ImgDet&rs=1, (accessed 29 June 2021).

Nations territory, which means no treaty was signed, so permission from the First Nation government is required for pipeline, mining, fishing and farming.

A concept central to the debate around the legal regime that should govern the implementation of development projects on Indigenous Peoples' lands is that of *Free, Prior and Informed Consent* (FPIC).[29] This concept is currently invoked by most bodies dealing with Indigenous rights, the FPIC being a specific right pertaining to Indigenous Peoples recognised in the UNDRIP[30].

The United Nations Permanent Forum on Indigenous Issues (UNPFII)[31] explains the concept.

> *Free* means no coercion, intimidation or manipulation.
> *Prior* means consent is sought well in advance of authorization or start of any activities, with enough time allowed for Indigenous consultation.
> *Informed* means that satisfactory information should be provided in relation to key areas including the nature, size, pace, reversibility and scope of the proposed project, the reasons for launching it, its duration and a preliminary assessment of its economic, social, cultural and environmental impact.

Consent is regarded as a process consisting of consultation and participation in accurate and clear language and with total transparency. It is unestablished whether the FPIC imposes on the state an obligation to obtain the consent of Indigenous Peoples before initiating and authorizing development projects on their lands. Most states would say that the interests of their citizens must be equal to the recognition of Indigenous People's rights when it comes

[29] The United Nations Food and Agricultural Organisation, Indigenous peoples, http://www.fao.org/indigenous-peoples/our-pillars/fpic/en/, (accessed 20 June 2021).
[30] A Consolidation of The Constitution Acts 1867 to 1982, https://laws-lois.justice.gc.ca/PDF/CONST_TRD.pdf, (accessed 12 June 2021).
[31] United Nations, Department of Economic and Social Affairs Indigenous Peoples, https://www.un.org/development/desa/indigenouspeoples/, (accessed 20 June 2021).

to owning and regulating resources, meaning that Indigenous People should not have the power to block projects that are considered strategically important for the development of the entire country.

Article 32 of UNDRIP established that:

> *'Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval if any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.'*[32]

According to this provision, no project affecting their lands can take place without their free, prior and informed consent. States maintained that they should not obtain, but 'seek' consent. Since Indigenous movements were gaining recognition at an international level, States were compelled to consider Indigenous views, and acknowledge that their participation was necessary to the production of UNDRIP, the final version of which is a compromise between two conflicting views on the contentious issue of self determination and land rights. UNDRIP article 10[33] states that Indigenous Peoples cannot be forced from their lands or territories and that no relocation can take place without free, prior and informed consent and after agreement on compensation, and where possible, agreement on the option to return.

The World Bank changing the last word in the FPIC from 'consent' to 'consultation', implies that Indigenous Peoples' right to decline unwanted projects taking place on their

[32] United Nations, Indigenous Peoples - Lands, Territories and Natural Resources, Indigenous Peoples Indigenous Voices, https://www.un.org/esa/socdev/unpfii/documents/6_session_factsheet1.pdf, (accessed 12 June 2021).
[33] United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly on 13 September 2007, UNDRIP_E_web.pdf, (accessed 17 June 2021).

land, along with their dignity, their human rights, their economies and their culture are concepts that aren't entirely respected, and that this term is meant to be interpreted restrictively. Denying Indigenous Peoples the right to oppose decisions related to their lands contradicts the existing regime of Indigenous rights.[34]

Like in Australia and Brazil, the Canada and the Canadian Constitution[35] recognizes Indigenous Peoples' rights to the land, the use of the land and the protection of its natural resources. Logging, for example, inside Indigenous territories constitutes a crime under Canadian Federal Law but in New Brunswick and other Canadian provinces, native people have the right to harvest wood from Crown lands for personal use.

In 2005, in R. v. Marshall and R. v. Bernard,[36] the Supreme Court ruled in a unanimous judgment that three New Brunswick men who took Crown wood to make furniture, build a home and to burn as firewood were exercising their aboriginal rights, not stealing. Although the higher court denied Aboriginal People's right to log Crown lands for commercial purposes, it ruled that logging for personal use was permissible, in light of the fact that both Mi'kmaq and Maliseet people logged on those lands centuries before Europeans arrived in North America. The ruling allowed that the right to harvest the wood must be able to evolve with the time to include the construction of modern homes, but the wood cannot be sold, traded or bartered for money. Native rights experts acknowledge the ruling leaves a lot of room for interpretation however, and that there will be questions about how far this non-commercial right can be taken.

[34] Barelli, M., Shaping Indigenous Self-Determination: Promising or Unsatisfactory Solutions?, January 25, 2012, International Community Law Review, Vol. 13, No. 4, pp. 413-436, 2011, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1991756, (accessed 17 June 2021).
[35] Government of Canada, A Consolidation of The Constitution Acts 1867 to 1982 / Issued by the Department of Justice, https://laws-lois.justice.gc.ca/PDF/CONST_TRD.pdf, (accessed 12 June 2021).
[36] Supreme Court of Canada, Supreme Court Judgments, R. v. Marshall; R. v. Bernard, [2005] 2 S.C.R. 220, 2005 SCC 43, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2276/index.do, (accessed 15 June 2021).

In the early part of the 20th century, Indigenous People were given no status under international law, and there was no procedure by which they could address the international community. The International Labour Organization Convention (ILOC) was born from the conflict of the right to self-determination vs. inclusion and its effect is that it shifted the conversation towards the collective right to be different and autonomous, which gave rise to some deeply controversial issues including that of self-determination. The right to enjoy one's own culture under Article 27 of the ICCPR[37] requires respect for traditional rights to the extent necessary to sustain that culture. The ICCPR does not contain a right to property, but in effect it served to ensure at last some protection of collective property in land.

CERD's Resolution no. 23, from 1997[38] argued that the preservation of Indigenous culture and historical identity had been and still was jeopardized. It called upon countries 'to recognize and respect Indigenous distinct culture, history, language and way of life as an enrichment of cultural identity and to promote its preservation; to provide the Indigenous Peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics; to ensure that members of Indigenous Peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent and that Indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.'[39]

The ratification of international instruments recognizing specific rights of Indigenous Peoples acknowledged that the gradual emergence of an international consensus on the right of Indigenous Peoples to their traditional land meant that such rights became a matter

[37] United Nations Human Rights Office of the High Commissioner, International Covenant on Civil and Political Rights, https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx, (accessed 15 June 2021).
[38] General Recommendation No. 23: Indigenous Peoples: 08/18/1997, Gen. Rec. No. 23. (General Comments), UN International Convention on the Elimination of Racial Discrimination General recommendation 23_1997_EN.pdf (eods.eu), (accessed 15 June 2021).
[39] Ibid.

of customary international law. In this way property is interpreted to include 'the communal land tenure of Indigenous Peoples in accordance with evolving international standards of indigenous rights.'[40]

Article 28 of UNDRIP[41] declares that Indigenous Peoples have the right to restitution and the right to redress, by restitution if possible and otherwise by compensation, for lands, territories and resources which they have in the past traditionally owned or occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

Chapter III: The Indian Act

The Indian Act is the basis of a 150-year old system of dealing with the Indigenous population. In the 1876 Indian Act[42], the term 'Indian' meant any male person of Indian blood reported to belong to a particular band, and child of such a person, and any woman who is or was lawfully married to such a person. In 1951, the definition changed to a encompass any person who pursuant to the Act is registered as an Indian.[43] In the 1970s the term 'First Nations' became a part of the vernacular to replace the term 'Indian Band' and to refer collectively to First Nations, Inuit and Métis Peoples who live in Canada, but it wasn't until 2016 that the federal government replaced the term 'Aboriginal' with 'Indigenous' in government communications, and in doing so revisited the sentiment of the Royal Proclamation of King George III[44] and the nation-to-nation relationship it begat. The

[40] The United Nations Permanent Forum on Indigenous issues, Together we Achieve, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Peoples-Collective-Rights-to-Lands-Territories-Resources.pdf, (accessed 10 June 2021).
[41] United Nations Human Rights, Office of the High Commissioner, Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles - Article 28: Right to a Free and Fair World, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23997, (accessed 10 June 2021).
[42] Indian Act, R.S.C. 43, s.1.1985, c. I-5, https://laws-lois.justice.gc.ca/eng/acts/I-5/FullText.html, (accessed 03 June 2021).
[43] Joseph, Bob, 21 Things you may not know about the Indian Act, Helping Canadians Make Reconciliation with indigenous Peoples a Reality, 2018, Indigenous Relations Press, p11.
[44] Proclamation of 1763, https://www.history.com/topics/native-american-history/1763-proclamation-of, (accessed 15 July 2021).

term Aboriginal Peoples is used to indicate a collective group of people who hold various rights and obligations under provisions of the Indian Act and section 35 of the Constitution Act, 1982[45]. In 1969, Prime Minister Pierre Trudeau proposed the 'total assimilation of Indigenous People, abolishment of the Indian Act, elimination of treaties and incorporation of First Nation communities into provincial government responsibility to achieve equality for Indigenous Peoples. The proposed policy was unequivocally rejected by Indigenous Peoples across Canada who wanted to maintain their legal distinction and did not believe assimilation was a means to achieve equality.'[46]

III.1. The Indian Act and Women

Prior to the arrival of Europeans and the fundamental disruption to traditional lifestyle that that ensued, women were central to the family. Section 12[47] of the Indian Act subjected women and their children to a legacy of discrimination by implementing policies that made women unequal to men and to non-Indian women. Under Section 12, an Indian woman who married a non- Indian man was not entitled to be registered and lost her status. It also removed status from a woman whose mother and paternal grandmother had not been status Indians before their marriages. Although they could be registered, they lost their status when they turned 21.

'Nothing is more real than the women's superiority. It is they who really maintain the tribe … In them resides all the real authority: the lands, the fields, and all their harvest belong to them; they are the soul of the councils, the arbiter of peace and war … they arrange the

[45] Canada, INAN - Section 35 of the Constitution Act 1982 - Background - Jan 28, 2021, https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/inan-jan-28-2021/inan-section-35-consitution-act-1982-background-jan-28-2021.html, (accessed 4 June 2021).
[46] SPON Social Policy in Ontario, Trudeau's words about aboriginals resonate, https://spon.ca/trudeaus-words-about-aboriginals-resonate/2012/01/04/, (accessed 10 July 2021).
[47] Indian Act (R.S.C., 1985, c. I-5 /), https://laws-lois.justice.gc.ca/eng acts/I-5.3/page-1.html, (accessed 23 June 2021).

marriages; the children are under their authority; and the order of succession is founded in their blood."[48]

-Joseph-Francois Lafitau 1742
French Jesuit missionary and ethnologist

Women's status as center of the family perseveres despite the best efforts of the architects of the Indian Act, as evidenced in the video Oka Crises CBC[49], a 1990 news clip about a land dispute between a group of Mohawk people and the town of Oka, Quebec, Canada. The Oka dispute revolved around the intention of the town of Oka to expand a golf course and residential development onto land used by the Mohawk for a cemetery. The dispute culminated in a 78-day standoff between Mohawk protesters, Quebec police, and the Canadian Army. During the dramatic climax, a violent protest erupted, with the infantry major making it clear his intention was to move his army through the barricade to deep inside Indian territory. Warriors were nearing hysteria at the sight of soldiers approaching their tribal cemetery when something remarkable happened. The Mohawk women took over and cleared their men. "Get back and stay back!', one woman ordered a camouflaged and armed warrior, pointing to home. "I'll fucking kick your ass!" she said as the warrior obeyed.

The Oka Crisis played an important role in the creation of the Royal Commission on Aboriginal Peoples which was established by Prime Minister John Mulroney on 26 August 1991 to investigate questions about Indian Status, among other issues. The Commission released its report in 1996 with the main conclusion being a need for the complete restructuring of the relationship between Indigenous and non-Indigenous people in Canada.

[48] Joseph-Francois Lafitau 1742, Joseph, Bob, 21 Things you may not know about the Indian Act, Helping Canadians Make Reconciliation with indigenous Peoples a Reality, 2018, Indigenous Relations Press, p20.
[49] The Oka Crises CBC, Knowlton Nash, The Oka Crisis CBC - Bing video Oka Crisis: How It Started - Bing video, (accessed 10 June 2021).

The implementation of the Indian Act though, disrespected and undermined the role of Indigenous women and girls and affected their independence, stripping them of their identities and tying them irrevocably to a first nation male, without whom they had no legal tie to their own community and no legal rights associated with their social position or status. A white woman who married an Indian male gained Indian status, but an Indian woman was unable to hold her own status without belonging to her father or husband. Federal law in the 1800 defined a status Indian solely based on paternal lineage – an Indian was a male Indian, the wife of a male Indian, or the child of a male Indian. Between 1958 and 1968 alone, more than 100,000 women and children lost their Indian status as a result of the provisions of the Indian Act. First Nations women were cornered into an interdependence with First Nations men in 1851 when the federal government established an androcentric First Nations identity. This doctrine begat the term 'non-status', which refers to any First Nations person who is not federally registered to a band which signed a treaty with the Crown. It usurped the authority and power of First Nations' women who were traditionally held in high regard as the givers of life by the community, whose lineage was traced through mothers and matrilocal family units.

From 1869 to 1985, the Indian Act provided that:

> *'any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of the Act, nor shall the children issue of such a marriage be considered Indians within the meaning of this Act; Provided also, that any Indian woman marrying an Indian of any other tribe, band or body shall cease to be a member of the tribe, band of body to which she formerly belonged, and become a member of the tribe band or body of which her husband is a member, and the children, issue of this marriage, shall belong to their father's tribe only.*'[50]

[50] Indian Act, R.S.C. 43, s.1.1985, c. I-5, https://laws-lois.justice.gc.ca/eng/acts/I-5/FullText.html, (accessed 03 June 2021).

The Indian Act effectively assigned women a non-person status, denying treaty and health benefits, and removing from them their right, as an individual, to live on a reserve. The 1869 Gradual Enfranchisement Act[51] provided that an enfranchised man could draw up a will leaving his land to his children, but not to his wife. In this way, the end of maternal lineage was imposed by necessitating the joining of her husband's band in order to qualify for benefits and allowing for no division of property and inheritance except in the case of a widow of good moral character, a trait determined by the Superintendent General of Indian Affairs in his extreme control over status Indians. This imposed disenfranchisement caused considerable constraints for women and children trying to leave an abusive relationship.

One attempt to mitigate the dysfunctions caused by the reserve system and the Indian Act was the 1985 Act to Amend the Indian Act, which eliminated gender discrimination and granted restoration of 'Indian' Status membership, and the return of Indigenous women's voices and power as a key measure of decolonization.

Sandra Lovelace-Nicholas[52] is the first Indigenous woman appointed to be to the Senate. From the province of New Brunswick in Canada's Maritimes, she championed changes to the Indian Act that sought to restore the legal rights of Status Indian women and children and took her case to the United Nations Human Rights Committee in 1981. There, she argued that discriminatory measures in the Indian Act violated international law, that it was "discriminatory on the ground of sex and contrary to the Covenant."[53] The UN ruled in her

[51] An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42, https://caid.ca/GraEnfAct1869.pdf, (Accessed 21 July 2021).
[52] Parliament of Canada, Senate of Canada, Senator Sandra Lovelace Nicholas, https://sencanada.ca/en/senators/lovelace-nicholas-sandra-m/, (Accessed 20 July 2021).
[53] Conn, H, "Sandra Lovelace Nicholas". The Canadian Encyclopedia, 13 May 2020, Historica Canada. https://www.thecanadianencyclopedia.ca/en/article/sandra-lovelace-nicholas, (accessed 02 August 2021).

favour, stating that Canada was in breach of the International Covenant on Civil and Political Rights (ICCPR)[54].

By 1985, the Indian Act was amended by the passage of Bill C-31[55] to remove discrimination against women and to be consistent with Section 15 of the Canadian Charter of Rights and Freedoms.[56] Another restorative measure taken in 2019 by the Government of Canada was the removal of the 1951 cut-off from the Indian Act. Bill S-3[57], ensures that women receive the same rights as men, and corresponds with the National Inquiry into Missing and Murdered Indigenous Women and Girls' Calls to Action[58]. This move reinstated status to women who lost status or were removed from band lists because of their marriage to a non-Indian man going back to 1869.

Gender discrimination remains though, in the case of women who lost their status through marriage before 1985 and who could only pass Indian status onto their children but not their children's children. This is called the second-generation cut-off[59] and is in in stark contrast to the rights of their brothers, who can pass status for one more generation than the women. Many hurdles existed for women who attempted to reapply for their status with the Department of Indian and Northern Affairs (DIAND)[60], including the navigation of a complex documentation system and the associated and daunting red tape and paperwork,

[54] Sandra Lovelace v. Canada, Communication No. 24/1977: Canada 30/07/81, UN Doc. CCPR/C/13/D/24/1977, https://www.escr-net.org/caselaw/2010/sandra-lovelace-v-canada-communication-no-241977-canada-300781-un-doc-ccprc13d241977, (accessed 15 July 2021).
[55] The Canadian Encyclopedia, Bill C-31, https://www.thecanadianencyclopedia.ca/en/article/bill-c-31, (accessed 15 July 2021).
[56] The Canadian Charter of Rights and Freedoms, 1985, https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/, (accessed 20 July 2021).
[57] Government of Canada, Bill S-3: Eliminating known sex-based inequities in registration, https://sac-isc.gc.ca/eng/1467214955663/1572460311596, (accessed 20 July 2021).
[58] Government of Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, https://rcaanc-cirnac.gc.ca/eng/1448633299414/1534526479029, (accessed 20 July 2021).
[59] Legal Affairs and Justice Canada, Second-Generation Cut-Off Rule, 06-19-02-06-AFN-Fact-Sheet-Second-Generation-cut-off-final-revised.pdf, (accessed 20 July 2021).
[60] Government of Canada, Library and Archives Canada, Indian Affairs Annual Reports, 1864-1990, https://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/first-nations/indian-affairs-annual-reports/Pages/introduction.aspx, (accessed15 June 2021).

along with the logistics of presenting in person to a federal office where staffing shortages and unpredictably high number of applicants, those in the thousands, added another layer of barriers to an already beleaguered system.

III.2. The Indian Act and Children

The Indian Act of 1876 was a homogenizing and paternalistic government policy put in place to assimilate First Nations Peoples through enfranchisement, a legal process for terminating a person's Indian status in order to impose full Canadian citizenship upon them, and one implemented often without consent. It is an assimilation policy intended to eradicate the notion of the Indian along with their language, cultural traditions and spiritual beliefs by integrating and educating the entire Indigenous population in Western beliefs. Some say there is no Canada without it.

> "*When the school is on the reserve the child lives with its parents, who are savages; he is surrounded by savages, and though he may learn to read and write his habits, and training and mode of thought are Indian. He is simply a savage who can read and write. It has been strongly pressed on myself, as the head of the Department, that Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men.*"[61]
>
> - John A. MacDonald, 9 May 1883

The Indian Act worked away at erasing First Nations women while the Sixties Scoop, the child welfare system and residential schools combined their focus on Indigenous children and youth. Canada's $875 million class action settlement agreement with Sixties Scoop

[61] Sir John A. Macdonald, to the House of Commons, Canada, House of Commons Debates (9 May 1883), https://www.ictinc.ca/blog/the-indian-act-residential-schools-and-tuberculosis-cover-up?fbclid=IwAR0SUCrqY8prvl1L9jSATEAKSygCfeF4im1QZ2ZShqRwQfF-1nlgNfyEdF0, (accessed 03 June 2021).

survivors allowed $750 million to compensate First Nations and Inuit children who lost their cultural identities as a result of being removed from their homes and placed with non-Indigenous foster or adoptive parents between 1951 and 1991.

Currently, according to Cindy Blackstock, Executive Director of the First Nations Child and Family Caring Society of Canada, and a First Nations woman with 25 years of social work experience in child protection and Indigenous children's rights, more than three times the number of Indigenous children are placed in state care today than at the height of residential school operations. Indigenous children account for about seven per cent of all kids in Canada but make up more than half the number in state care and in Manitoba, Indigenous children make up nearly 90 per cent of kids in care[62].

III.3. The Indian Act and Alcohol

In 1884, the sale of intoxicants to Indians was prohibited.

'Everyone who by himself, his clerk or his agent and everyone who in the employment or on the premises of another directly or indirectly on any pretense or by any device,

(a) sells, barters, supplies or gives to any non-treaty Indian, or to any person male or female who is reputed to belong to a particular band, or who follows the Indian mode of life, or any child of such a person any intoxicant, or causes or procures the same to be done or attempts the same or connives thereat … shall, on summary conviction before any judge, police magistrate, stipendiary magistrate, or two justices of the peace or Indian agent, be liable to imprisonment for the term not exceeding six months and not less than one month, with or without hard labour, r to a penalty not exceeding three hundred dollars and not less than fifty dollars with

[62] Dr. Cindy Blackstock (Executive Director, First Nations Child and Family Caring Society of Canada) at the Indigenous and Northern Affairs Committee, 2019, https://openparliament.ca/committees/aboriginal-affairs/42-1/146/dr-cindy-blackstock-1/only/, (accessed 14 July 2021).

costs of prosecution or to both penalty and imprisonment in the discretion of the convicting judge magistrate justices of the peace or Indian agent.

– Indian Act 1884, amendment[63]

The early fur traders used alcohol, along with other items, to barter with Indians for furs and other commodities beneficial to trade. It was a common ploy to supply a great quantity of alcohol to the Indian traders prior to the negotiating process.

The earliest mention to controlling Indians' access to alcohol was included in the instructions to superintendent, deputy superintendents, commissaries, interpreters and missionaries in 1775.

- *"No Trader shall sell or otherwise supply the Indians with Rum, or other spirituous liquors, swan shot or rifled barrel led guns."*[64]

Suppression of liquor sales to Indians became a fixture of the Indian Act legislation. In the Acts between 1884 and 1970, there are 39 references to intoxication, penalties for being intoxicated, for providing intoxicants, and for brewing intoxicants on reserves. In 1884 it became a felony for Indians to purchase alcohol, or enter a licenced establishment; likewise, for anyone to sell alcohol to an Indian person. This form of prohibition created the scenario of Indians purchasing liquor from black market dealers and consuming it in back alleys and bushes.

In the early days, one intent behind the alcohol ban was the belief that if Indians were able to access alcohol, they wouldn't be diligently working their farmland. In other words, they should be on the reserve working land that in many cases was not arable, where they were

[63] A Look at First Nations Prohibition of Alcohol, October 20, 2016, https://www.ictinc.ca/blog/first-nations-prohibition-of-alcohol, (accessed 15 June 2021).
[64] Historical Development of the Indian Act, Treaties and Historical Research Centre, P.R.E. Group, Indian and Northern Affairs, 1978

expected to suddenly learn to farm with rudimentary hand tools because they were denied access to modern farm tools. If they did manage to grow anything, they weren't permitted to sell it without a permit to leave the reserve or the permit required to sell their produce. Also, the government and mainstream society didn't want to be forced to socialize with Indians in drinking establishments, and the licensed establishment were in fear of a related decrease in customers.

Aboriginal men subject to the Indian Act could not attend functions where liquor was served. This exclusion was discriminatory to the men who had fought, been wounded and died along side their non-Aboriginal comrades, but the Indian Act was inflexible on the issue of access to liquor. During the two world wars enlisted Indians were legally allowed to drink with their peers but upon their return to Canada they were denied the same consideration. Indian veterans were banned from establishments that their fellow servicemen frequented, a prohibition that had a myriad of hidden ramifications. It separated Indians from their wartime companions and jeopardized their access to veteran's benefits by denying equal access to information through the Royal Canadian Legion, whose sole purpose was to support and inform former soldiers.

Instead, the white Indian agent became the primary source of information.

The Royal Commission on Aboriginal People (RCAP) noted the challenges for Indian veterans due to the prohibition and a special committee of the Senate and House of Commons examined the alcohol restriction component to the Indian Act in 1946-1948. In response to the findings, the Indian Act went though another set of amendments but rather than repeal the sections regarding prohibition of Indian intoxication, the 1951 revision made it an offence for an Indian to be in possession of intoxicants or be intoxicated whether on or off a reserve.

"We are having this trouble because we are reaping the harvest of 50 years or more of making the Indian a second-class citizen. We are going to have to make up our minds whether we are going to keep the Indian bottled up in a sort of Canadian apartheid or whether we are going to let him be a good citizen. If he is drunk or causing a disturbance, then he should be put out of the premises the same as a white man should, but he should not be put out because he is an Indian."[65]

- *Saskatchewan Premier Tommy Douglas 1960*

The Indian Act prohibition set the stage for developing the pervasive stereotype that Indians suffered from an alcohol intolerance. Corralled into consuming their alcohol quickly to avoid being arrested and fined, the myth that Indians cannot tolerate alcohol fit into the federal government's stance that Indians were savages that needed overseen.

The prohibitions in the Indian Act relate to the intergenerational use of abuse of alcohol. Survivors of residential schools emerged at the age of 18 struggling to cope with the breakdown in the core family and community environments by using alcohol and other means to cope and it is those behaviours that linger intergenerationally. From a scientific perspective, it's a breakdown in individual, family, and community values that are being passed along from generation to generation and that is why there are problems with alcohol in some Indigenous people and communities. Discriminatory liquor offences on- and off-reserve were repealed in 1985 and band councils were given by-law powers to control the sale and possession of liquor. The systemic damage inflicted by the Indian Act's prohibition laws generations ago continues to have an impact in how mainstream society views Indigenous Peoples.

[65] Joseph, Bob, 21 Things you may not know about the Indian Act, Helping Canadians Make Reconciliation with indigenous Peoples a Reality, 2018, Indigenous Relations Press, p41.

III.4. The Indian Act and the Reservation System

A reserve is defined as a track of land set aside under the *Indian Act* and treaty agreements for the exclusive use of an Indian band. Reserves were regarded as a place to confine the Indian population until they became civilized and enfranchised into general society as full citizens with equal rights and responsibilities and in possession of a proportional share of the reserve assets. In reality, the reserve system deigned to contain and control Indians while providing European settlers full access to the fish and game, water, timber and mineral resources that had formerly sustained Indigenous life and culture. From 1637 early French missionaries were intent on convincing Indians to settle in one spot and embrace both agriculture and Christianity. At the same time, John A. MacDonald was working toward two lofty goals as Canada's first Prime Minister. He needed to lure European settlers to Canadian soil and to build a railway linking the west coast to Ottawa, both of which necessitated acquisition of land for settlement and development. Hundreds of Indigenous communities with thousands of people living their traditional lives on traditional land were in the way. The reserve system met the government's need to contain and relocate communities to make room for settlers and development. In 1870 MacDonald wrote to the Lieutenant Governor of Manitoba[66] of his intention to:

> - '*take immediate steps to extinguish the Indian titles somewhere in the Fertile Belt in the valley of Saskatchewan and open it for settlement. There will otherwise be an influx of squatters who will seize upon the most eligible positions and greatly disturb the organization of future surveys.*'[67]

With no consistent method to designate land to a band, each treaty specified different amounts. For example, in British Columbia a family of five was allotted 20 acres of land, but Treaties 1 and 2 used a ratio of 160 acres per family and Treaties 3-11 allocated 640

[66] Archibald, Sir Adams George National Historic Person, Truro, Nova Scotia, https://www.pc.gc.ca/apps/dfhd/page_nhs_eng.aspx?id=1131, (accessed 20 July 2021).
[67] Prime Minister John A. MacDonald to Adam George Archibald Lieutenant Governor of Manitoba, 18 November 1870.

acres per family[68]. Reserves were either a portion of Indigenous traditional land or tracts far away, chosen with little regard for the type of livelihood to which the displaced Indigenous Peoples were accustomed, be it from the sea or from the interior. The reality was that they lost land, which constricted their ability to hunt, trap, fish and harvest traditional foods to sustain themselves and their families and communities.

The resulting scarcity of traditional food along with the introduction of foreign food, the change in lifestyle and the exposure to European viruses and diseases caused Indians' immune systems to weaken and made them more vulnerable to malnourishment and disease. Indigenous people were also forced into government-owned, European, single family-style housing that was unsuitable for the traditional concept of family and community collectivity. Traditional dwellings consisted of several families, were contingent on the environment and food gathering or hunting traditions and had open space for meeting, eating and practicing spirituality. Communities that were removed altogether from their traditional home lost their connection to the land that was part of their history, culture and identity and were left facing a future impoverished, malnourished, vulnerable to disease and controlled by the Crown.

III.5. The Indian Act and Residential Schools

> *'When the school is on the reserve the child lives with its parents, who are savages;*
> *'The ritual begins with the state ostentatiously performing an arrest for being drunk in a public place, proceeds with the booking, the filing out of forms, and the routine of custodial and medical care. At the inquest, protocol and policies are hammered out to describe the things we must do as a civilization when confronted with flesh that has decayed and minds that are presumed to have lost their rationality. Left untreated, wounded bodies give out and their owners demise is seen as natural and*

[68] Joseph, Bob, 21 Things you may not know about the Indian Act, Helping Canadians Make Reconciliation with indigenous Peoples a Reality, 2018, Indigenous Relations Press, p11.

inevitable. It goes without saying that a people seen as damaged and dying cannot be entrusted with self-governance and stewardship over the land. Custody and the inquest therefore both bear an intrinsic relationship to continuing colonial occupation.' [69]

- *Sir John A. MacDonald 1879*

The first residential schools opened in the 1870s, and by 1920 amendments to the Indian Act made it mandatory for status Indian children aged five to eighteen to attend, an order subject to police enforcement. An estimated 150,000 children were forcibly removed from their homes and placed in the 139 residential schools across Canada, where they were stripped of their culture, language and identity, in violation of several articles in the Convention on the Rights of the Child (CRC).[70]

- CRC Article 2 - Non-Discrimination - note overlapping sources of discrimination, need for disaggregated data collection by government and positive measures to eliminate discrimination
- CRC Article 3 - Best Interests of the Child - consider in light of the cultural and collective rights of the individual Indigenous child, but group's best interests cannot trump child's best interests
- CRC Article 6 - Life, Survival and Development – respect for traditions and culture, respect harmonious development of child, note disproportionately high numbers of Indigenous children living in extreme poverty, high rates of infant and child mortality that require positive measures

[69] S. Razack, Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody, Toronto, University of Toronto Press, 2015. p. 113.
[70] Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49, https://www.ohchr.org/en/professionalinterest/pages/crc.aspx, (accessed 10 July 2021).

- CRC Article 12 – Participation - need for participation of Indigenous communities and children in developing culturally sensitive law, policy and programs; protocol may require elders to be heard when the child is heard in own language
- CRC - Article 30 (note: cultural practices are not protected if deemed prejudicial to the child's dignity, health and development), 29 (education), 5 (extended family), 17 (media of cultural benefit, linguistic needs) and Guiding Principles. In those States in which ethnic, religious or linguistic minorities or persons of Indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.[71]

The goal of "killing the Indian in the child," the general sentiment of European settlers, was articulated by lawyer and journalist Nicholas Flood Davin in his Report on Industrial Schools for Indians and Half-Breeds in 1879. Considered an architect of the Canadian Indian residential school system, he wrote, *"Indian culture is a contradiction in terms. They are uncivilized … the aim of education is to destroy the Indian."*

Davin, an architect of Canada's residential schools policy, in a 1879 paper, looked at boarding schools just established in the U.S. and urged Canada to create similar ones. Based on his paper, Canada's federal government opened three such schools, starting in 1883 in the future province of Saskatchewan. Both Canada and the United States borrowed ideas from reformatories being constructed in Europe for children of the urban poor, according to the Truth and Reconciliation Report[72].

[71] United Nations Human Rights Office of the High Commissioner, Convention on the Rights of the Child, 2 September 1990, https://www.ohchr.org/en/professionalinterest/pages/crc.aspx, (accessed 20 June 2021).
[72] Government of Canada, Truth and Reconciliation Commission of Canada, Final Report, https://pm.gc.ca/en/news/backgrounders/2015/12/15/final-report-truth-and-reconciliation-commission-canada, (accessed 20 June 2021).

The Indian Act, section 11, stipulated that, *'The Governor in Council may make regulations, which shall have the force of law, for the committal by justices or Indian agents of children of Indian blood under the age of sixteen years, to such industrial school or boarding school, there to be kept, cared for and educated for a period not extending beyond the time at which such children shall reach the age of eighteen years.'*[73]

And so began the most aggressive and destructive of all Indian Act policies, most of which were harsh but manageable. The potlatch was banned, so practitioners went underground to hold ceremonies. The Act pushed people onto small reserves, but families were still together. Taking the children though, was unbearable. The goal of killing the Indian in the child was bad enough but sometimes the child themselves died - 6,000 of the 150,000 who attended the schools between the 1870s and 1996 disappeared. Precise numbers don't exist because schools, churches that managed the schools, and Indian agents kept few records.

With the signing of the 11 numbered treaties beginning in 1871, the federal government assumed responsibility for the education of the Indigenous People of half of Canada, Manitoba, Saskatchewan, and Alberta, along with portions of Ontario, British Columbia, and the Northwest Territories. First Nation signatories to the treaties realized that their traditional life was being seriously impacted by the influx of Europeans and they wanted their children to have an education so they could take part in the new wage economy. Prior to the 1876 Indian Act, education was provided at day schools built on reserves for the children to attend and begin their assimilation into settler society but issues with low attendance impeded this plan. The education policy was revised, influenced by the study of the American government's management of education of native children.

[73] Indian Act. R. S., c. 43, s. 1. 1884

Thousands of children died of routine abuse and neglect in residential schools, but record keeping was poor and the records that existed were not preserved. Those who survived the US model-based 'aggressive civilization'[74] share horrific stories of the physical, sexual and emotional abuse, which, along with chronic malnutrition, left a tragic legacy of long-lasting intergenerational effects on survivors' physical and mental well-being and the structure of their families and communities.

The United States and Canada each have their own history with residential schools. Their shared infrastructure was designed in tandem but were referred to as native boarding schools by Canada's southern neighbours. The discovery of unmarked graves beside former schools in Canada has prompted an investigation by U.S. Interior Secretary Deb Haaland, who runs the department that operated U.S. assimilation schools. The first Indigenous person to achieve that position, Haaland said, "Only by acknowledging the past can we work toward a future we're all proud to embrace."[75] The removal of children from their homes and the denial of their identity through attacks on their language and spiritual beliefs were compounded by the lack of basic care including the failure to provide adequate food, clothing, medical services and a healthful environment, and the failure to ensure that the children were safe from figures who abused them physically, sexually and emotionally.

Some empirical studies of the negative effects of residential schooling on Indigenous Peoples' health show that former attendees and subsequent generations had poorer rates of health in general, and higher rates of diseases such as obesity and diabetes, along with mental distress, depression, addictive behaviours and substance mis-use, stress, and suicidal behaviours.

[74] Aggressive Assimilation, Facing History and Ourselves, https://www.facinghistory.org/stolen-lives-indigenous-peoples-canada-and-indian-residential-schools/historical-background/aggressive-assimilation, (accessed 28 July 2021).
[75] The Secretary of the interior Washington, https://www.doi.gov/sites/doi.gov/files/secint-memo-esb46-01914-federal-indian-boarding-school-truth-initiative-2021-06-22-final508-1.pdf, (accessed 28 July 2021).

The last federally run Canadian residential school closed as recently as 1996 so of course, their impacts are still felt. Indigenous communities, though resilient, show the impact of intergenerational trauma and colonization. In 2007, the largest class action suit in Canadian history, the Indian Residential Schools Settlement Agreement (IRSSA)[76] recognized the damage inflicted by residential schools. One element of the IRSSA was the establishment of the Truth and Reconciliation Commission of Canada to facilitate reconciliation among former students, their families, their communities and all Canadians. The National Centre for Truth and Reconciliation has put together a booklet called Truth and Reconciliation Calls to Action. The booklet is divided into three sections: the ten principles of reconciliation; the 94 calls to action; and the 46 articles of the UNDRIP, which constitutes "the minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world."

A formal apology from then Prime Minister Stephen Harper followed, in which he acknowledged the deeply embedded perception that Indigenous culture was inferior and the resulting harm. The 2001 Truth Commission into Genocide in Canada Report[77] documents the responsibility of the Roman Catholic Church, the United Church of Canada, the Anglican Church of Canada, and the federal government in the deaths of more than 50,000 Native children in the Canadian residential school system, a population control measure also called The Canadian Holocaust.[78] The International Convention of the Prevention and Punishment of the Crime of Genocide (ICPPCG), on December 9, 1948, set the United Nations definition of genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

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[76] Marshall, T., Indian Residential Schools Settlement Agreement, January 2020, https://www.thecanadianencyclopedia.ca/en/article/indian-residential-schools-settlement-agreement, (accessed 28 July 2021).
[77] Hidden from History: The Canadian Holocaust, The Untold Story of the Genocide of Aboriginal Peoples by Church and State in Canada, http://canadiangenocide.nativeweb.org/truth_commission.html, (accessed 20 July 2021).
[78] Hidden from History: The Canadian Holocaust, The Untold Story of Aboriginal Peoples by Church and State in Canada,2001, http://canadiangenocide.nativeweb.org/genocide.pdf, (accessed 28 July 2021).

1. Killing members of the group.
2. Causing serious bodily or mental harm to members of the group.
3. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part more.
4. Imposing measures intended to prevent births within the group.
5. Forcibly transferring children of the group to another group.

Indigenous Canadians were subject to each act on this genocide checklist.
The Crimes Against Humanity and War Crimes Act (CAHWCA)[79] officially criminalizes genocide, crimes against humanity and war crimes based on customary and conventional international law, including the Rome Statute[80].

The Canadian government, police and churches committed a century of intentional genocide on Aboriginal Peoples in Canada, and under international law these institutions would be accountable before the International Criminal Court as defendants in a war crimes trial. If the United Nations is a mechanism to confront Crimes Against Humanity, it can be argued that it must apply its Convention on the Crime of Genocide to the ethnic cleansing and murder of Canadian First Nations people. From the 1870s to mid 1990s, 150,000 First Nations children attended church run schools to be civilized and Christianised at the cost of their physical health and mental, emotional and spiritual wellness. The post-traumatic stress from the abuse and neglect at the residential schools, and symptoms and lasting effects of this cost are so pervasive throughout the extensive accounts of survivors, that the condition has a name. “Residential School Syndrome” is a term that describes the mental health issues, depression, addictive behaviours, substance misuse, stress and suicidal behaviours that metastasize intergenerationally in survivors. It is indisputable that these institutions and

[79] Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24, Assented to 2000-06-29, https://laws-lois.justice.gc.ca/eng/acts/C-45.9/, (accessed 20 July 2021).
[80] Rome Statute of the International Criminal Court, 1998, https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf, (accessed 20 July 2021).

the people who worked in them were directly involved in the deaths of thousands of Indigenous children. Colonial attempts to assimilate were in fact genocidal.

The National Inquiry opened its report with a bombshell, calling Canada's historic and current treatment of First Nation, Inuit and Metis people a genocide. It was a word that caused many to recoil, including retired general Romeo D'Allaire, who witnessed the Rwandan genocide.

'My definition of genocide, I read it very deliberately at the start of the Rwandan genocide, and it was a deliberate act of a government to exterminate deliberately, and by force and directly, an ethnicity or a group or an entity of human beings.'

- *Roméo Antonius Dallaire OC CMM GOQ MSC CD Canadian humanitarian, author, retired senator and Canadian Forces lieutenant-general*

For Indigenous communities, the loss of children to the Indian Residential School system has been a fact for more than a century. With the traumatic knowledge that family members went missing or were killed while institutionalized at the schools, these effects of colonialism aren't a dark chapter just now being revealed, but rather the main plot in a narrative that defines Canada.

The Sisters of Charity Halifax[81], who operated the Shubenacadie Residential School in Nova Scotia from 1929 to 1967, issued a letter of apology[82] in July 2021, for their organization's role in a racist system where research showed that despite their claims of being low in the church hierarchy, the sisters had a lot of agency to make decisions and weren't just participants but very much implementers of a racist system. Their apology joins other statements of remorse issued over the years, but they have never taken accountability

[81] Sisters of Charity Halifax, https://schalifax.ca/, (accessed 20 July 2021).
[82] Sisters of Charity Halifax, Letter of Apology, https://schalifax.ca/wp-content/uploads/2021/07/Apology-26July2021.pdf, (accessed 20 July 2021).

for the treatment of the children in their care, the deaths of 16 of whom are recorded by the National Centre for Truth and Reconciliation (NCTR), but survivors have said more children vanished during that time, and ground-penetrating radar has been used to search the site in central Nova Scotia, as in other parts of Canada after the remains of 215 children was uncovered in Kamloops, British Columbia.

'*The recovery of these remains is heartbreaking and shameful. As human beings and as members of a religious congregation that served at two of these schools, we weep. We are ashamed of the cruelty some people can inflict on others*'[83]

- *The Sisters of Charity Halifax*

Like with all federal infrastructures in Canada, the Shubenacadie Residential School[84] in Nova Scotia was funded by Canada's federal government, but the Sisters of Charity staffed the schools with autonomy despite the priest holding the role of principal. The sisters were tasked with teaching Indigenous children how to become proper Canadians, the boys farmers and the girls housewives, and proper Christians, while ignoring, mocking or portraying as savage their Mi'kmaw culture. In researching his book, 'Indian School Road: Legacies of the Shubenacadie Residential School', Chris Benjamin investigated the role of the sisters at the institute. He was denied access to their daily annals, a public document where everyday events were recorded, and so was the Canadian Broadcasting System (CBC), but the National Centre for Truth and Reconciliation committed to release its copies later in 2021.

The UNDRIP constitutes 'the minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world.'[85] Canada, the United States, Australia and New Zealand, each with their own colonial history, initially argued against signing the UNDRIP,

[83] Sisters of Charity Halifax, Letter of Apology, https://schalifax.ca/wp-content/uploads/2021/07/Apology-26July2021.pdf, (accessed 20 July 2021).
[84]Benjamin, Chris, Indian School Road: Legacies of the Shubenacadie Residential School, September 2014
[85] UNDRIP, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf, (accessed 21 June 2021).

fearing the level of autonomy it recognizes would undermine the sovereignty of their own states, particularly in the context of land disputes and natural resource extraction. The Declaration was characterized as incompatible with Canada's Constitution and the Canadian Charter of Rights and Freedoms in affirming only the collective rights of Indigenous Peoples and failing to balance individual and collective rights. In May 2016, the Minister of Indigenous and Northern Affairs finally declared Canada a full supporter of the UNDRIP, with the vision of harmonizing Canada's laws with the United Nations despite Conservatives in both chambers raising concerns about potential negative impacts of the legislation, arguing it would give Indigenous Peoples a "veto" over natural resource projects, provincial laws and areas of jurisdiction.

A cultural shift in response to growing awareness has government and institutions acknowledging the realities confronting Indigenous Peoples in Canada and challenging the inequalities Indigenous communities continue to face in terms of societal marginalization and ongoing systemic racism. In order to combat continuing racial injustice today, the vision must include an understanding of civil rights, established for First Nations through three principal arguments: international law, the Royal Proclamation of 1763[86] and its subsequent treaties, and common law as defined in Canadian courts. This section will look at Canada's growing embrace of Indigenous land acknowledgments and Canada's Truth and Reconciliation Commission (TRC)[87] and other government reconciliation efforts to mitigate the long-seeing and intergenerational effects of the Indian Act,[88] along with the relation between lingering systemic racism and its effects on the Indigenous population in cases that have come before the Supreme Court of Canada.

[86] Miller, J.R., *The Royal Proclamation – "the Indians' Magna Carta"?*, 2013, http://activehistory.ca/2013/09/the-royal-proclamation-the-indians-magna-carta/, (accessed 05 June 2021).
[87] Government of Canada, Truth and Reconciliation Commission of Canada, https://rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525, (accessed 05 May 2021).
[88] Indian Act, R.S.C. 43, s.1.1985, c. I-5, https://laws-lois.justice.gc.ca/eng/acts/I-5/FullText.html, (accessed 03 June 2021).

To understand the effects of colonial assimilation techniques on the Indigenous population of Canada today, it is important to understand the historical context in which these techniques were used, and the rationale behind the questionable decision making. This section will briefly highlight some key factors in the formation of the treaty-based agreements around the Indigenous population and some of the trickle-down repercussions faced by Indigenous Canadians today.

Conflict arising over sharing land, especially in the context of colonisation, is reflected in the deep rift between Indigenous and non-Indigenous people in Canada, a divide that goes back centuries. Europeans benefited from the knowledge of the Indigenous population when they arrived on the continent in the mid 1500s and the two groups formed peaceful alliances focused around the bountiful fur trade and fishing. The alliance waned once the Europeans grew accustomed to the climate and learned to use the valuable resources of land and waterways. Hierarchy was assumed by Europeans from the beginning, bolstered by the absence of a written language in the New World and Aboriginal spirituality which was unfamiliar and suspect. Indigenous lives quickly became expendable and with the imposition of European values, chaos to Indigenous society ensued, culminating in the collapse of food supplies, rampant illness, and the creation of the reserve system,[89] a tract of land set aside under the Indian Act and treaty agreements for the exclusive use of an Indian band on which members have the right to live but not to own. There, band administrative and political structures are located but the property is held in trust by the Crown under the Minister of Indian Affairs authority.[90]

When the policy makers and government agents became the administrators of imposed colonial morality, their disdain and impatience for the problem of the Indigenous Peoples

[89] Government of Canada, Definition and Registration of Indians, Reserves, https://laws-lois.justice.gc.ca/eng/acts/i-5/page-5.html#h-332074, (accessed 03 June 2021).
[90] University of British Columbia, Indigenous Foundations, *What are Indian Reserves?*, https://indigenousfoundations.arts.ubc.ca/reserves/, (accessed 03 June 2021).

was evident in leaders' quotes, including Canada's first Prime Minister, Sir John A. MacDonald, who in 1887 said,

> *"The great aim of our legislation has been to do away with the tribal system and to assimilate the Indian peoples in all respects."*[91]

His successor, Duncan Campbell Scott, the Deputy Superintendent of Indian Affairs reiterated this sentiment thirty years later in 1920 with,

> *"I want to get rid of the Indian problem … Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question and no Indian department."*[92]

Chapter IV: Repercussions of Colonization

Forced assimilation of Indigenous Peoples in Canada during European colonization has created a legacy of intergenerational damage and anti-Indigenous sentiment in Canadian society. A traumatic intersection of failing in the sectors of education, health, employment, housing, child and family services, policing and the justice system shows how anti-Indigenous racism is embedded in institutions endorsed by the Canadian government.

Overrepresentation in negative outcomes across these social institutions can be linked to Indigenous peoples' past mistreatment. Indigenous Canadians are subject to worse outcomes when it comes to socioeconomic aspects that are considered risk factors for negative encounters with the justice system, where they represent more than a quarter of the adult population[93], proof of the strong relationship between social inequality and criminal

[91] J. A. MacDonald, speech, https://www.facinghistory.org/stolen-lives-indigenous-peoples-canada-and-indian-residential-schools/chapter-3/introduction, (accessed 03 June 2021).
[92] D.C. Scott, speech, 1920, https://www.ictinc.ca/blog/10-quotes-john-a.-macdonald-made-about-first-nations, (accessed 03 June 2021).
[93] Statistics Canada, 2016, 'Focus on Geography Series, 2016 Census, Aboriginal peoples', Ottawa, https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-pr-eng.cfm?Lang=Eng&GK=PR&GC=13&TOPIC=9, (accessed 19 June 2020).

behaviour. Suicide rates among First Nations people, Métis and Inuit are significantly higher than among the non-Indigenous population, some approximately twice as high.[94]
Cases brought before the SCC will be examined, followed by the last section discussing the inquiry system and why the Canadian justice system was in violation of human rights laws not to follow through with prosecution of factually-evidenced police malfeasance, and blatantly loose interpretations of the law in regard to prosecution of offences. Treaty negotiations and rights, natural resources harvesting rights, land and fisheries use, residential and school abuse are all part of the multidimensional area of Aboriginal Law.

IV.1. Police

This section will investigate the apathy exhibited in the dismissive and marginalizing approaches toward the Indigenous population in Canada by police and the national and provincial justice systems, focusing on cases that were brought before the Supreme Court of Canada (SCC). The discussion is around the fact that mistreatment of Indigenous people is systemic, in stark violation of their fundamental human rights and still in wide practice. Mistreatment has been pervasive as an acceptable way to deal with the Indigenous population going through the legal system in Canada at various stages, from carding or 'street checks'[95] to incarceration.

The concept of intersectionality is also used to examine how multiple factors such as race, class, poverty, mental health and addiction play a role in eliciting behaviour and decision-making from various players' powerful determining role in Indigenous Canadians' fate. The aim of this section is to illustrate the importance of accountability and equanimity in the crucial role of the justice system from street level to the highest court and in examining how Indigenous deaths are treated in Canada.

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[94] Statistics Canada, 2019, 'Suicide among First Nations people, Métis and Inuit (2011-2016): Findings from the 2011 Canadian Census Health and Environment Cohort (CanCHEC)', https://www150.statcan.gc.ca/n1/daily-quotidien/190628/dq190628c-eng.htm, (accessed 21 June 2021).
[95] D. Mazur, 'What is a Street Check?, BC Civil Liberties Association', Victoria, 2018, https://bccla.org/2018/09/what-is-a-street-check, (accessed 27 June 2021).

The only way to combat the ingrained attitudes and practices that lead to the over-representation of Indigenous people in the justice system is to consider the context in which these practices occur and the deeply rooted colonial structure which is inarguably influenced by antiquated societal and historical factors. Policing is itself a type of paternalistic, rule-by-force authority that can be traced to North America's history of slavery and Indigenous genocide. In Canada, the Royal Canadian Mounted Police (RCMP) was created for the purpose of ridding the prairies of self-sufficient Indigenous communities and to gain control over their resources and lands.[96]

The need to cease discriminating practices is relevant because of recent findings from the 1996 Report of the Royal Commission on Aboriginal Peoples[97] that the greatest contributor to their overrepresentation in the justice system are the colonial values underlying Canadian criminal laws, policies and practices. Abuses and other indignities inflicted by the unparalleled authority of the police and the justice system have come to define the relationship of Indigenous Peoples with law enforcement.

Therefore, this section will first introduce the issue of systemic racism in policing in Canada and the forms it takes in the cases of Indigenous People who have died in police custody and the way Indigenous deaths at the hands of white civilians have been dealt with in the colonial-based court system. In addition, this section explores how inquests and inquiries consistently failed to examine the indifference and detachment experienced by Indigenous persons in interactions with authority.

The fragile relationship between Indigenous people and police can be traced back to colonialist policies and the fact that police have been used to implement the policies. There

[96] J.P. Turner, 'The North West Mounted Police, 1873 – 1893', Ottawa, ON, King's Printer, 1950, vol.2.
[97] Canada, Royal Commission on Aboriginal Peoples. 'Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada', Ottawa, *Royal Commission on Aboriginal Peoples*, 1996.

is a broader issue of police accountability, and its contextualization in contemporary settler colonial relations. Legal narrative detailing deaths in custody due to 'excited delirium',[98] reflect the sheer impossibility of charging an officer for an Indigenous death in custody. In Canada, the excited delirium excuse was used to let killer cops off the hook in two cases within a three-week period in the fall of 2016 and chalked up to 'copaganda'[99] or propaganda for cops. Given the statistics and the perniciousness of Indigenous death in custody, Sherene Razack asks Canadians to consider 'what settler colonialism has to do with both elevated rates of deaths in custody and the recurring response in inquests that Indigenous people are responsible for their own demise.'[100]

Understanding the broken relationship between Indigenous people and Canada's federal and provincial regulatory authorities necessitates familiarity with the history and effect of colonialization. Believing that Indigenous cultures were inferior, the newly formed Canadian government implemented a harsh series of policies, '*The Indian Act*, 1876' or 'An Act to amend and consolidate the laws respecting Indians'[101], to assimilate the Indigenous peoples into settler Canadian society. Much of the suspicion and distrust that Indigenous people feel toward police is rooted in that history of colonial policies, legal systems and institutions which included 'Indian agents'[102] who had near-dictatorial powers over their charges, and who, along with police, organized the most damaging elements of Canadian Indigenous policy.

[98] Canadian Police Knowledge Network, Excited Delirium Syndrome (ExDS), https://www.cpkn.ca/en/course/excited-delirium-syndrome/, (accessed 23 July 2021).
[99]Mediacoop, Excited Delirium Is Copaganda Bullshit to Let Killer Cops off the Hook, www.mediacoop.ca/story/excited-delirium-copaganda-bullshit-get-killer-cop/37082, (accessed 20 July 2021).
[100] S. Razack, Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody, Toronto, University of Toronto Press, 2015. pp. 160-161.
[101]Indian Act (R.S.C., 1985, c. I-5), https://laws-lois.justice.gc.ca/eng/acts/I-5.3/page-1.html, (accessed 23 June 2021).
[102] R. Irwin, Indian Agents in Canada, *Canadian Encyclopedia*, 25 October 2018, https://www.thecanadianencyclopedia.ca/en/article/indian-agents-in-canada, (accessed 23 June 2021).

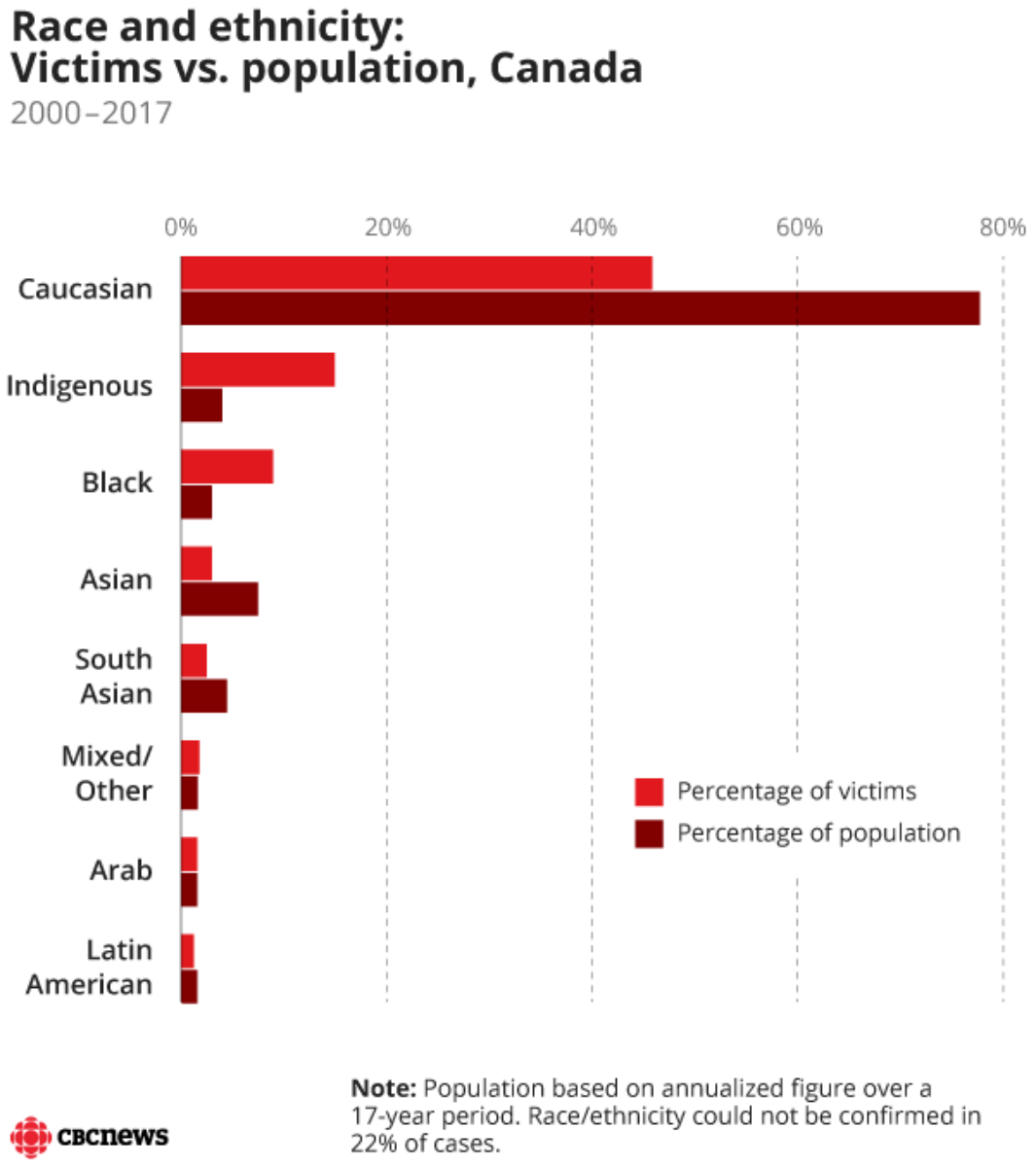

Table 2: This breakdown of victims of police encounters shows the overrepresentation of the Indigenous population in police-related deaths compared to their representation in the overall population.[103]

[103]J.Marcoux and K.Nicholson, 'Deadly Force', *CBC News*, 23 July 2021, https://newsinteractives.cbc.ca/fatalpoliceencounters/, (accessed 27 May 2021).

The pattern of irresponsible leadership continued into Canada's Indian Residential Schools, and begat, among other things, the 'aggressive civilization'[104] of Indigenous children. This genocidal infrastructure was used to control, oppress, exploit, assimilate and eradicate an entire race. In the words of Indian agent Duncan Campbell Scott, a career civil servant and 'extreme assimilationist'[105] involved in Aboriginal Affairs in the early 1900s, the goal was '*to get rid of the Indian problem*.' [106]

The present crisis surrounding race in Canada is affected negatively by an absence of focus on the root causes, a better awareness of which will help determine how to move past the current dismal racial climate in Canada. The tendency to presume that the problem of racial violence is isolated to a few stubborn racists that haven't yet jumped on the progressive bandwagon, and that the cure to racial injustices in Canada should always revolve around education, is evolving to a new approach in understanding the problem as well as the solution.

Nelson Mandela said, 'Education is the most powerful weapon which you can use to change the world,'[107] but it is not a cure-all for the country's racial sins. It is, however, still how most Canadians understand their responsibility in fixing contemporary racial injustices. One measure of how far a few have come in race relations is calculated by how integrated Canadian schools are and how many federal dollars are committed toward education.

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[104] N. F. Davin, Canada, *Annual Report*, 1880, Department of the Interior "Report on Industrial Schools for Indians and Half-Breeds", 14th March 1879, http://rschools.nan.on.ca/article/the-notion-of-removal-1131.asp, (accessed 20 June 2021).
[105] Stolen Lives: The Indigenous Peoples of Canada and the Indian Residential Schools: Until There Is Not a Single Indian in Canada, "Until There Is Not a Single Indian in Canada" | Facing History and Ourselves, 2015, (accessed 5 June 2021).
[106] J. Leslie, "The Bagot Commission: Developing a Corporate Memory for the Indian Department", Historical Papers / Communications historiques, vol. 17, Ottawa 1982, pp. 31-52, https://www.erudit.org/en/journals/hp/1982-v17-n1-hp1117/030883ar/, (accessed 4 June 2021).
[107] Oxford References, speech, Madison Park High School, Boston, 23 June 1990, https://www.oxfordreference.com/view/10.1093/acref/9780191843730.001.0001/q-oro-ed5-00007046, (accessed 20 July 2021).

Deaths of Indigenous minorities continue at an alarming rate because the country hasn't properly addressed its long history of racial bullying, which has treated brown skin as an indication of criminality. Instead, when confronted with jarring racial injustices, there is a tendency to point to the blatantly racist and to individualize the problem and place it at a distance in order to make sense of contemporary racial violence.

The problem is not that there are a few racist apples, but that the whole tree is affected. There is a presumption of dangerousness that is tightly bound to race for so many in Canada. What does this mean in the context of unarmed citizens? It means that brown skin triggers a heightened sense of threat that then influences an officer's decision to use deadly force. 'Police are lawfully authorized to use up to deadly force — which includes using a firearm — where they believe that they're in imminent danger of being seriously injured or killed,' said Tom Stamatakis, president of the Canadian Police Association[108]. This presumption gets reinforced and takes on a truth-like quality though everyday interaction, affecting confidence and self-esteem through having a precious commodity like an individual identity reduced to someone else's perception of how much danger is posed. In talking about the current racial crisis in policing, it is society in general that, in big ways through actions and in small ways by silence, supports the lie that Indigenous Peoples are more dangerous or less capable than the rest of the population.

The 2015 Conservative Speech from the Throne, *Making Change Happen*[109], aimed for creating a new relationship between Canada and First Nations and emphasized that 'Canada is strong because of our differences, not despite them'[110] and that the country's strength is in its diversity.

[108] J. Marcoux and K. Nicholson, 'Deadly force, Fatal encounters with police in Canada: 2000-2017', CBC News 23 July, 2020, https://newsinteractives.cbc.ca/longform-custom/deadly-force, (accessed 21 June 2021).
[109] His Excellency the Right Honourable David Johnston, Governor General of Canada, 'Making Real Change Happen', *Speech from the Throne to Open the First Session of the Forty-second Parliament of Canada*, 4 December 2015, https://www.canada.ca/en/privy-council/campaigns/speech-throne/making-real-change-happen.html, (accessed 10 December 2020)
[110] Ibid.

As if in response, First Nations chiefs are now demanding an inquiry into systemic bias against Indigenous People in criminal justice and policing. The protests across the United States in the wake of its seemingly never-ending incidents of racialized police violence have led to greater discussion on systemic racism in Canada. It is important to not live in a state of denial, however one of the reasons that racism is so persistent in Canada is because of the country's commitment to being perceived as a haven of racial tolerance.

Between 2000 and 2017 there were 461 fatal encounters with police in Canada and the number is on the rise.[111] Of those 461 fatalities, 70 per cent had either mental health issues or substance abuse problems, or both. Further analysis shows that 42 per cent of those who died were mentally distressed, while 45 per cent were under the influence of drugs or alcohol.[112] These deaths inflamed racial tension and were met with outrage by a portion of the population and seeming complacence by another portion who observed dispassionately on social media that if you don't do anything wrong, police don't shoot at you.

As a group, Indigenous people are more likely than others to be violently victimized. Indigenous people may be seen by police as less worthy victims in comparison to others and so their calls for assistance may be downplayed or even ignored. Crimes against them may not be investigated as thoroughly or prosecuted as vigorously. This, in turn, leads to lack of trust in police and fewer crimes reported because Indigenous people see little point in doing so.

A review of cases involving sudden deaths of Indigenous men and women found that Thunder Bay Police Service[113] investigators failed on an unacceptably high number of occasions to treat or protect the deceased and their family equally and without

[111] J. Marcoux and K. Nicholson, 'Deadly force, Fatal encounters with police in Canada: 2000-2017', CBC News July 23, 2020, https://newsinteractives.cbc.ca/longform-custom/deadly-force, (accessed 21 June 2021).
[112] Ibid.
[113] Thunder Bay Police Service, https://www.thunderbaypolice.ca/, (accessed 17 June 2021).

discrimination because the deceased was Indigenous.[114] The failure to conduct adequate investigations and the premature conclusions drawn in these cases is, at least in part, attributable to racist attitudes and racial stereotyping.

In terms of the talking about the current racial crisis there is a tendency to focus attention on police and overlook individual complicity in creating an environment in which Indigenous lives are not treated as equal, where Indigenous death is framed as something that is timely and unpreventable, and where the state actors are not responsible. The common denominator is the indifference to Aboriginal death.

Investigations of Indigenous deaths and other interactions with police showed that Indigenous lives were devalued, and reflected differential treatment based on racist attitudes and stereotypical preconceptions about Indigenous Peoples, which belies the fact that police are supposed to be champions of justice in the case of a vulnerable charge whether said charge is intoxicated, suicidal, in need of medical help, or otherwise endangered. The fact is that if you are brown-skinned and having a mental health crisis for example, it is an incident that can lead to death.

'Some of the worst racists carry a gun. And they carry a badge!', said Grand Chief Doug Kelly, leader of the Sto:lo Tribal Council of British Columbia at the 2015 Assembly of First Nations in Gatineau, Quebec.[115] And inquiries generally follow only in the wake of high-profile police-involved deaths that attract media attention.

Today in Canada, there is an historic national inquiry into missing and murdered Indigenous women and girls, which examines root causes for the disproportionate number of victims, the blatant underlying cause of which is the systemic disrespect that has seen Indigenous

[114] Anti-Racism Act, 2017, S.O. 2017, c. 15
[115] Mas, S., 'Bob Paulson says he doesn't want racists inside RCMP ranks', *CBC News*, 9 Dec 2015, https://www.cbc.ca/news/politics/first-nations-bob-paulson-racism-mmiw-1.3357406, (accessed 2 June 2021).

detainees in police custody abandoned to freeze to death[116], and Indigenous patients being ignored to death in the health care system,[117] a form of discrimination so common that there are allegations of an emergency room "game" in which health-care staff competed to guess the intoxication levels of Indigenous patients.[118] Initially the Conservative government rejected the call for a formal inquiry into the disproportionality high number of missing and murdered aboriginal women, insisting that the cases should be viewed simply as crimes and not sociological phenomena requiring examination. Today, despite the ongoing national inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG), the deaths and disappearances continue, a trend that speaks to the vulnerability of the Indigenous population. The Royal Canadian Mounted Police (RCMP) estimate a total of 1,181 Indigenous women went missing or were murdered between 1980 and 2012, but there is no way to gauge the actual number of Indigenous victims of the large scale femicide that has been occurring over the past 150 years.

Many deaths in custody occur because police or medical professionals are indifferent to Indigenous People in their care, and will not touch, examine or monitor them in the same capacity they show to their white counterparts. This is indifference that kills. The pervasiveness of indifference among hospital, police and prison personnel suggests a shared, if unspoken-except-in-frustrated-mutterings, understanding that care would be wasted on Indigenous prisoners or patients, especially those perceived to be inebriated.

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[116] Report of the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild, The Honourable Mr. Justice David H. Wright, 2004, http://www.publications.gov.sk.ca/freelaw/Publications_Centre/Justice/Stonechild/Stonechild-FinalReport.pdf, (accessed 5 June 2021).

[117] B. Gunn, "Ignored to Death: Systemic Racism in the Canadian Healthcare System", EMRIP the Study on Health, Robson Hall Faculty of Law, University of Manitoba, https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Health/UniversityManitoba.pdf, (accessed 1 June 2020).

[118] A. Sterrit, 'Indigenous Peoples not surprised by reports of racist game played in hospitals', CBC News, 23 June 2020, https://www.cbc.ca/news/canada/british-columbia/indigenous-patients-nurses-on-alleged-racist-game-in-hospitals-1.5622448?__vfz=medium%3Dsharebar, (accessed 5 June 2021).

Inquests understand professional indifference and negligence toward Indigenous Peoples on the part of state actors as a story of timely death, which gains coherence through representations of Indigenous Peoples as possessing a pathological frailty that is more often than not associated with alcohol abuse. Each inquest forces the racial logic that Indigenous People are beyond saving, a dying race of chronic alcoholics. '*Custody and inquest are in this way a ritual of neglect and redemption*,' Sherene Razack writes in Dying from Improvement.[119]

In Winnipeg, New Brunswicker Raymond Cormier was found to be legally blameless in the murder of 15-year-old Tina Fontaine, whose 33-kilogram body was pulled from the Red River in 2014[120] inspiring the non-profit group 'Drag the Red'[121] to organize and embarrass the Winnipeg Police Service into paying attention to reports of missing Indigenous women and men. Saskatchewan farmer Gerald Stanley was found not guilty of murdering 22-year-old Colten Boushie, an Indigenous man on his property.[122] No one has been held legally accountable for either death.

Two Worlds Colliding (2004)[123] is a documentary examining Saskatoon's notorious freezing deaths. Countless Indigenous men were deposited on the outskirts of northern towns by police officers and left to walk back or not, in freezing weather. Many never made it home from what has come to be known as a 'starlight tour'[124]. Inadequate police investigations resulted in inconclusive evidence time and again, until a decade after the

[119] Razack, S. H., Dying from improvement, Inquests ad Inquiries into Indigenous Deaths in Custody, University of Toronto Press, p.102.
[120] D. Memee Lavell-Harvard and Jennifer Brant, eds., Forever Loved: Exposing the Hidden Crisis of Missing and Murdered Indigenous Women and Girls in Canada, 2016.
[121] 'Taken', *Drag the Red*, [web blog], 26 July 2016, https://www.takentheseries.com/drag-the-red/, (accessed 2 June 2021).
[122] K. Roach, The Gerald Stanley Case, The Canadian Encyclopedia, Historica Canada, 10 February 2020, https://www.thecanadianencyclopedia.ca/en/article/gerald-stanley-and-colten-boushie-case, (accessed 5 February 2021).
[123] 'Two Worlds Colliding' 2004, https://www.nfb.ca/film/two_worlds_colliding/, (accessed 2 June 2021).
[124] Ibid.

fact, a witness placed 17-year-old Neil Stonechild[125] in the back of a Saskatoon police car that night in 1990, showing signs of abuse and saying, '*They're going to kill me.*'[126] Stonechild was found, days later, frozen in an industrial area near Saskatoon, in -28-degree weather, partially clothed and wearing one shoe. The case initially caused a national discussion on police treatment of minorities but faded in the news for a decade, until two more Indigenous men were found frozen outside the city. At last, in 2003, the provincial government agreed to call an inquiry into Stonechild's death which resulted in the conviction of the two officers for assault and unlawful confinement, and a jail sentence for each of 8 months.

In the Eastern Canada Province of New Brunswick, where 29,380 First Nations, Metis or Inuk make up 4 percent of the population,[127] two Indigenous people died as a result of separate encounters with police in June 2020, both during wellness checks. In response to these incidents, New Brunswick Premier Blaine Higgs abandoned a plan to increase emergency powers in the police Bill 49, An Act to Amend the Emergency Measures Act.[128]

The legislation would have given police powers to stop people during a state of emergency and demand documentation to ensure compliance with an emergency order, particularly in the case of enforcement officers screening people entering the province for COVID-19. Considering the systemic racism perceived in the two shootings, it was determined to be the wrong time to give police more power.

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[125] 'Neil Stonechild: Timeline', CBC News online November 3 2005, https://www.cbc.ca/news2/background/stonechild/timeline.html, (accessed 20 Jun 2021).
[126] Ibid.
[127] Statistics Canada, Focus on Geography Series, 2016 Census, Aboriginal peoples, https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-pr-eng.cfm?Lang=Eng&GK=PR&GC=13&TOPIC=9, (accessed 19 June 2020).
[128] Legislative Assembly of New Brunswick, BILL 49, An Act to Amend the Emergency Measures Act 2011, https://www.gnb.ca/legis/bill/FILE/59/3/Bill-49-e.htm, (accessed 20 June 2021).

Despite New Brunswick Premier Blaine Higgs refusal to approve a provincial inquiry into the death of the two Indigenous New Brunswickers at the hands of police, he joined other political leaders, First Nations Peoples, chiefs and various ministers from Social Development, Public Safety and Indigenous Affairs in stating that it is time for government to listen, address issues and make lasting changes. New Brunswick First Nations chiefs, however, walked out of a meeting with Premier Higgs over his refusal to commit to an inquiry into systemic racism in the justice system and policing in the province, citing federal jurisdiction.

> *'It seems it's the same old 'they know what's best for us,' even though we have 15 of the chiefs standing here asking*,'[129]
>
> - Chief Bill Ward Metepenagiag First Nation.

IV.2. Health care

Long before the Truth and Reconciliation Commission began its investigation into events at residential schools, in 1904, Dr. Peter Bryce[130], the Chief Medical Officer for the Department of the Interior and Indian Affairs and public reformer, began to make detailed submissions to deputy superintendent Duncan Campbell Scott about the conditions he observed at Indian residential schools. In 1907, he conducted a study of the health of students in industrial schools in Manitoba, Saskatchewan and Alberta and found epidemic levels of death from tuberculosis among the schools and Aboriginal communities. The resulting Bryce Report[131] documented and publicized the horrific conditions, compiling substantial data demonstrating the unfolding public-health tragedy, dire living conditions

[129] L. Perley, 'Chiefs walk out of meeting after Higgs doesn't agree on inquiry into systemic racism', CBC News, July 08, 2020, https://www.cbc.ca/news/canada/new-brunswick/first-nations-chiefs-premier-systemic-racism-new-brunswick-1.5642537, (accessed 27 June 2021).
[130] 1906-1910 The Bryce Report, http://www.fnesc.ca/wp/wp-content/uploads/2015/07/IRSR11-12-DE-1906-1910.pdf, (accessed 20 July 2021).
[131] Department of Indian Affairs File 140,754-1 "Correspondence relating to tuberculous among the Indians in the various agencies across Canada 1908-1910" (c10167)

and soaring mortality rate of Indigenous children at Indian Residential Schools[132]. His analysis could not have been clearer. The schools he investigated in 1907 and again in 1909 reported a mortality rate for children aged 4 to 18 of 40 per cent to 60 per cent, many from tuberculosis. (Although precise data on TB in children at the time was scarce, Bryce estimated that the death rate from tuberculosis among Canada's native population was 34.7 per 1,000, or about 19 times that of the general non-Indigenous population.) A quarter of all students were known to have died by 1907, with a rate as high as 75 per cent at one school.[133]

Leaked to the media and debated in the House of Commons, Bryce's work fell on deaf ears. Prime Minister Wilfrid Laurier's Liberal government enacted few changes. In fact, as the tragedies multiplied over the following decade, conditions deteriorated even further. The schools were poorly built, overcrowded and unsanitary; the Indigenous children malnourished, overworked and abused.[134] His report received publicity across the country and with its extreme criticism of the government, he was ultimately removed from the position. Christian churches operated these schools for profit and their model supported the genocidal efforts of the federal government whose officials willfully ignored the conditions. As Scott wrote in 1910:

> "*It is readily acknowledged that Indian children lose their natural resistance to illness by habitating so closely in these schools, and that they die at a much higher rate than in their villages. But this alone does not justify a change in the policy of this Department, which is being geared towards the final solution of our Indian Problem.*"[135]

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[132] Fraser, C., Logan, T., Orford, N. Globe and Mail July 17, 2021 https://www.theglobeandmail.com/opinion/article-a-doctors-century-old-warning-on-residential-schools-can-help-find/, (accessed 20 July 2021).

[133] Ibid.

[134] Ibid.

[135] Fraser, C., Logan, T., Orford, N. Globe and Mail, July 17, 2021, A doctor's century-old warning on residential schools can help find justice for Canada's crimes, https://www.theglobeandmail.com/opinion/article-a-doctors-century-old-warning-on-residential-schools-can-help-find/, (accessed 20 July 2021).

Furthermore, inquests for the most part consider death of Indigenous people as timely rather than untimely.

> *'The story of timely death gains coherence through representations of indigenous people as possessing a pathological frailty that is more often than not associated with alcohol abuse. If indigenous people are a dying race of chronic alcoholics, then they are people that no one can really harm or repair.*[136]
>
> - *Sharene Razack, Dying From Improvement*

A vicious cycle of health injustice among Indigenous people was set off by their cultural deprivation and systemic isolation, created by residential schools and colonial practices. Health inequity exists today despite the abolishment of the residential school system because of the multi-generational impact of its longitudinal policies that influenced parenting, dietary and lifestyle habits.

IV.3. Intergenerational Trauma

Individual trauma affects all aspects of human functioning, causing fatigue and self-isolation, insomnia, irritability and impacts on cognitive functioning. With collective trauma, the injury is not just to the individual, but to the fabric of society itself, causing suffering to communities and society, and can be passed down through generations. The philosophy of killing the Indian in the child inflicted waves of trauma on families. One generation of children separated from their parents and raised in a loveless, industrial setting and taught to hate their own culture naturally affected their parenting of the next generation and so on. Pent-up resentment and post-traumatic stress manifested itself into alcohol dependence and abuse and a myriad of other repercussions that passed along slow-motion shock waves of hurt and self-harm.

[136] Razack, S. H., Dying from improvement, Inquests ad Inquiries into Indigenous Deaths in Custody, University of Toronto Press, p.113.

At the time, the United States President Thomas Jefferson's Declaration of Independence talked about all men being created equal while referring to Indigenous Peoples as "merciless Indian savages".[137] More explicit diatribes came from church-run boarding schools, where Indigenous students were assigned to read books that referred to their families as savages in a way that was detrimental to their development and self-esteem. The residential school system and its legacy brought immeasurable human suffering to the First Nations, Inuit and Métis Peoples, the effect of which continues to reverberate through generations of families and communities.

IV.4. Anti-Indigenous Sentiment and rise in prejudice

In Nova Scotia, tensions are rising in the lobster fishery, with the Department of Fisheries and Oceans (DFO) moving fisheries officers from across Canada to monitor relations between Indigenous and commercial lobster fishermen over the sale of lobster caught under the communal food, social and ceremonial licences (FSC). The Indigenous fishery has no season; it is always open to Indigenous People and is regulated by DFO, but licence conditions do not permit the sale of the catch. The Sipekne'katik First Nation, a Mi'kmaw community in Nova Scotia, was exercising a treaty right that was recognized by the Supreme Court of Canada two decades earlier which, while it affirmed the right to sell, it also ruled governments have the right to regulate the treaty fishery for conservation and in the public interest. On September 17, 2020, the Sipekne'katik First Nation, launched a self-regulated lobster fishery, marking the twenty-first anniversary of the SCC's first decision in R. v. Marshall — the historic decision which held that Mi'kmaq have a treaty right to earn a moderate livelihood through fishing. Settler fishers and others opposed to Sipekne'katik First Nation's fishery responded with protests, acts of violence, vandalism, theft, and intimidation on the water and on the docks. Hostility and racist commentary proliferated in person and online and commercial harvesters have repeatedly complained that the treaty is

[137] Owings, A., Author, Huffinton Post, 'Indian Voices: Listening to Native Americans', The Damaging Three Words of the Declaration of Independence, Sep 01, 2011, https://www.huffpost.com/entry/a-radical-suggestion-exci_b_888897, (accessed 10 June 2021).

being used as a cloak for a commercial fishery. Sipekne'katik Chief Mike Sack said, '*DFO does not have a right to impose rules on the band's food, social and ceremonial fishery'*[138].

In New Brunswick, in the summer of 2021, a first nations man was acquitted of a charge of illegal possession of a moose carcass, following more than a decade of court proceedings. The appeal focused on '*correcting an injustice resulting from the failure of two lawyers to provide a defendant with effective counsel in advancing a defence of Aboriginal right under section 35 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982, 1982, c. 11 (UK).*"[139] Keith Boucher had been charged with possessing a moose carcass without a license in violation of section 58 of the New Brunswick Fish and Wildlife Act[140], and he argued that he did not need a license to possess moose meat because he was an Indian Person who had Aboriginal rights protected by section 35 of the Constitution Act, 1982.[141] His lawyer argued that since Boucher had lived a traditional Mi'kmaq lifestyle since age six and was extremely knowledgeable about Mi'kmaq spirituality, ceremonies, traditions, and hunting practices, that under the Constitution Act of 1982 it was his Aboriginal right to possess the moose carcass. The court document though, stated that Boucher didn't have "Indian" status under the Indian Act, but he did carry a New Brunswick Aboriginal Peoples Council card.

The Crown conceded that, if it were determined that Mr. Boucher is First Nations, he would have had the right to harvest the moose and therefore would not be guilty of the offence. As

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[138] Withers, P., CBC News, Nova Scotia, An appeal for calm as tensions rise again over N.S. Indigenous lobster fishery, August 10, 2021, An appeal for calm as tensions rise again over N.S. Mi'kmaw lobster fishery | CBC News, (accessed 10 August 2021).
[139] Court of Appeal of New Brunswick Cours d'appel de nouveau Brunswick, 116-18-CA Between Keith Boucher Appellant and her majesty, the Queen MAJESTY THE QUEEN RESPONDENT, https://www2.snb.ca/content/dam/courts/pdf/appeal-appel/rulings-motions/2019/08/20190808Boucherv.R.pdf, (accessed 10 July 2021).
[140] New Brunswick Regulation 82-103 under the Fish and Wildlife Act, 2020-39, https://www.gnb.ca/0062/acts/BBR-2009/2009-58.pdf, (accessed 10 July 2021).
[141] The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, Recognition of existing aboriginal and treaty rights | The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 | Federal Statutes / Lois fédérales (lexum.com), (accessed 10 July 2021).

a result, since Mr. Boucher admitted at trial that all essential elements of the offence had been established, the only remaining issue was whether Mr. Boucher is First Nations, specifically Mi'kmaq."[142] The Court examined the case of R. v. Powley[143] in determining if Boucher was First Nations.

The three criteria in the First Nations test are self identification, community acceptance and ancestral connection. Only members with a demonstrable ancestral connection to the historic community can claim a section 35 right. Powley claimed Metis ancestry. The Métis did not exist before European contact but arose as the European settlers mixed with aboriginal peoples living in Canada. Métis rights though, are specifically protected in s. 35(2) of the Constitution Act, 1982.[144]

The Court said that the 'appropriate time to look for the Métis right is the time just prior to when the Europeans effectively established political and legal control in the area'[145], and if that right was integral to the Métis distinctive culture at that time. Applying this test to the facts, the Court found that the Métis had a right to hunt for food in the designated territory at the time just prior to European control – around 1850, and that this right was an integral part of the Métis culture. The rest of the test was also satisfied in this case and the court ruled that 'the current right is the same as the historic right; there was continuity; the right was not extinguished, it was infringed by the regulation, and the infringement was not successfully justified.'[146]

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[142] R. v. Keith Boucher 2015 NBPC 06, https://www.ecelaw.ca/aboriginal-and-indigenous-law/case-law/r-v-boucher-2015-nbpc-6-canlii.html, (accessed 10 July 2021).
[143] SUPREME COURT OF CANADA, R. v. Powley, [2003] 2 S.C.R. 207, 2003 SCC 43, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2076/index.do, (accessed 10 July 2021).
[144] The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, Recognition of existing aboriginal and treaty rights | The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 | Federal Statutes / Lois fédérales (lexum.com), (accessed 10 July 2021).
[145] Guide to the Canadian Charter of Rights and Freedoms, https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html, (accessed 10 July 2021).
[146] R. v. Powley, 2003 SCC 43 (CanLII), [2003] 2 SCR 207, https://www.canlii.org/en/ca/scc/doc/2003/2003scc43/2003scc43.htm, (accessed 10 July 2021).

V.3. Supreme Court Cases

There have been 8 cases brought before the Supreme Court of Canada (SCC) involving Indian Residential Schools. The 2006 Indian Residential School Settlement Agreement (IRSSA) was the largest-ever class action settlement in Canada, with a payout of $28,000 CAN (around 18,236 Euros) for each of the 80,000 former residential school survivors to reconcile the physical, sexual, emotional, and psychological abuses inflicted during their time at the institutions. It was a turning point in the history of the nation. Now though, in the Final Report released by the Independent Assessment Process Oversight Committee 2021[147], the cost of compensating thousands of victims of Canada's notorious residential schools amounted to more than $3 billion, according to a report released in 2021. In all, roughly 150,000 First Nations, Inuit and Métis children attended these institutions. Under the Independent Assessment Process (IAP) created to adjudicate claims from students who had suffered abuse at the schools, claimants were entitled to up to $275,000 each, based on the nature and level of abuse suffered. In all, 38,276 claims were received, with Saskatchewan having the most claimants. Adjudicators awarded $2.14 billion in compensation to 23,431 claimants while another 4,415 claimants received compensation directly from the federal government.[148] Overall, the government paid out $3.23 billion in compensation and other costs. The process itself cost another $411 million. The IRSSA established a multibillion-dollar fund to support survivors in their recovery. One of the outcomes of this agreement was the creation of the Truth and Reconciliation Commission. The Commission produced its final report in 2015 which included the creation of 94 Calls to Action meant to address the legacy of the residential school system. In its 2015 report, the Truth and Reconciliation Commission said there have been over 40 successful convictions of former residential school staff members who sexually or physically abused students. As of January 31, 2021, of that year, it said 37,951 claims for injuries resulting

[147] Independent Assessment Process, Independent Assessment Process Oversight Committee 2021, http://www.iap-pei.ca/media/information/publication/pdf/FinalReport/IAP-FR-2021-03-11-eng.pdf, (accessed 10 July 2021).
[148] Canadian Broadcasting System, https://www.cbc.ca/news/indigenous/iap-final-report-residential-schools-1.5946103, (accessed 10 July 2021).

from physical and sexual abuse at residential schools had been received. The SCC ruled in 2017 FONTAINE vs CANADA[149], that residential school survivors have full control over their stories and records a decision concerning the disposition of documents related to the settlement of claims arising from abuse and mistreatment of Indigenous children removed from their homes and forced to attend residential schools. The Fontaine decision preserves these essential aspects of the Independent Assessment Process (IAP) and ensures that only survivors can decide when, how, and whether their stories are archived or published.

There is no question that 'the justice system, starting with the police, through the court system and into its jails, is a deeply flawed institution infected by overt and systemic racism.'[150] Professional indifference and negligence toward Indigenous People on the part of state actors manifest itself in all aspects of the governing system that took upon itself the responsibility to care for their charges, who didn't request, want or need care, until the effects of the colonial system took hold after many generations.

A territory shared with Indigenous Nations based on formal agreements (treaties) and information agreement (alliances) were founded on three principles: one, mutual respect; two, mutual prosperity; and three, mutual protection, none of which have proven to abound in the current system.

The final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (MIMMIWG) [151] revealed that 'persistent and deliberate rights violations were the root cause behind Canada's staggering rates of violence against Indigenous women.' The

[149]Canada (Attorney General) v. Fontaine, 2017 SCC 47 (CanLII), [2017] 2 SCR 205, https://www.canlii.org/en/ca/scc/doc/2017/2017scc47/2017scc47.html, (accessed 10 July 2021).
[150] M. Spratt, Canadian Lawyer Magazine, Canada's treatment of Indigenous peoples fits the definition of 'genocide', https://www.canadianlawyermag.com/news/opinion/canadas-treatment-of-indigenous-peoples-fits-the-definition-of-genocide/276176, (accessed 10 July 2021).
[151] Final Report, The National Inquiry into Missing and Murdered Indigenous Women and Girls, Reclaiming Power and Place, Ottawa, Canadian Press, 2003, https://www.mmiwg-ffada.ca/final-report/, (accessed 23 June 2021).

final report of The National Inquiry and the adverse reaction against it, leaves no doubt that racism still insinuates itself in the justice system as highlighted in two separate judgements of the SCC, in the cases of R. v. Barton[152] and R. v. Le[153].

In the case of R. v. Barton[154] the court conceded to the damaging effects of widespread racism against Indigenous people in Canada's criminal justice system. Bradley David Barton was found not guilty of killing an Indigenous woman because of a discrepancy in the interpretation of the rules dealing with sexual history, the SCC ruled.

The court said,

> *'Trials do not take place in a historical, cultural, or social vacuum. Indigenous persons have suffered a long history of colonialism, the effects of which continue to be felt. There is no denying that Indigenous people — and in particular Indigenous women, girls, and sex workers — have endured serious injustices, including high rates of sexual violence against women.'*[155]

In the case of Le[156], the SCC concluded again that *'racial minorities have disproportionate levels of contact with the police and the criminal justice system — not because of their conduct but because of the colour of their skin*.'[157]

[152] SCC, R. v. Barton, May 24 2019 SCC 33, https://www.scc-csc.ca/case-dossier/cb/2019/37769-eng.pdf (accessed 23 June 2021).
[153] SCC, R. v. Le, 31 May 2019 SCC 34, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17804/index.do (accessed 23 June 2021).
[154] SCC, R. v. Barton, 2019 SCC 33 Ibid.
[155] S. Franks, 'Barton jury instructions may raise racial prejudice', *Canadian Bar Association National Magazine*, 5 June 2019, https://nationalmagazine.ca/en-ca/articles/law/in-depth/2019/barton-jury-instructions-may-raise-racial-prejudic, (accessed 27 June 2021).
[156] SCC, R. v. Le, 2019 SCC 34 Ibid.
[157] M. Spratt, Canadian Lawyer Magazine, Canada's treatment of Indigenous peoples fits the definition of 'genocide', https://www.canadianlawyermag.com/news/opinion/canadas-treatment-of-indigenous-peoples-fits-the-definition-of-genocide/276176, (accessed 10 July 2021).

According to Sherene Razack, in her exploration of 'the Canadian settler state', Dying From Improvement - Inquests and Inquiries into Indigenous Deaths in Custody[158],

> *'the tendency for inquests and inquiries to focus on the individual pathologies (e.g. alcoholism and mental illness) of the victims deflects attention away from the deep structural issues and strained relations between the police and Indigenous People.'*[159]

Their inquiries highlight the systemic nature of damage imposed on Indigenous Peoples. Razack said,

> *'Stricter laws that make police more accountable as they stop and frisk and interrogate people on the street and the implementation of the use of body cameras is an advancement to transparency in the justice system, but observers are not convinced that law enforcement would need body cameras to gauge accountability and honourable behaviour if the population didn't live in a society that treats certain groups as dangerous and suspicious first.'*[160]

Chapter V: Reconciliation

Political leaders across Canada hurried to condemn racism in the aftermath of protests regarding the way Canada governs and polices marginalized populations. Without understanding what systemic racism is though, the people at the very heads of those systems are just talking the talk without walking the walk. On 8 December 2015, following a prolonged reluctance, the Liberal government finally acknowledged the approximately 1,200 missing and murdered Indigenous women in Canada and, extending acknowledgement to responsibility, vowed finally to launch a national public inquiry. In 2016 The National Inquiry into Missing and Murdered Indigenous Women and Girls

[158] S. Razack, *Dying from Improvement: Inquests and Inquiries into Indigenous Deaths in Custody,* Toronto, University of Toronto Press, 2015. pp. 51-80.
[159] Ibid.
[160] Ibid.

(NIMMIWG)[161] became a significant component of the federal government's dedication to the concept of reconciliation.

Police are civilians' last line of defence in terms of society's social institutions. They respond to the failures of other social institutions like Social Welfare, Education and Child and Family Services, failures that see Indigenous Peoples facing different outcomes in the health, employment, housing, justice and policing systems than non-Indigenous Peoples.

The Indigenous Peoples Court (IPC)[162] at the Thunder Bay, Ontario Courthouse opened in 2017, creating a resource for Indigenous people who have been charged with a criminal offence, through its 'restorative justice approach using Indigenous culture and traditions.'[163] Built to function in a holistic nature, it accords with 'the medicine wheel teachings of the Indigenous People and will provide support to assist the individual's rehabilitation and reduce recidivism.'[164]

In New Brunswick, the Saint John police force are partnering with the federal government for funding to create a crisis response unit consisting of non-uniformed police and emergency social workers. This hybrid unit offers a component of enforcement and protection for the social workers, without the intimidation aspect that comes with a uniform. The Integrated Mobile Crisis Response Team[165] (IMCRT) is a collaborative initiative between provincial and municipal law enforcement agencies and addiction and

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162 Steps to justice, Your guide to Law in Ontario, What is a Gladue or Indigenous Peoples Court? https://stepstojustice.ca/questions/criminal-law/what-gladue-or-indigenous-peoples-court/, (accessed 27 June 2021).

163 Ibid.

164 G. McNeilly, Office of the Independent Police Review Director, *Broken Trust Indigenous People and the Thunder Bay Police Service*, December 2018, http://oiprd.on.ca/wp-content/uploads/OIPRD-BrokenTrust-Final-Accessible-E.pdf, p.64, (accessed 05 June 2021).

165 Government of New Brunswick, Social Development, News Release, 21 February 2020, *New mobile response crisis team announced*, https://www2.gnb.ca/content/gnb/en/departments/social_development/news/news_release.2020.02.0070.html, (accessed 02 June 2021).

mental health services providers, that provides on-site acute addiction and mental health needs assessments and specialized crisis intervention, along with attention and better support for high-risk individuals.

It is vital for the public to have confidence in the justice system whose responsibility is community service and protection. When the legitimacy of police conduct is called into question, which happens routinely, public fears around the issue of trust need assuaged, and light needs shone onto the role that colonialism keeps playing in the lives of Canadians and the Indigenous People of Canada.

The Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs[166] spoke at the United Nations Permanent Forum on Indigenous Issues 16th Session,[167] of the three paths to reconciliation and self-determination in Canada: the UN Declaration on the Rights of Indigenous Peoples; honouring established treaties, claims and other agreements; and working towards new recognition of rights, and also the 94 specific and meaningful calls to action that arose from Canada's TRC[168], number 79 of which is the Commemoration of Indian Residential School Sites.[169]

The UNDRIP preamble highlighting the human rights violated through colonialization is as follows:

Article 22 (special attention paid to children and youth),

Article 3 (self-determination),

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[166] Canada, Prime Minister of Canada Justin Trudeau, The Honourable Carolyn Bennet, https://pm.gc.ca/en/cabinet/honourable-carolyn-bennett, (accessed 03 June 2021).

[167] 16th Session of the United Nations Permanent Forum on Indigenous Issues, Statement by Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples, 2017, OHCHR | 16th Session of the United Nations Permanent Forum on Indigenous Issues, (accessed 03 June 2021).

[168] Government of Canada, Truth and Reconciliation Commission of Canada, https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525, (accessed 10 June, 2021).

[169] C. Beninger, 'Implementing TRC Call to Action #79: Commemoration of Indian Residential School Sites', *Active History*, http://activehistory.ca/2017/09/implementing-trc-call-to-action-79-commemoration-of-indian-residential-school-sites/, p.30, (accessed 03 June 2021).

Article 7 (no forcible removal of children),
Article 13 (know history, language, oral traditions, writings),
Article 14 (education in own culture, language),
Article 17 (protection from economic exploitation and interference with education),
Article 19 (free, prior and informed consent prior to legislative or administrative measures),
Article 21 (own political, economic and social systems/institutions),
Articles 25, 26 and 32 (right to land and resources, responsible to future generations),
Article 31 (enjoy cultures, customs, religions, languages; develop economies and social and political institutions) and
Article 43 (survival, dignity and well-being).[170]

Bill C-15 is the landmark piece of federal legislation brought forward to implement UNDRIP into Canadian law, and to ensure Canada's commitment to a renewed, nation-to-nation relationship with Indigenous Peoples, a relationship based on recognition of rights, respect, co-operation and partnership. It affirms the rights of Indigenous Peoples to self-determination and to their language, culture and traditional lands and delineates the need for FPIC from Indigenous Peoples on anything that infringes on their lands or rights. Implementing the Declaration breathes life into Section 35 of Canada's Constitution, which provides full rights for Indigenous Peoples.

V.1. Land Acknowledgment

Territorial acknowledgement is rooted in an ancient Indigenous diplomatic custom. When an Indigenous person came to be on the territory of another Nation, even if only passing through, they would announce their presence by acknowledging that their hosts were the Nation responsible for preserving this territory and that they come in peace. In current

[170] UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295, https://www.refworld.org/docid/471355a82.html, (accessed 27 June 2021).

atmosphere of reconciliation, the custom has been revived for meetings to acknowledge the Indigenous Nation or Nations that occupy the territory where the meeting is taking place.

> "*Acknowledging territory shows recognition of and respect for Aboriginal Peoples. It is recognition of their presence, both in the past and the present. Recognition and respect are essential elements of establishing healthy, reciprocal relations. These relationships are key to reconciliation...*"[171]

In 2015, under Prime Minister Justin Trudeau, territorial land acknowledgements began to accompany every official opening address in the form of a statement identifying "Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq peoples". This acknowledgement is a seismic cultural shift for some and a token gesture to others. Critics see territorial land acknowledgements as empty rhetoric and ask how creating expectations that do not correspond with reality leads to reconciliation, and fear that admitting the land is unceded could be interpreted as Indigenous Peoples having legal right to reclaim the land. Canada's embrace of Indigenous land acknowledgments is growing but has left some First Nations advocates ambivalent about whether these are a meaningful act of reconciliation or perfunctory bureaucratic hypocrisy.

V.1. White-settler Trauma Trolling

Trauma sells, as evidenced in the furor of white settler outrage flared up in early 2021, at the discovery of a mass grave at the site of a former residential school in Western Canada. '215 remains! One as young as three!' Dedication to healing and community is needed along with attention that doesn't leave marginalized and vulnerable people at the disposal of white settlers' temporary concern-trolling. The pain is too deep to be passed around and devalued by white settler tire-kickers with a passing interest in trauma porn.

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[171] Canadian Association of University Teachers, Guide to Acknowledging First Peoples and Traditional Territory, https://www.caut.ca/content/guide-acknowledging-first-peoples-traditional-territory, (accessed 03 June 2021).

On July 1, 2021, shortly after the discovery of the graves, thousands of Canadians turned out on Parliament Hill[172] for Canada Day to pay a sort of tribute to the grim headlines, plus Canada Day festivities had ground to a halt due to COVID. Orange t-shirt-wearers wound their way through the streets to show solidarity with Indigenous communities reeling from the onslaught of the news. Now, only a few months later, First Nations community leaders are concerned that the discovery of the residential school graves and the horror they represent may fall to the wayside both in coverage and public memory. Federal and provincial flags, lowered indefinitely at the time of the discovery, are back at full mast and Prime Minister Trudeau's sudden calling of a federal fall election is overshadowing months of reckoning with the colonial genocide that upholds the framework of Canada's history. The number one priority in the election could be addressing the genocide against Indigenous Peoples, which runs the gauntlet from the legacy of unmarked graves, missing and murdered Indigenous women and girls, the over-incarceration rates of Indigenous people, issues with inadequate housing and the lack of clean water on First Nations. The focus though, seems to be favouring the Canadian middle class who are not in the throws of an extended and long-term human rights crises.

Chris Benjamin, who investigated the Shubenacadie Residential School in his research for his book, Indian School Road: Legacies of the Shubenacadie Residential School, declined as a white author, to exploit an Indigenous survivor's story. Instead, he concentrated on the European Canadians who created, implemented and ran the institute. '*White people, settler Canadians, created this system and we're responsible for it,*' he said.[173]

Some Catholic Canadians are struggling with their faith, reflecting and rethinking aspects of their religion after learning the blanching details of life for the countless children

[172] Government of Canada, Parliament Hill, https://www.canada.ca/en/services/culture/cultural-attractions/attractions-canada-capital/parliament-hill.html, (accessed 10 June 2021).
[173] Indian School Road, Legacies of the Shubenacadie Residential School, 2014 Nimbus publishing, p.79

corralled into these institutions, and absent is the comfort found in turning to prayer. In July 2021 in Winnipeg, a Catholic priest was banned by the archdiocese from speaking publicly after accusing residential school survivors of lying about sexual abuse to get more money from court settlements.

> *'If they wanted extra money, from the money that was given to them, they had to lie sometimes — lie that they were abused sexually and, oop, another $50,000. It's kind of hard if you're poor not to lie', he continued, adding that all of the Indigenous people who he knew during his 22 years working up north liked residential schools.*[174]
>
> *- Father Rheal Forest July 10, 2021*
> *St. Emile Roman Catholic Church, Winnipeg*

V.2. Anti-racism initiatives

The New Brunswick Human Rights Commission website notes that

> *'Canadian courts have recognised that discrimination may be direct, involving an intentional difference in treatment, usually motivated by bigotry, prejudice or stereotypes. However, it may also be unintentional, as in the case of 'systemic' or 'adverse effects' discrimination that occurs when a uniform practice has a disproportionately adverse effect on a disadvantaged group and the needs of the group are not reasonably accommodated.*'[175]

[174] Radio Canada, Winnipeg Catholic priest accuses residential school survivors of lying about abuse for money, https://ici.radio-canada.ca/rci/en/news/1812700/winnipeg-catholic-priest-accuses-residential-school-survivors-of-lying-about-abuse-for-money, (accessed 10 June 2021).
[175] The New Brunswick Human Rights Commission, The New Brunswick Human Rights Act Explained https://www2.gnb.ca/content/gnb/en/departments/nbhrc/human-rights-act/act-explained.html, (accessed 10 June 2021).

Anti-racism initiatives abound now in Canada, municipally, provincially and at the federal level. The Federal government, in partnership with community groups and Indigenous Peoples including the First Nations, Métis and Inuit Peoples, created an Anti-Racism Strategy,[176] the Indigenous component of which emphasises not only identification of issues, but demands the accountability of elected officials to monitor these structures. Adequate mechanisms are needed to buttress political will to address the real crisis at hand, which is a failure of commitment to recognize that most crimes are related to poverty, mental health issues and substance abuse, and need to be treated holistically, and not only through the criminal justice system.

The Federal Anti-Racism Secretariat[177] conducted national summits on anti-Semitism and Islamophobia, along with announcing several commitments that include engaging communities in the development of Ottawa's next anti-racism plan.

Minister Bardish Chagger[178], the Minister of Diversity and Inclusion and Youth said,

> '*Diversity and inclusion are both fundamental to a more inclusive society, where all Canadians are able to participate and thrive. Although our government has already taken important steps to combat racism, systemic racism is still a daily reality for too many Canadians.*'[179]

In that vein, initiatives such as the Security Infrastructure Program,[180] which provides funding to enhance the security infrastructure of communities targeted by hate-motivated

[176] Government of Canada, Canada's Antiracism Strategy, https://www.canada.ca/en/canadian-heritage/campaigns/anti-racism-engagement.html, (accessed 06 June 2021).
[177]Government of Canada, Federal Anti-Racism Secretariat, https://www.canada.ca/en/canadian-heritage/campaigns/federal-anti-racism-secretariat.html, (accessed 03 June 2021).
[178] Chagger Bardish, Member of parliament Waterloo, Ontario, http://bardishchaggermp.ca/, (accessed 03 June 2021).
[179] Ibid.
[180] Government of Canada, Public Safety Canada, Security Infrastructure Program (publicsafety.gc.ca), https://www.publicsafety.gc.ca/cnt/trnsprnc/brfng-mtrls/trnstn-bndrs/20191120/026/index-en.aspx, (accessed 03 June 2021).

crimes, and the Anti-Racism Action Program,[181] intended to help address barriers to employment, justice and social participation among Indigenous Peoples, racialized communities and religious minorities, are two of the commitments by which the government of Canada is implementing its Anti- Racism Strategy in an effort to dismantle white supremacists, monitor hate groups, and take action to combat hate everywhere, including online.

In the province of New Brunswick, archival reconnaissance at the Provincial Archives of New Brunswick (PANB) is bringing to light its own history of Indian day schools. The Sussex Vale School ran until 1826 however others operated well into the 20th century, their missions like the other residential schools across Canada, originally designed to impose English language, culture and social norms on the Indigenous students through education, but after 1807 functioning more like a workhouse with its program of indentured servitude.

The May 27, 2021 discovery at the Tk'emlúps te Secwépemc First Nation of the unmarked mass grave with its remains of 215 Indigenous children, came as a painful reminder of Canada's violent settler colonial past and assimilationist policies. With ground-penetrating radar, the community was able to locate the remains of children as young as three years old and confirmed a knowing in their community that there were undocumented deaths at the Kamloops Residential School.

By July 2021, the remains of nearly 1700 children have been found in similar mass grave sites across the country using the same ground-penetrating radar. That number will undoubtedly continue to rise as searches are conducted from coast to coast. Unfortunately, that same technology cannot be used to scour archives to find records related to residential and Indian day schools. Any archival evidence has been tucked away for decades in federal

[181] Government of Canada, Anti-Racism Action Program, https://www.canada.ca/en/canadian-heritage/services/funding/anti-racism-action-program.html, (accessed 03 June 2021).

and church records, and many documents were purposely destroyed by the federal government and church institutions alike. Nevertheless, the task of locating surviving records that document the history of these schools is a necessary one and was most recently taken up by faculty in the University of New Brunswick's Department of History. A similar offer has already been extended by faculty at Nipissing University to assist Indigenous nations, communities and researchers, and faculties at other universities in other provinces are stepping forward to offer their help and expertise, but it is important to remember that historians are not uniquely equipped to search archives, and some do not even use archives in their own research.

Archives also have a crucial role to play when it comes to addressing the Calls to Action made by the TRC. Specifically, they can help by working with Indigenous communities to find ways to reverse decades of racist or discriminatory record description, the discounting of records not produced by European or white settlers, and the removal of any barriers that exist between Indigenous communities and the settler archives.

Historians are now charged with teaching Canadian history in a way that challenges the kinds of pedagogy that supports settler narratives of the past, which only serve to support the myth of a benevolent Canada. For the faculty at UNB, this means teaching students about the complicated nature of Indigenous and settler relations, finding ways to incorporate Indigenous voices and knowledge about Turtle Island (North America), and taking a critical approach to Confederation without getting bogged down in debates about presentism and statues of John A. Macdonald[182].

[182] Johnson, J. K., The Canadian Encyclopedia, Sir John A. Macdonald, 2017, https://www.thecanadianencyclopedia.ca/en/article/sir-john-alexander-macdonald, (accessed 10 July 2021).

Conclusion

In conclusion, this paper has meant to illustrate through examples, the ineffectiveness of ongoing reconciliation efforts by the Canadian government. Very likely every residential school that still stands or was ripped down has unmarked graves. This is just the beginning of a deep reckoning, social conscience, and an opportunity for government to make more than empty gestures. 'Crown' land? Give its governance over and understand that the time for corporate greed needs to come into balance with seven generations philosophy, for everyone's benefit. Sober second thought in the senate? Transform that body to a Circle of Elders and bring Indigenous philosophy into the intuitions where laws are made. Anything is possible if we are willing. We are certainly able, and meaningful change is long overdue. Patience for empty gestures is gone. The impact of colonialism is comprehensive. Treaties haven't been respected. The Indigenous People have been (and continue to be) forcibly displaced from the land, and the reservation system, Indian Act, residential school systems, RCMP, mineral rights laws and Crown land acts are all systemic tools that colonizers have used to eradicate Indigenous people to create property and wealth for colonial powers. If a Canadian lives here and is not Indigenous, they hold accountability for righting wrongs and co-creating systems that are fair. This means giving some things up, including sharing power and wealth.

Money isn't enough. Clean water, health, and housing are good, but also insufficient. Constitutional reform that formally makes space to co-govern is a tall order, but this land is Indigenous land, and whose laws and institutions are these, anyway? What can we do in the present that is constructive rather than destructive, that re-envisions how we share power, engage with social responsibility, the environment, and the economy in a way that is sustainable? We have all the constitutional lawyers, both Indigenous and non-Indigenous, and all the bureaucratic expertise necessary. All that is needed beyond that is political will and some visionary imagination. Nothing is impossible. Any impediment presented is surmountable.

Apologies are disingenuous and a symbolic way for settlers to appease First Nations without taking meaningful action, and the opposite of what is needed for true reconciliation. The inured societal values of life, liberty and security of the person are core values worthy of constitutional protection and government interference in these requires public accountability.[183] The Canadian government has issued countless apologizes[184] for the atrocities committed in residential schools[185] and for children separated from their families, withdrawn as much as possible from the parental influence,[186] forced to live in abusive conditions, taught English and forbidden from speaking their own language[187].

Certainly, one generation cannot be held accountable for sins of the past however current applications of systemic racism to status Indians and the racist policies of Canadian institutions are still doing harm with a structure that provides temptation in the form of reserves and benefits.[188] This form of support has come at the cost of societal disrespect, stigma and prejudice. An intergenerational decline in development and accompanying lack of confidence due to a learned dependence on government hand-outs, see some families without skills or motivation to support themselves despite support in the form of free university education and other skills training opportunities.[189]

Residential schools are not some shadowy remnant of a past that no longer exists in Canada. It is our present reality, and the fact is that Indigenous Peoples in this country continue to

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[183] MacAlister, D., *Police Involved Deaths The Need for Reform*, 'BC Civil Liberties Association', Vancouver, 2012, https://bccla.org/wp-content/uploads/2012/03/2012-BCCLA-Report-Police-Involved-Deaths3.pdf, p.1, (accessed 06 June 2021).

[184] 2008 Federal Apology to Residential School Survivors, (online video), 2008, https://www.youtube.com/watch?v=aQjnbK6d3oQ, (accessed 05 June 2020).

[185] Trudeau apologizes to residential school survivors in Newfoundland and Labrador (online video), 2017, https://www.youtube.com/watch?v=3NESUCfZksg, (accessed 05 June 2020).

[186] Canada, J. A. MacDonald, House of Commons Debates, (9 May 1883).

[187] C. McIntyre 'Read Justin Trudeau's apology to residential school survivors in Newfoundland', *MacLean's Magazine*, 2017, https://www.macleans.ca/news/canada/read-justin-trudeaus-apology-to-residential-school-survivors-in-newfoundland/, (accessed 05 June 2020).

[188] Department of Justice, Canada, *Indian Act*, R.S., c. I-6, s. 1., 1876, Section 18, https://web.archive.org/web/20060427032207/http://lois.justice.gc.ca/en/I-5/247900.html, (accessed 03 June 2021).

[189] Government of Canada, Indigenous Services Canada, Education and Training, https://www.sac-isc.gc.ca/eng/1100100033601/1521124611239, (accessed 06 June 2021).

bear the weight of systemic racism, colonial erasure and trauma caused by a genocidal system that was built up over many years, by many governments, and many prime ministers. This same system did not simply vanish in 1996 when the last residential school, located in Saskatchewan, closed its doors. Part of reaching a meaningful reconciliation will require a great deal of archival work to unpack that fact – to find records, to acknowledge their significance to different communities, and to recognize that as much as archival records can teach us about the past, they can equally inform us of our present.

Reconciliation cannot happen without justice, action and true accountability. Public scrutiny and pressure are what incents political attention to these serious and deeply rooted issues and seems to be the only way to achieve substantive progress. The establishment of accountability frameworks is in the national interest to reduce the ability of governments and institutions to spin their wheels in inaction and hypothesize about change coming soon. Meaningful action is what is needed for true reconciliation, to right centuries of past injustices, and ensure that Indigenous Peoples have a path to the recognition of rights and jurisdiction and self-determination, and a bright and prosperous future in Canada.

Bibliography:

Abella, R. (2014). Employment Equity in Canada: The Legacy of the Abella Report (AGÓCS C., Ed.). Toronto; Buffalo; London: University of Toronto Press. Retrieved August 3, 2021, from http://www.jstor.org/stable/10.3138/j.ctt7zwc0n, (Accessed July 15, 2021).

Aggressive Assimilation, Facing History and Ourselves, https://www.facinghistory.org/stolen-lives-indigenous-peoples-canada-and-indian-residential-schools/historical-background/aggressive-assimilation, (accessed 28 July 2021).

An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42, https://caid.ca/GraEnfAct1869.pdf, (Accessed 21 July 2021).

Anti-Racism Act, 2017, S.O. 2017, c. 15.

Archibald, Sir Adams George National Historic Person, Truro, Nova Scotia, https://www.pc.gc.ca/apps/dfhd/page_nhs_eng.aspx?id=1131, (accessed 20 July 2021).

Barelli, Mauro, Shaping Indigenous Self-Determination: Promising or Unsatisfactory Solutions?, January 25, 2012, International Community Law Review, Vol. 13, No. 4, pp. 413-436, 2011 , https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1991756, (accessed 17 June 2021).

Bear Nicholas, A., Human Rights in New Brunswick, A New Vision for a New Century, Responsibilities Not Rights, A Native Perspective, p.32

Benjamin, Chris, Indian School Road: Legacies of the Shubenacadie Residential School, September 2014

Bora Laskin Law Library, Aboriginal Law in Canada, 'Notable Cases in Aboriginal Law', https://guides.library.utoronto.ca/c.php?g=250656&p=1671426, (accessed 1 June 2020).

Borrows, J., *Canada's Indigenous Constitution*, Toronto Buffalo London, University of Toronto Press

Canada, Annual Report Office of the Correctional Investigator, 2019, https://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20162017-eng.pdf, p,48, (accessed June 1, 2020).

Canada, 'The Arrival of the Europeans: 17th Century War's, Ch. 1, https://www.canada.ca/en/department-national-defence/services/military-history/history-heritage/popular-books/aboriginal-Peoples-canadian-military/arrival-europeans-17th-century-wars.html, (accessed 1 June 2021).

Canada, 'Delivering on Truth and Reconciliation Commission Calls to Action', 2015, https://www.rcaanc-cirnac.gc.ca/eng/1524494530110/1557511412801, (accessed 5 June 2021).

Canada, Hidden from History: The Canadian Holocaust, The Truth Commission into Genocide in Canada, Vancouver 1998, http://canadiangenocide.nativeweb.org/genocide.pdf, (accessed 5 June 2021).

Canada, Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back. Volume 1. Ottawa: Royal Commission on Aboriginal Peoples, 1996, https://data2.archives.ca/e/e448/e011188230-01.pdf , p.276, (accessed 4 June 2020).

Canada, Royal Commission on Aboriginal Peoples. Report of the Royal Commission on Aboriginal Peoples: Restructuring the Relationship, VOLUME 2, Ottawa: The Commission, 1996, https://data2.archives.ca/e/e448/e011188230-02.pdf, (accessed 1 June 2020).

Canada, Royal Commission on Aboriginal Peoples. 'Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada', Ottawa, *Royal Commission on Aboriginal Peoples*, 1996.

The Canadian Charter of Rights and Freedoms, https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/

The Canadian Encyclopedia, Bill C-31, https://www.thecanadianencyclopedia.ca/en/article/bill-c-31, (accessed 15 July 2021).

Canadian Human Rights Act (R.S.C., 1985, c. H-6), https://laws-lois.justice.gc.ca/eng/acts/h-6/index.html, (accessed June 1, 2020).

Canadian Police Knowledge Network, Excited Delirium Syndrome (ExDS), https://www.cpkn.ca/en/course/excited-delirium-syndrome/, (accessed 23 July 2021).

Civil Rights Act of 1964, Pub. L. 88-352,78 Stat.241 (1964)

Class Action 60s Scoop Settlement, 2021, https://sixtiesscoopsettlement.info/, (accessed 10 June 2021).

Conn, H, "Sandra Lovelace Nicholas". The Canadian Encyclopedia, 13 May 2020, Historica Canada. https://www.thecanadianencyclopedia.ca/en/article/sandra-lovelace-nicholas, (accessed 02 August 2021).

A Consolidation of The Constitution Acts 1867 to 1982, https://laws-lois.justice.gc.ca/PDF/CONST_TRD.pdf, (accessed 12 June 2021).

Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49, https://www.ohchr.org/en/professionalinterest/pages/crc.aspx, (accessed 10 July 2021).

Davin, N.F., Canada, *Annual Report*, 1880, Department of the Interior "Report on Industrial Schools for Indians and Half-Breeds", 14th March 1879, http://rschools.nan.on.ca/article/the-notion-of-removal-1131.asp, (accessed 12 June 2021).

Denis, J. & Bailey, K., 'You Can't Have Reconciliation Without Justice': How Non-Indigenous Participants in Canada's Truth and Reconciliation Process Understand Their Roles and Goals', In: Maddison S., Clark T., de Costa R. (eds) The Limits of Settler Colonial Reconciliation, Springer, Singapore, 2016, https://doi.org/10.1007/978-981-10-2654-6_9, (accessed 10 June 2021).

Dr. Cindy Blackstock (Executive Director, First Nations Child and Family Caring Society of Canada) at the Indigenous and Northern Affairs Committee, 2019, https://openparliament.ca/committees/aboriginal-affairs/42-1/146/dr-cindy-blackstock-1/only/, (accessed 14 July 2021).

Edwards, K., Kapyong Barracks Discussion - Page 13 - SkyscraperPage Forum, Numbered Treaties and Historical Treaties Combined, https://th.bing.com/th/id/OIP.iAvOuNZA9vRRwaaWPVmxJwHaE7?pid=ImgDet&rs=1, (accessed 29 June 2021).

Food and Agriculture Organization of the United Nations, http://www.fao.org/indigenous-peoples/our-pillars/fpic/en/#:~:text=Free%2C%20Prior%20and%20Informed%20Consent%20%28FPIC%29%20is%20a,project%20that%20may%20affect%20them%20or%20their%20territories, (accessed 20 July 2021).

Gadacz, R. R., The Canadian Encyclopedia, Potlatch, 2019, https://www.thecanadianencyclopedia.ca/en/article/potlatch, (accessed 20 July 2021).

General Recommendation No. 23: Indigenous Peoples: 08/18/1997, Gen. Rec. No. 23. (General Comments), UN International Convention on the Elimination of Racial Discrimination General recommendation 23_1997_EN.pdf (eods.eu), (accessed 15 June 2021).

Government of Canada, Bill S-3: Eliminating known sex-based inequities in registration, https://sac-isc.gc.ca/eng/1467214955663/1572460311596, (accessed 20 July 2021).

Government of Canada, Definition and Registration of Indians, Reserves, https://laws-lois.justice.gc.ca/eng/acts/i-5/page-5.html#h-332074, (accessed 03 June 2021).

Government of Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, https://rcaanc-cirnac.gc.ca/eng/1448633299414/1534526479029, (accessed 20 July 2021).

Government of Canada, Truth and Reconciliation Commission of Canada, Final Report, https://pm.gc.ca/en/news/backgrounders/2015/12/15/final-report-truth-and-reconciliation-commission-canada, (accessed 20 June 2021).

Government of Canada, Truth and Reconciliation Commission of Canada, https://rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525, (accessed 05 May 2021).

Gunn, B., 'Ignored to Death: Systemic Racism in the Canadian Healthcare System', EMRIP the Study on Health, Robson Hall Faculty of Law, University of Manitoba, https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Health/UniversityManitoba.pdf, (accessed 1 June 2020).

Hallowell, G., The Oxford Companion to Canadian History Oxford University Press 2004

Harper, S., 'Statement of apology to former students of Indian Residential Schools', 2008, https://www.rcaanc-cirnac.gc.ca/eng/1100100015644/1571589171655, (accessed 5 June 2021).

Hidden from History: The Canadian Holocaust, The Untold Story of Aboriginal Peoples by Church and State in Canada,2001, http://canadiangenocide.nativeweb.org/genocide.pdf, (accessed 28 July 2021).

Historical Development of the Indian Act, Treaties and Historical Research Centre, P.R.E. Group, Indian and Northern Affairs, 1978

Hofmann *The study of terrorist leadership: where do we go from here? Journal of Criminological Research, Policy and Practice, ISSN: 2056-3841, Article publication date: 18 September 2017, (Accessed September 2020).*

Indian Act. 43 V., c.28, s.1., http://caid.ca/IndAct1886.pdf, (accessed 1 June 2020).

Indian Act (R.S.C., 1985, c. I-5), https://laws-lois.justice.gc.ca/eng/acts/I-5.3/page-1.html, (accessed 23 June 2021).

Indigenous Corporate Training Inc., Working Effectively with Indigenous Peoples®, What is the Seventh Generation Principle?, May 30, 2020, https://www.ictinc.ca/blog/seventh-generation-principle, (accessed July 20, 2021).

Irwin, R., Indian Agents in Canada, *Canadian Encyclopedia*, 25 October 2018, https://www.thecanadianencyclopedia.ca/en/article/indian-agents-in-canada, (accessed 23 June 2021).

Johnston, D., His Excellency the Right Honourable David Johnston, Governor General of Canada, 'Making Real Change Happen', Speech from the Throne to Open the First Session of the Forty-second Parliament of Canada, 4 December 2015, https://www.canada.ca/en/privy-council/campaigns/speech-throne/making-real-change-happen.html, (accessed December 2020)

Joseph, Bob, 21 Things you may not know about the Indian Act, Helping Canadians Make Reconciliation with indigenous Peoples a Reality, 2018, Indigenous Relations Press, p11.

Joseph-Francois Lafitau 1742, Joseph, Bob, 21 Things you may not know about the Indian Act, Helping Canadians Make Reconciliation with indigenous Peoples a Reality, 2018, Indigenous Relations Press, p20.

Legal Affairs and Justice Canada, Second-Generation Cut-Off Rule, 06-19-02-06-AFN-Fact-Sheet-Second-Generation-cut-off-final-revised.pdf, (accessed 20 July 2021).

Leslie, J., "The Bagot Commission: Developing a Corporate Memory for the Indian Department", Historical Papers / Communications historiques, vol. 17, Ottawa 1982, pp. 31-52, https://www.erudit.org/en/journals/hp/1982-v17-n1-hp1117/030883ar/, (accessed 4 June 2021).

Legislative Assembly of New Brunswick, BILL 49, An Act to Amend the Emergency Measures Act 2011, https://www.gnb.ca/legis/bill/FILE/59/3/Bill-49-e.htm, (accessed 20 June 2021).

J. A. MacDonald, J.A., speech, https://www.facinghistory.org/stolen-lives-indigenous-peoples-canada-and-indian-residential-schools/chapter-3/introduction, (accessed 03 June 2021).

Marcoux, J. and Nicholson,K., 'Deadly Force', *CBC News*, 23 July 2021, https://newsinteractives.cbc.ca/fatalpoliceencounters/, (accessed 27 May 2021).

Marshall, T., Indian Residential Schools Settlement Agreement, January 2020, https://www.thecanadianencyclopedia.ca/en/article/indian-residential-schools-settlement-agreement, (accessed 28 July 2021).

Mas, S., 'Bob Paulson says he doesn't want racists inside RCMP ranks', *CBC News*, 9 Dec 2015, https://www.cbc.ca/news/politics/first-nations-bob-paulson-racism-mmiw-1.3357406, (accessed 27 May 2021).

Mazur, D., 'What is a Street Check?, BC Civil Liberties Association', Victoria, 2018, https://bccla.org/2018/09/what-is-a-street-check, (accessed 27 June 2021).

McIntosh, E., 'What we mean when we say Indigenous land is 'unceded', January 24, 2020, https://www.nationalobserver.com/2020/01/24/analysis/what-we-mean-when-we-say-indigenous-land-unceded, (accessed 4 June 2021).

McLachlin, The Civilization of Difference, Remarks of the Right Honourable Beverley McLachlin, P.C.

Chief Justice of Canada, https://www.scc-csc.ca/judges-juges/spe-dis/bm-2003-03-07-eng.aspx, (Accessed July 30, 2021).

McMahon, T., 'The Supreme Court's Indian Residential Schools Cases: The Beatings Continue', February 27, 2018, https://ssrn.com/abstract=3129464, (accessed 10 June 2021).
Mediacoop, Excited Delirium Is Copaganda Bullshit to Let Killer Cops off the Hook, www.mediacoop.ca/story/excited-delirium-copaganda-bullshit-get-killer-cop/37082, (accessed 20 July 2021).

Memee Lavell-Harvard, D., and Jennifer Brant, eds., Forever Loved: Exposing the Hidden Crisis of Missing and Murdered Indigenous Women and Girls in Canada, 2016.

Miller, J.R., *The Royal Proclamation – "the Indians' Magna Carta"?*, 2013, http://activehistory.ca/2013/09/the-royal-proclamation-the-indians-magna-carta/, (accessed 05 June 2021).

National Anti-Racism Council of Canada, 'Racial Discrimination in Canada', 2007, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_NGO_CAN_70_8253_E.pdf, (accessed 10 June 2021).

National Council on Reconciliation and the Annual State of Indigenous Peoples report, Interim Board for the National Council for Reconciliation, Crown-Indigenous Relations and Northern Affairs, 2018, Final Report: Interim Board for the National Council for Reconciliation (rcaanc-cirnac.gc.ca), (accessed 5 June 2021).

New Brunswick Human Rights Commission, Government of New Brunswick, https://www2.gnb.ca/content/gnb/en/departments/nbhrc.html, (accessed 27 May 2021).

The Oka Crises CBC, Knowlton Nash, The Oka Crisis CBC - Bing video Oka Crisis: How It Started - Bing video, (accessed 10 June 2021).

Ont. Human Rights Comm. v. Simpsons-Sears, 1985 CanLII 18 (SCC), [1985] 2 SCR 536, https://canlii.ca/t/1ftxz, retrieved on 2021-02-15

Oxford References, speech, Madison Park High School, Boston, 23 June 1990, https://www.oxfordreference.com/view/10.1093/acref/9780191843730.001.0001/q-oro-ed5-00007046, (accessed 20 July 2021).

Paul, Daniel N., We Were Not the Savages, Scalp Proclamation 1749, http://www.danielnpaul.com/BritishScalpProclamation-1749.html, (accessed 410 June 2021).

Parliament of Canada, Senate of Canada, Senator Sandra Lovelace Nicholas, https://sencanada.ca/en/senators/lovelace-nicholas-sandra-m/, (accessed 20 July 2021).

Pescosolido, Martin, Lang, Olafsdottir Rethinking theoretical approaches to stigma: a Framework Integrating Normative Influences on Stigma (FINIS). Soc Sci Med. 2008 Aug;67(3):431-40. doi: 10.1016/j.socscimed.2008.03.018. Epub 2008 Apr 22. PMID: 18436358; PMCID: PMC2587424.

Prime Minister John A. MacDonald to Adam George Archibald Lieutenant Governor of Manitoba, 18 November 1870

Poitras, J., CBC, New Brunswick, Maliseet want name of St. John River changed back to 'Wolastoq', June 8, 2017, https://www.cbc.ca/news/canada/new-brunswick/maliseet-river-naming-wolastoq-st-john-pronunciation-1.4150289, (accessed July 20, 2021).

Razack, S. R., *Dying from Improvement - Inquests and Inquiries into Indigenous Deaths in Custody*, Toronto Buffalo London, University of Toronto Press 2015.

Report of the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild, The Honourable Mr. Justice David H. Wright, 2004, http://www.publications.gov.sk.ca/freelaw/Publications_Centre/Justice/Stonechild/Stonechild-FinalReport.pdf, (accessed 5 June 2021).

Professor Emerita, Bear Nicholas, Andrea, BA (Colby), BEd (STU), MEd (University of Maine, Orono), Native Studies, Chair of Studies in Aboriginal Cultures of Atlantic Canada, Professor Emerita https://www.stu.ca/nativestudies/faculty/, (accessed July 17, 2021).

Razack, S. R., Dying from Improvement - Inquests and Inquiries into Indigenous Deaths in Custody, Toronto Buffalo London, University of Toronto Press 2015.

Report of the Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild, The Honourable Mr. Justice David H. Wright, 2004, http://www.publications.gov.sk.ca/freelaw/Publications_Centre/Justice/Stonechild/Stonechild-FinalReport.pdf, (accessed 5 June 2021).

Roach, K., The Gerald Stanley Case, The Canadian Encyclopedia, Historica Canada, 10 February 2020, https://www.thecanadianencyclopedia.ca/en/article/gerald-stanley-and-colten-boushie-case, (accessed 5 February 2021).

Robert H. Jackson Center, Nuremberg Trial, International Military Tribunal, 1945-1946, https://www.roberthjackson.org/nuremberg-timeline/, (accessed July 17, 2021).

Sandra Lovelace v. Canada, Communication No. 24/1977: Canada 30/07/81, UN Doc. CCPR/C/13/D/24/1977, https://www.escr-net.org/caselaw/2010/sandra-lovelace-v-canada-communication-no-241977-canada-300781-un-doc-ccprc13d241977, (accessed 15 July 2021).

Scott, D.C., speech, 1920, https://www.ictinc.ca/blog/10-quotes-john-a.-macdonald-made-about-first-nations, (accessed 03 June 2021).

The Secretary of the interior Washington, https://www.doi.gov/sites/doi.gov/files/secint-memo-esb46-01914-federal-indian-boarding-school-truth-initiative-2021-06-22-final508-1.pdf, (accessed 28 July 2021).

Sir John A. Macdonald, to the House of Commons, Canada, House of Commons Debates (9 May 1883), https://www.ictinc.ca/blog/the-indian-act-residential-schools-and-tuberculosis-cover-up?fbclid=IwAR0SUCrqY8prvl1L9jSATEAKSygCfeF4im1QZ2ZShqRwQfF-1nlgNfyEdF0

Sisters of Charity Halifax, Letter of Apology, https://schalifax.ca/wp-content/uploads/2021/07/Apology-26July2021.pdf , (accessed 20 July 2021).

Smith, D. G., The Canadian Encyclopedia, Religion and Spirituality of Indigenous Peoples in Canada, April 2018, https://www.thecanadianencyclopedia.ca/en/article/religion-of-aboriginal-people, (accessed 17 July 2021).

Spaulding, William B., Foster-Sanchez, Maia, The Canadian Encyclopedia, Smallpox in Canada, Smallpox in Canada | The Canadian Encyclopedia, (accessed 17 July 2021).

SPON Social Policy in Ontario, Trudeau's words about aboriginals resonate, https://spon.ca/trudeaus-words-about-aboriginals-resonate/2012/01/04/, (accessed 10 July 2021).

Statistics Canada, 2016, 'Focus on Geography Series, 2016 Census, Aboriginal peoples', Ottawa, https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-pr-eng.cfm?Lang=Eng&GK=PR&GC=13&TOPIC=9, (accessed 21 June 2021).

Statistics Canada, 2019, 'Suicide among First Nations people, Métis and Inuit (2011-2016): Findings from the 2011 Canadian Census Health and Environment Cohort (CanCHEC)', https://www150.statcan.gc.ca/n1/daily-quotidien/190628/dq190628c-eng.htm, (accessed 21 June 2021).

Sterrit, A., 'Indigenous Peoples not surprised by reports of racist game played in hospitals', CBC News, 23 June 2020, https://www.cbc.ca/news/canada/british-columbia/indigenous-patients-nurses-on-alleged-racist-game-in-hospitals-1.5622448?__vfz=medium%3Dsharebar, (accessed 5 June 2021).

Stolen Lives: The Indigenous Peoples of Canada and the Indian Residential Schools: Until There Is Not a Single Indian in Canada, "Until There Is Not a Single Indian in Canada" | Facing History and Ourselves, Canada, Facing History and Ourselves, 2015,

Supreme Court of Canada, The Right Honourable Beverley McLachlin, P.C., C.C., https://www.scc-csc.ca/judges-juges/bio-eng.aspx?id=beverley-mclachlin

'Taken', *Drag the Red*, [web blog], 26 July 2016, https://www.takentheseries.com/drag-the-red/, (accessed 2 June 2021).

Thunder Bay Police Service, https://www.thunderbaypolice.ca/, (accessed 17 June 2021).

Truth and Reconciliation Commission of Canada, National Centre for Truth and Reconciliation Truth and Reconciliation Commission, Library and Archives Calls to Action, Winnipeg, 2015, http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf, (accessed 1 June 2021).

Tuck, James A., 2006, The Canadian Encyclopedia, Beothuk, https://www.thecanadianencyclopedia.ca/en/article/beothuk, (accessed 10 June 2021).

'J.P. Turner, 'The North West Mounted Police, 1873 – 1893', Ottawa, ON, King's Printer, 1950, vol.2.

'Two Worlds Colliding' (online video), 2004, https://www.cinemapolitica.org/film/two-worlds-colliding, (accessed 10 June 2021).

United Nations Declaration on the Rights of Indigenous Peoples, https://www.un.org/en/, (accessed 21 June 2021).

United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly on 13 September 2007, UNDRIP_E_web.pdf, (accessed 17 June 2021).

United Nations Human Rights Office of the High Commissioner, Convention on the Rights of the Child, 2 September 1990, https://www.ohchr.org/en/professionalinterest/pages/crc.aspx, (accessed 20 June 2021).

The United Nations Permanent Forum on Indigenous issues, Together we Achieve, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/04/Indigenous-Peoples-Collective-Rights-to-Lands-Territories-Resources.pdf, (accessed 10 June 2021).

University of British Columbia, Indigenous Foundations, *What are Indian Reserves?*, https://indigenousfoundations.arts.ubc.ca/reserves/, (accessed 03 June 2021).

UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295, https://www.refworld.org/docid/471355a82.html, (accessed 27 June 2021).

Virtual Museum of Canada, New Brunswick, Our Stories our people, Heritage Branch, Province of New Brunswick, 2002, https://www1.gnb.ca/0007/Culture/Heritage/VMC/NBHistory.asp, Accessed 9 July 2021).

W. Benais and M. Equay, The Numbered Treaties, Western Canada's Treaties were intended to provide frameworks for respectful coexistence, April 30, 2018, https://www.canadashistory.ca/explore/settlement-immigration/the-numbered-treaties, (accessed 1 June 2021).

Wilk, P., Maltby, A. & Cooke, M., 'Residential schools and the effects on Indigenous health and well-being in Canada—a scoping review', Public Health Rev 38, 8, 2017, https://doi.org/10.1186/s40985-017-0055-6, (accessed 10 June 2021).

Case Law:

Supreme Court of Canada, Lovelace v. Canada, [1979] U.N. Doc. CCPR/C/OP/1, at 10
Supreme Court of Canada, Fontaine v. Canada, [2017] SCC 47, [2017] 2 S.C.R. 205