Congress of Aboriginal Peoples

Report on Indigenous Overrepresentation in the Justice System

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1. Executive Summary

This report discusses Indigenous overrepresentation in the criminal justice system of Canada. It shows how Indigenous institutionalization is a systemic problem rooted in historical colonial polices and modern-day inequalities. It also explores two related issues of particular importance to CAP's constituency: potential abuse of peace bonds and the relationship between Indigenous women and girls and the justice system.

Indigenous peoples in Canada have been incarcerated at higher rates than other Canadians for decades. In 2020, Indigenous people accounted for 5% of Canada's population,[1] but a shocking 30% of inmates in federal custody. This is an increase from 25% of inmates in federal custody only four years ago.[2] Indigenous children are more likely to become involved in the criminal justice system than to graduate from high school. This is not principally because they are more likely to commit crimes, but rather because of systemic issues such as poverty and racism.[3]

The key findings of this report include the following.

- Academic literature demonstrates that colonization and the suppression of Indigenous culture have led to the current social and economic conditions and the abnormally high incarceration rates of Indigenous people.

- The solution to high rates of Indigenous recidivism is to provide the means for offenders to regain their culture, heritage and spirituality and to provide them with the knowledge, training and life skills they need to thrive in Canadian society.

- Only properly resourced and Indigenous operated community programs will have the impact needed to "stem the tide" of Indigenous incarceration and recidivism.

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[1] 2016 Census. https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm

[2] Office of the Correctional Investigator. "Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge" Jan 21, 2020

[8]Canadian Council of Child and Youth Advocates (2011) Special Report – Aboriginal Children Canada Must Do Better: Today and Tomorrow, Canadian Council of Child and Youth Advocates, Canada.

- Indigenous women and girls are incarcerated at even higher rates than Indigenous men and boys.[4] In addition, the criminal justice system fails to protect Indigenous women and girls from violent predators, including those within the justice system itself.[5]

- Further research on the issue of peace bond abuse is needed. It seems likely that in some provinces, Indigenous ex-offenders are more likely than their non-Indigenous peers to be issued a peace bond upon release.

This March 2020 CAP report, "Indigenous Overrepresentation in the Justice System," will inform the organization's ongoing advocacy work on behalf of off-reserve Indigenous peoples. It represents both qualitative and quantitative research on the justice system and concludes with recommendations for CAP's work going forward. For more information on the relationships between health, housing, child welfare, criminal justice, the environment, international relations, or language and culture, please see the other March 2020 CAP policy research reports.

[4] Office of the Correctional Investigator. "Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge" Jan 21, 2020

[5] De Finney, Sandrina. (2017). Indigenous girls' resilience in settler states: Honouring body and land sovereignty. Agenda, 31(2), 10-21.

2. Fact Sheet: Indigenous Overrepresentation in the Justice System

- Indigenous people are 5% of Canada's population,[6] but they make up a shocking 30% of inmates in federal custody. This is an increase from 25% of inmates in federal custody only four years ago.[7]
- Indigenous women make up 42% of the women in federal prisons.[8]
- The Correctional Services of Canada (CSC) contributes to overrepresentation as Indigenous inmates are more likely to be put into maximum security, to be involved in use of force incidents and, historically, to be placed in segregation. Even though they enter rehabilitative programs more quickly and complete them at higher rates than other prisoners, Indigenous offenders are released later and have their release revoked more often.[9]
- Research shows that Indigenous people are treated more harshly than non-Indigenous people at every stage of the justice system.[10] They are more likely to be denied bail, spend more time in pre-trial detention, and are charged and sentenced more harshly.[11]
- Even when risk factors such as poverty are considered, Indigenous identity remains "independently associated with incarceration, suggesting that policing practices or other aspects of the current criminal justice system may be partly responsible" for the over representation of Indigenous peoples in prison.[12]
- Indigenous children are more likely to become involved in the criminal justice system than to graduate from high school. This is not principally because they are more likely to commit crimes, but rather because of systemic issues such as poverty and racism.[13]

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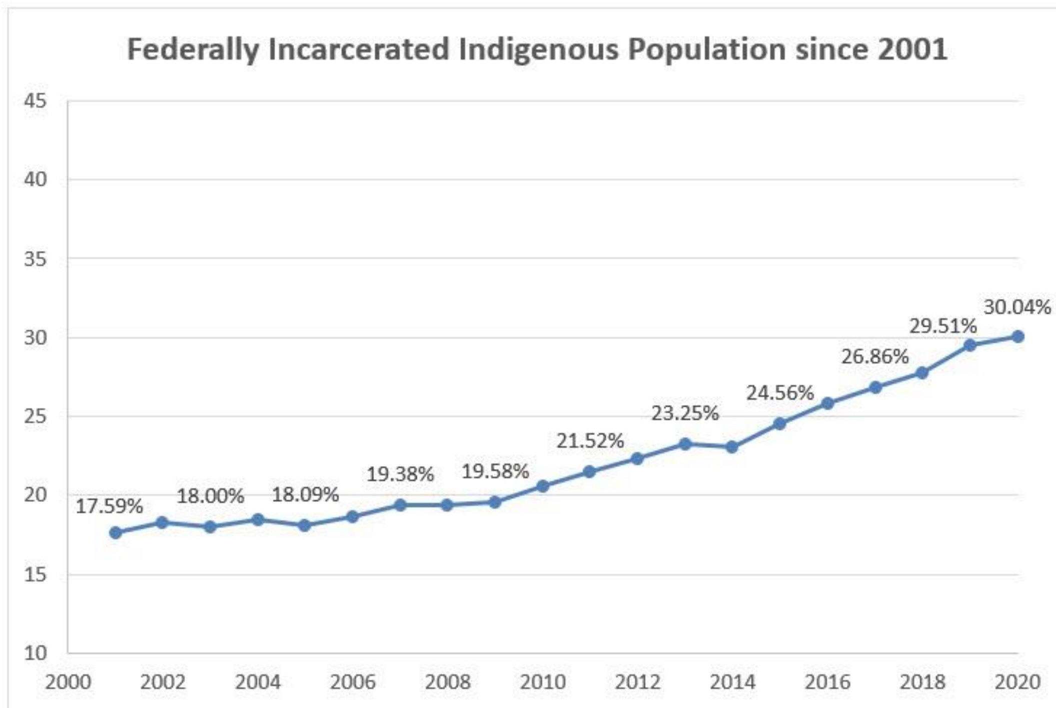
[6] 2016 Census. https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm
[7] Office of the Correctional Investigator. "Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge" Jan 21, 2020
[8] Office of the Correctional Investigator 2020
[9] Office of the Correctional Investigator 2020
[10] Bracken, Denis C., Deane, Lawrence & Morrissette, Larry (2009) Desistance and social marginalization: The case of Canadian Aboriginal offenders, Theoretical Criminology, 13 (1): 61-78.2009: 66,.
[6] Barker, Brittany., Alfred, Gerald Taiaiake., Flemming, Kim., Nguyen, Paul., Wood, Eva., Kerr, Thomas & DeBeck, Kora (2015) Aboriginal Street-involved Youth Experience Elevated Risk of Incarceration, Public Health, 129 (12): 1662-1668
[12] Dhillon, Jaskiran K. (2015) Indigenous girls and the violence of settler colonial policing, Decolonization: Indigeneity, Education & Society, 4 (2): 1-31.
[8]Canadian Council of Child and Youth Advocates (2011) Special Report – Aboriginal Children Canada Must Do Better: Today and Tomorrow, Canadian Council of Child and Youth Advocates, Canada.

3. Introduction

For decades, Indigenous Canadians have been incarcerated at a rate far exceeding that of other Canadians. Despite the framework laid out by the 1996 Royal Commission on Aboriginal Peoples, the Truth and Reconciliation Commission and the 1999 *Gladue* decision, initiatives seeking to address this issue have been piecemeal and ineffective. Twenty years after Gladue, the proportion of the Canadian prison population who are Indigenous has reached a shocking 30% and continues to rise.[14]



Graph showing the percentage of the federally incarcerated population that identifies as Indigenous, each year since 2001.[15]

Little has changed since 1977 when CAP, then known as the Native Council of Canada, remarked in its report on the Metis and Non-Status Indian Crime and Justice Commission:

[14] Office of the Correctional Investigator. "Indigenous People in Federal Custody Surpasses 30%: Correctional Investigator Issues Statement and Challenge" January 21, 2020
[15] Table from *Ibid*

> "Native people are asking for responsibility for their own programs and their own people, yet there are very few Native controlled projects in the area of criminal justice.
>
> "If a few of the studies which have been previously carried out are reviewed it is immediately apparent that many of the same recommendations are made over and over again, particularly those having to do with increased Native responsibility in Staffing and programming for Native people, even though it is recognized the Native people have special needs and interests.
>
> "It seems very often that policies are agreed to in principle, but not in practice and that reiterating the same solutions to old problems gives the impression that something is actually being done."[16]

The alarmingly high incarceration rate of Indigenous peoples is a systemic problem in Canadian society. It has become clear that colonization and the suppression of Indigenous culture have led to the current social and economic conditions and the abnormally high incarceration rates of Indigenous people. The solution is to provide the means for Indigenous offenders to regain their culture, heritage and spirituality and to provide them with the knowledge, training and life skills they need to thrive in Canadian society. Only properly resourced and Indigenous operated community programs will have the impact needed to "stem the tide" of Indigenous incarceration and recidivism.

This paper will begin with a review of the data that demonstrate the severity of the current situation before summarizing what the academic literature says are the causes of over incarceration: economic inequality, profiling and discrimination in the justice system itself, and traumas that are the legacy of the continuing colonial system. Potential solutions will be addressed, with an emphasis on crime prevention through early intervention, supporting the healing of offenders during and after incarceration, the use of truly Indigenous-led restorative justice, and consistent implementation of Gladue principles. This report will also touch on two related issues of particular importance to our constituents: the potential abuse of peace bonds and the particular problems faced by Indigenous women in contact with the justice system.

[11] NCC, Metis and non-Status Indian Crime and Justice Commission report, 1977, 3-4

Finally, we will discuss the lessons learned by CAP through direct engagement with its constituents. The most frequent message received from individuals and affiliate organizations within the CAP structure is that Indigenous communities want to be involved in the rehabilitation and reintegration of Indigenous offenders. Individuals, local organizations, provincial/regional organizations and national Indigenous organizations want to participate in community corrections initiatives and the development of solutions, corrections programming, and policy.

4. Indigenous Over Incarceration and its Causes

In 2017/2018, Indigenous people, who make up 4% of the Canadian population, accounted for 30% of adult admissions to provincial/territorial custody and 29% of those to federal custody. In comparison, ten years ago Indigenous adults represented 21% of admissions to provincial/territorial custody and 20% of federal custodial admissions.

These national figures obscure the fact that in certain provinces the situation is even more dire. In 2017/2018, Indigenous adults represented three-quarters of admissions to custody in Manitoba (75%) and Saskatchewan (74%). These two provinces also had the highest proportion of Indigenous adults among their provincial populations, with 15% for Manitoba and 14% for Saskatchewan.

- At the end of fiscal year 2016-2017, the proportion of Indigenous offenders in custody was 12.9% greater than the proportion of non-Indigenous offenders in custody. 71.4% of Indigenous offenders were in custody vs. 58.5% of non-Indigenous offenders.

- Indigenous women in custody represent 36.6% of all women in custody while Indigenous men in custody represent 26.3% of all men in custody.

- In 2016-17, Indigenous offenders represented 23.1% of the total offender population.

- Indigenous offenders accounted for 26.8% of the in-custody population of offenders and 17.2% of the community population of offenders in 2016-17.

In 2017/2018, Indigenous males accounted for 28% of male admissions to custody in the provinces and territories. Indigenous females made up a greater proportion of custody admissions than their male counterparts, accounting for 42% of female admissions, while non-Indigenous females accounted for 57%. In comparison to 2007/2008, the number of admissions of Indigenous males to provincial/territorial custody increased 28% while the number of admissions of Indigenous females increased 66% in the provinces and territories.[17]

Indigenous children are more likely to become involved in the criminal justice system than to graduate from high school. This is not principally because they are more likely to commit crimes, but rather because of systemic issues such as poverty and racism.[18] It is well established that poverty, addiction, and mental health issues such as post-traumatic stress are risk factors for criminal behavior, and Indigenous people in Canada struggle with these problems at a rate far exceeding other Canadians. This is now universally understood as the direct result of a two century-long campaign of genocide and colonization that deliberately tore apart Indigenous communities, cultures, families and psyches. It is for these crimes, committed by the government of Canada, that Indigenous people across the country are now serving time.

Indigenous peoples are treated differently by institutions such as the police, courts, and child welfare services.[19] They are more likely to be denied bail, spend more time in pre-trial detention, and are charged and sentenced more harshly.[20] The criminalization of Indigenous peoples is also part of a broader systemic process of institutionalization. For example, "youth from the child welfare system are also at much greater risk of becoming involved with the juvenile justice system" and this movement from one institution to another has been "referred to as the 'child-welfare-to-prison pipeline."[21] Often, Indigenous girls enter the criminal justice system from care

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[17] Adult and youth correctional statistics in Canada, 2017/2018, Government of Canada, Statistics Canada

[18] Canadian Council of Child and Youth Advocates (2011) Special Report – Aboriginal Children Canada Must Do Better: Today and Tomorrow, Canadian Council of Child and Youth Advocates, Canada.

[19] Tauri, Juan M. & Porou, Ngati (2014) Criminal Justice as a Colonial Project in Settler-Colonialism, African Journal of Criminology and Justice Studies, 8 (1): 20-37; Bracken, Denis C., Deane, Lawrence & Morrissette, Larry (2009) Desistance and social marginalization: The case of Canadian Aboriginal offenders, Theoretical Criminology, 13 (1): 61-78.

[20] Barker, Brittany., Alfred, Gerald Taiaiake., Flemming, Kim., Nguyen, Paul., Wood, Eva., Kerr, Thomas & DeBeck, Kora (2015) Aboriginal Street-involved Youth Experience Elevated Risk of Incarceration, Public Health, 129 (12): 1662-1668

[21] Ontario Human Rights Commission (2018) Interrupted Childhoods: Over-repressentation of Indigenous and Black children in Ontario Child Welfare: 28

facilities where they have been labeled as violent and remanded to custody.[22] The Chief Correctional Investigator of Canada, Ivan Zinger, notes that even though they enter programming more quickly, tend to be engaged and complete at higher rates, Indigenous offenders are released later and have their release revoked more often.[23] Even when risk factors, such as poverty, are considered, Indigenous identity remains "independently associated with incarceration, suggesting that policing practices or other aspects of the current criminal justice system may be partly responsible" for the over representation of Indigenous peoples in prison.[24] This institutionalization of Indigenous peoples is part of a larger process of assimilation and control that fragments Indigenous communities and families and disrupts Indigenous identities, leading to loss of culture.[25] Therefore, it is important to understand the role of the justice system in advancing colonial violence against Indigenous peoples and to situate the criminalization of Indigenous peoples within the processes of forcible assimilation.[26]

Recommendations:

- Higher rates of offending among Indigenous people are associated with poverty and a lack of social capital. Initiatives that address inequalities by helping Indigenous people to gain skilled employment, decent housing or higher education will help to prevent them from coming into conflict with the justice system. CAP must advocate for significant investment in social assistance and other aspects of the welfare state.

- Investing in mental health programming and addictions treatment will pay for itself several times over by preventing crime. Furthermore, Canada has a humanitarian duty to ensure that everyone who needs these services can access them, which is doubly true in

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[22] Sikka, Anette, (2010). Indigenous Women and Girls in the Criminal Justice System Trafficking of Aboriginal Women and Girls in Canada, Aboriginal Policy Research Consortium International (APRCi). 57 (2010): 201-231.
[23] Annual Report of the Correctional Investigator of Canada, 2018-19
[24] Dhillon, Jaskiran K. (2015) Indigenous girls and the violence of settler colonial policing, Decolonization: Indigeneity, Education & Society, 4 (2): 1-31.
[20] Martel, Joane & Brassard, Renée (2008) Painting the Prison 'Red': Constructing and Experiencing Aboriginal Identities in Prison, British Journal of Social Work, 38 (2008): 340-361.
[21] De Finney, Sandrina. (2017). Indigenous girls' resilience in settler states: Honouring body and land sovereignty. Agenda, 31(2), 10-21. doi:10.1080/10130950.2017.1366179; Dhillon 2015; Newell 2013

the case of Indigenous people whose traumas are often the result of the legacy of residential schools and other government policies.

- Involvement in the child welfare system is the single greatest predictor of future incarceration. Providing appropriate supports to families living in poverty or with mental health challenges is less expensive and more effective than placing their children in care and eventually into the prisons system. When weighing the best interests of the child, child welfare workers must consider the harms caused by removing Indigenous children from their families and cultures.

- Police services should increase the number of Indigenous police and ensure that there is intentional recruitment of Indigenous professionals throughout the justice system. Professionals within the justice system also need to possess the cultural competency to work with different Indigenous communities.

5. Recent Amendments to the Corrections and Conditional Release Act

On June 21, 2019, Bill C-83 – *An Act to Amend the Corrections and Conditional Release Act and Another Act* received Royal Assent. The act eliminates administrative segregation, also known as solitary confinement, and replaces it with the introduction of Structured Intervention Units (SIUs), intended to be used only when inmates need to be separated from the general population for their safety or the safety of others.

Bill C-83 transformed the federal correctional system by eliminating the use of administrative segregation in all institutions and replacing it with Structured Intervention Units. The SIU model differs from segregation in that offenders are permitted a minimum of four hours a day outside of their cell, including two hours of meaningful human interaction. Other measures included in the bill are:

- implementing a new correctional interventions model;
- strengthening health care governance;
- addressing the specific needs of Indigenous offenders; and

- better supporting victims.

The bill also includes measures specific to Indigenous Offenders:

- ensures that systemic and background factors unique to Indigenous offenders are considered in all correctional decision-making;
- establishes culturally appropriate interventions for Indigenous offenders; and
- identifies the appropriate authority with whom the Minister can enter into a section 81 agreement.

In meetings with Public Safety officials, CAP has taken the position that the C-83 is a positive step forward but expressed concern about the remaining possibility for human rights violations.

In October, Lisa Kerr, a law professor at Queen's University, wrote about potential problems with the federal government's newly tabled proposals around changes in the use of solitary confinement. Her view was that the legislation could make a positive difference if implemented properly, but that it lacked some important safeguards.

On the positive side, prisoners would have more time out of their cells – a minimum of four hours a day, including an 'opportunity to interact' with others through various programs and services. There would be more supervision and intervention by prison wardens. In addition, Kerr points out that the number of prisoners in segregation has dropped very substantially in the last few years.

However, prison staff would still have "vast discretion" given the lack of limits on time in solitary confinement and no external oversight of the process. This is especially problematic given a key "recent B.C. Supreme Court opinion, [in which] Justice Peter Leask spent 54 paragraphs, or 14 pages, discussing the history of calls for independent oversight of solitary, and explaining why the prison culture needs a truly independent check." Without external oversight, the temptation to use solitary confinement as a "first-line response for the challenges that prisons invariably face" would be very difficult if not impossible to control.

On Nov. 12, Senator Kim Pate, a long-time advocate for improvements in criminal justice, also wrote about the federal government's proposals around solitary confinement. Unlike Kerr, she

had nothing favorable to say about the proposals, writing that that the bill is "in reality, a cynical exercise that merely rebrands this cruel treatment." Pate felt the proposed changes are unlikely to end the over-use of segregation for people with mental health issues, for women, and for some minority groups. Pate also said that given past performance, one cannot be confident that the prison service will actually implement these new provisions as intended, especially given no external oversight.

Bill C-83 established the position of Independent External Decision Makers (IEDM) who will review the use of Segregated Intervention units. CAP and other organizations (John Howard Society, CHRC) have noted the risk of "institutional capture." This term refers to the problem of internal training for IEDM. Since these decision makers are being trained by and are working closely with CSC officials, they are likely to find themselves immersed in the organizational culture of corrections and its security-focused perspective, compromising their intended purpose as human-rights advocates and watchdogs over potential abuses by prison staff. The John Howard Society also recommends that the use of structured intervention units be reviewed within 30 days to be consistent with international norms.

The Truth and Reconciliation Commission issued several Calls to Action regarding the criminal justice system which the federal government has not yet put into action. Among them:

- Elimination of the barriers to creating more Healing Lodges
- Reform of the criminal justice system to address the needs of offenders with FAS, including a reform of the criminal code to waive minimum sentences for those with FAS.
- Additional supports for Indigenous programming in halfway houses and parole services
- Eliminate the over incarceration of Indigenous people by 2025

Recommendations:

- The Independent External Decision Makers are the individuals with the greatest opportunity to ensure that the SIU concept in Bill C-38 is implemented as intended. CAP

should offer to provide materials or training to these individuals to help them apply a culturally relevant human rights perspective to their work.

- A contractor might be engaged to develop a toolkit or training package for IEDMs and other corrections staff.
- Alternatively, or additionally, the IEDMs could be invited to a seminar organized by CAP.

6. Healing and Restorative Justice

Restorative justice is an approach that focuses on repairing relationships and the harm caused by crime while holding offenders accountable. It provides an opportunity for the parties directly affected by crime – victims and survivors, offenders and their communities – to identify and address their needs in the aftermath of a crime, and to seek a resolution that fosters healing, reparation and reintegration, and prevents future harm.[27] This is in contrast to the mainstream Western conception of criminal justice as having aims of deterrence, repudiation and punishment. Offering Indigenous youth and first-time offenders restorative justice programs can divert them away from the criminal justice system.

One metanalysis found that the average recidivism rate for Indigenous offenders who participated in culturally relevant programming was 9% lower than the average recidivism rate of Indigenous offenders who participated in generic programming. However, that same analysis cautioned that the methodology of the studies it was based on are fairly weak and stronger evidence is needed.[28]

One example of culturally relevant programming is sentencing circles. Sentencing circles are a means of restorative justice and provides a space for encounter between the victim (if they are willing) and the offender, but it moves beyond that to involve the community in the decision-making process. A circle will include members of the community including elders who will each

[22] Zehr, H., & Gohar, A. (2002). *The Little Book of Restorative Justice*. https://www.unicef.org/tdad/littlebookrjpakaf.pdf

[28] Sinclair, Raven and Jana Grekul "Aboriginal Youth Gangs in Canada: (de)constructing an epidemic" in First Peoples Child & Family Review vol 7 no 1, pp 8-28. 2012

tell the offender their views regarding the crime. The circle will then reach a consensus regarding a sentence and make a recommendation to the judge. The judge always retains the right to make the final determination. While this model may provide more input from the community, ultimately the principles it operates on are no different than in the rest of the justice system. No real power has been given to the Indigenous community, and Indigenous legal traditions are not placed on an equal footing with colonial ones. In a very real sense, it is a colonial courtroom, with the chairs rearranged into a circle.

Sections 81 and 84 of the Corrections and Conditional Release Act allow Indigenous offenders to be released into the custody of healing lodges. Healing Lodges offer another culturally relevant treatment program lead by the community. Lodges may be operated by Indigenous communities through an agreement entered into under section 81 of the Corrections and Conditional Release Act.

Some Lodges, however, are managed by corrections staff themselves rather than by Indigenous communities under a section 81 agreement. This practice is a deviation from the original vision of healing lodges as being run by and for Indigenous communities. CSC claims that these Lodges represent a compromise because vetting inmates for transfer of custody to a third party at a section 81 Lodge is time consuming. This vetting is admittedly a time-consuming process, and necessary to ensure the safety of staff and residents. However, with only nine healing lodges operating over twenty years after the program was established, and four of those operated by CSC rather than partner organizations, the time for this particular excuse has long passed.

The restorative justice approach sees supporting offenders in their attempts to desist from further criminal activity as a key to reducing the over incarceration of Indigenous people. Research on recidivism shows that the pathways to desistance vary between Indigenous and non-Indigenous offenders and between individuals.

However, all offenders need enough social capital in the form of family, community and kinship ties, labor market contacts, stable housing, education and marketable skills if they wish to alter their behavior. These are the very factors that Indigenous people in Canada are less likely to have in great supply. In particular, Indigenous people coming out of the child welfare system tend to

have very little social capital to draw on and are drawn into criminalized behaviors as a result—then are likely to be punished for those behaviors with incarceration more so than non-Indigenous offenders.

In addition, prisons act as recruiting centers for gangs, and are more likely to worsen than address the root causes of criminal behavior such as dislocation, trauma, mental illness, and social isolation. As a result, the prison experience is more likely to act as a cause of recidivism than to serve as a deterrent or to play a rehabilitative role.

The Chief Correctional Investigator recommended in his 2018-19 report that CSC develop a National Strategy for Gang Dis-Affiliation which should pay special attention to Indigenous-based gangs.[29] In their reply to the Investigator's response, CSC essentially asserted that their current policies were enough to address Dr. Zinger's concerns.[30] Research indicates that while Indigenous gangs are a serious issue in Canadian prisons and certain neighborhoods of major Canadian cities, the idea of a nationwide gang crisis may be overblown.[31] Indigenous gangs should be approached, therefore, as one more barrier to reintegration and desistance, not a problem in and of itself.

One program that has had some success in reducing recidivism and aiding in reintegration has been the Saskatoon based community organization Str8 Up. Considered "among the most comprehensive gang exit programs currently operating,"[32] this program is open to self-selected, self-identified gang members. Members are guided at their own pace through the gang de-affiliation process, with the understanding that building up the social capital to exist outside the gang can take some time and can be more difficult for some than others. Accountability is a cornerstone of the program and members are expected to make five commitments: drop their gang colours, deal with their addiction, be honest (drop "attitude" and manipulative ways), be humble, and commit to four years in the program. The program is built on three primary goals to rebuild positive social capital: becoming a faithful partner, a loving parent and a responsible

[29] Annual Report of the Correctional Investigator, 2018-19
[30] Correctional Service Canada, (2018) Response to the 45th Annual Report of the Correctional Investigator
[31] Sinclair and Grekul 2012
[32] Sinclair and Grekul 2012: 22

citizen. Strengthening kinship and community ties gives Indigenous participants the motivation they need to make changes in their lives, while the program gives them the tools that they need to understand their traumas within the context of colonization and work to heal it.

Str8 Up is a self-funded organization supported entirely through speaker's fees, but similar programs are sure to provide good value for money to governments. These programs prevent rather than respond to crime by giving those most likely to come into conflict with the Justice system a chance to make changes in a cycle of offending. The cost of one year of incarceration is estimated at $114,000,[33] not including lost productivity of the offender, the cost of the court's time, or the costs of a criminal investigation. That is to say nothing of the damage done by of the crime itself, or the human cost of incarceration both to the offender and their community. Therefore, investing in programs like Str8 Up may serve to save considerable resources for both individuals and the federal government.

Recommendations:

- CAP supports the Correctional Investigator's recommendation of a National Action plan for gang de-affiliation for offenders in and leaving Canadian prisons. However, we should be careful not to reinforce harmful stereotypes by playing into the media narrative of an Indigenous gang crisis.
- We should clearly articulate that given the centrality of prison in the formation and recruitment of Indigenous gangs, the best way to reduce the incidence of gang activity among Indigenous people is to reduce the number of Indigenous people being incarcerated.[34]
- More Healing Lodges should be established to meet the need for culturally relevant pre-release healing. In keeping with the original vision of the healing lodge concept, these programs should be staffed with Indigenous people and developed and run by Indigenous partners under a section 84 agreement, not by CSC. A significant proportion of these

[33] Parliamentary Budget Officer, Update on Costs of Incarceration, March 22, 2018
[34] Sinclair and Grekul, 2012

partners should be off-reserve organizations serving a pan-Indigenous community that includes non-band affiliated people.

7. Gladue Principles

The Gladue decision (1999) requires that the courts hear Indigenous social context evidence and consider reasonable alternatives to imprisonment during the sentencing process. Gladue factors can be key to implementing restorative justice conditions on an Indigenous offender.

Gladue remains somewhat controversial, as detractors claim that its use amounts to a race-based discount on sentencing for Indigenous offenders. However, the Supreme Court has reinforced its decision in cases such as *R. v. Ipeelee,* clarifying that the application of Gladue factors for Indigenous people are not automatic, nor do they negate the principles of proportionality and parity. Rather, consideration of these factors is necessary to craft a proportional sentence given the social context in which Indigenous people live and the law must operate. With Gladue principles now enshrined in the Corrections and Conditional Release Act as well as the Criminal Code, the legal precedent is likely going nowhere, even if political opposition remains from some corners.

Not all criticism of the Gladue principle comes from opponents of Indigenous rights. The final report of the National Inquiry on Missing and Murdered Indigenous Women and Girls found that many women were reluctant to be forthcoming in Gladue reports since the very factors of colonial violence that it is intended to put into context might be used against them in the security classification process. Higher security classifications reduce access to mental health and cultural services.

Findings of the MMIWG report call for Gladue reports to be treated as a right and provided to all Indigenous offenders. However, the report also suggests that s. 718.2(a) has had limited effectiveness in diverting Indigenous women from prisons and calls for further study of the potential effects of the Gladue process on women and girls.

One of the report's Calls for Justice demands that violence against Indigenous women be treated as an aggravating factor in sentencing, as proposed in the then-current Bill S-215. That Bill was later defeated in the House of Commons but its sponsor, Sen. Lillian Dyck said:

> "The proposed amendments to the Criminal Code contained in Bill S-215 are somewhat akin to the *Gladue* principle, but they apply to the victim rather than to the offender. The purpose of the bill is also a remedial response and is meant to rectify the over-victimization of Indigenous females. However, it is not meant to, nor should it be used to, justify the abandonment of the *Gladue* principle when an Indigenous person is accused of assault or murder of an Indigenous female."[35]

Neither Senator Dyck nor the MMIWG report explicitly mention this in their rationale for supporting the bill, but the Inquiry's Commissioner, Qajaq Robinson has been quoted in the media as saying that she believes Indigenous men who commit violence against Indigenous women receive more lenient sentences due to *Gladue,* sending the message that their crimes are not taken seriously by the justice system.[36] In these cases, an aggravating factor such as contemplated in Bill S-215 would act as a balancing factor to Gladue. While CAP has not adopted an official policy on this controversy, one board member has published an editorial criticizing Ms. Robinson's position.[37]

Access to report writing

Gladue report-writing services are not always accessible for eligible Indigenous offenders across provinces and territories. The National Inquiry on Missing and Murdered Women was told that some women requesting Gladue reports were refused or that they were prepared by police officers with no understanding of Indigenous culture. Additionally, Gladue reports do not have a consistent format and some are done better than others. Work has been done on standardization of reports by certain academics, including Dr. Jane Dickson of Carleton University.

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[35] Dyck, Lillian. 2016, January 27. "Criminal Code" Canada, Parliament. Senate. Edited Hansard 150[8]. 42nd Parliament, 1st session. https://sencanada.ca/en/content/sen/chamber/421/debates/008db_2016-01-27-e

[36] https://nationalpost.com/news/politics/mmiw-final-report-raises-concerns-about-gladue-principle-intended-to-support-indigenous-offenders

[37] Beaudin, Kim."Fair access to justice must be for all Indigenous people" The Globe and Mail Published July 3, 2019

Writing a Gladue report is a time intensive procedure that can take three to four weeks to complete. There is a shortage of certified Gladue report writers; certified report writers are generally located in major centers and are not available in smaller communities. People writing the Gladue reports include Indigenous Courtworkers, Justice Consultants/Contractors in a few instances, and Legal Aid and Indigenous Legal Service Agencies.

All provinces and territories have Indigenous Courtworker Associations except New Brunswick, PEI and Newfoundland. The Courtworker Program is funded through Justice Canada and flows to the Provinces and then to the Courtworker Organizations. Most Indigenous courtworker associations (180 employees total in Canada) offer Gladue services on their website.

In some provinces including Saskatchewan, pre-sentence reports with Gladue content are provided in most cases, and a full Gladue report is provided in only the most serious.[38.] Pre-sentence reports should not be confused with Gladue reports. Pre-sentencing reports do not contextualize colonization and systemic racism even if they mention Gladue factors. It appears convicted Indigenous people do not always realize what Gladue is and how it could be useful for their sentencing. Pre-sentence reports should not be confused for a Gladue Report. Pre-sentencing reports do not contextualize colonization and systemic racism even if they mention Gladue factors. According to CAP research, $1000-$1700 appears to be an accurate cost to prepare a Gladue Report. There are online courses that offer Gladue writing courses as well as in-person classes.

Recommendations

- While CAP has been a strong advocate of *Gladue* factors in sentencing, the question of its effect on Indigenous women is a serious one, and one that divides Indigenous people in Canada. More research is needed to determine whether it is true that greater levels of violence against Indigenous women is an unintended consequence of Gladue. In the absence of such evidence, CAP could endorse stronger sentences against those who commit violence toward Indigenous women without taking the position that there is a

[38]Report of the Correctional Investigator, 2017-18

problem with Gladue. Conversely, taking the position that harsher sentences are not an effective deterrent to any crime would be equally defensible.

- While Bill S-215 is no longer a live issue, CAP should anticipate that such a measure may be proposed again and formally adopt a position before engaging publicly on the matter.
- CAP could propose a program that would fund individuals to become certified to write Gladue reports using an existing course, allowing CAP and its affiliates to become a nationwide network for standardized Gladue reports.

8. Indigenous Women and Girls in the Criminal Justice System

Because the Canadian justice system has been historically structured to view and treat Indigenous peoples differently, to criminalize and institutionalize them, and to disempower Indigenous women and girls, it is understandable that this same system today contributes to the dehumanization of missing and murdered Indigenous women and girls.[39]

One of the most potent examples of this process is failure of the justice system to "condemn, investigate, and punish" acts of violence against Indigenous women and girls, a failure that "normalizes violence" and "encourages perpetrators to believe that they can act with impunity."[40]

Violence against women and girls is often trivialized by the justice system. For example, in Canada, sexualized violence is normalized in part by the incredibly low convictions rates for sexual assault: of the estimated 460,000 sexual assaults in Canada, only 15,200 (3%) are reported to police, only 5,544 (1%) lead to charges, only 2,824 (0.6%) are prosecuted, and only 1,519 (0.3%) end in conviction.[41] For Indigenous women and girls, the normalization of sexualized violence is compounded by racism and colonial biases. These biases in the justice system take many forms and are particularly evident in trends that cross many cases of missing and murdered Indigenous women and girls.

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[39]Dhillon 2015
[40]Amnesty International 2018: 8
[41]Palmater 2016: 276

A primary concern in the issue of missing and murdered Indigenous women and girls is the refusal by police to identify murder cases as suspicious and of concern, instead dismissing these cases as accidents or suicide. For example, in 2015, an Indigenous woman was brought to hospital after being found in a hotel laundry room after falling ten stories down a laundry chute, however the case has been dismissed as an accident.[42]

Among delays that occurred in this case, police were not called to investigate until 60 hours after the woman's death, police waited six months after the autopsy to conduct a toxicology test, and it was a full year before police attempted to locate the two men who last saw the woman alive.[43] Conflicting coroner's reports failed to determine whether the woman was capable of entering the laundry chute at the time of her death.[44]

In many cases, Indigenous women and girls who have been exploited or abused are treated like criminals by the justice system, while their abusers are given leniency. In the case of one murdered Indigenous girl who was being sexually exploited, police repeatedly failed to protect the child and in one case laid charges against the child rather than her abuser.[45]

Upon receiving a call about a young girl who had been reported missing and was being dragged down the street screaming for help, police responded by apprehending the child and issuing a ticket for the "possession/consumption of liquor by a minor." The child was not returned home to her guardians and no charges were laid against the adult male.[46]

In another instance, the same child, while under a missing persons report, was found in a vehicle with an adult male who had intended to sexually exploit her. Instead of charging the adult male, police "allowed the man who had been drinking and driving…to sleep and sober up" for a few hours before releasing him. The child was released onto the streets and days later her body was

[37]Leo, G. (2018, July). *Unresolved: Nadine Machiskinic*. CBC News. https://www.cbc.ca/missingandmurdered/mmiw/profiles/nadine-machiskinic
[38]Leo 2018
[39]Leo 2018
[40]Manitoba Advocate for Children and Youth. (2019, March). *A Place Where it Feels Like Home: The Story of Tina Fontaine*. https://manitobaadvocate.ca/wp-content/uploads/MACY-Special-Report-March-2019-Tina-Fontaine-FINAL1.pdf
[46]MACY 2019: 38

recovered from a river where it had been weighed down with rocks. Her killer has not been found.[47]

In cases where the perpetrators are known and ample evidence indicates their guilt, the justice system continues to fail Indigenous women. In 2011, Bradley Barton was acquitted in the death of an Indigenous woman who had bled to death in the bathtub of his hotel room.[48] Barton had cleaned the hotel room and left the scene before calling police to report that a women entered his hotel room and died there. It was only later, when questioned by police, that Barton admitted to having solicited the woman for sex work. Barton was also found to have in his possession violent pornography depicting the murder of women; however, this evidence was not made admissible in his trial. The judge determined that because Barton had "purchased her sexual services" that injuries resulting in her death were consensual, despite toxicology findings that the woman was impaired and would not have been able to consent at the time of her death.[49] Barton's acquittal effectively established that Indigenous women's and girls' bodies and lives can be still legally bought and ended by white men. Perpetrators of violence against Indigenous women and girls frequently escape accountability and receive reduced sentences, creating a culture of impunity. Jatim Patel, convicted in the murder of an Indigenous woman, received a sentence of nine years because he claimed he had experienced gay panic; this despite the fact that he hid the victim's body in a hotel room and then proceeded to engage in sexual relations and with another woman before eventually requesting her assistance in disposing of the body.[50] Patel's sentence was reduced to four and a half years; a few years after his release Patel sexually assaulted two children and was deemed a dangerous offender.[51] In Canada, men who commit violent crimes against Indigenous women are treated with leniency. Yet, in the past decade, the number of Indigenous women sentenced to federal prison has increased by 57% while the overall rate of adult incarceration is declining.[52] Similarly, Indigenous children account for 43% of all children

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[47]MACY 2019
[48]Razack 2016
[49]Razack 2016: 286; Kaye 2016
[45]Fraser, K. (2018, March). *Former convicted killer now jailed indefinitely for sexually assaulting 13-year-old girl*. Vancouver Sun. https://vancouversun.com/news/local-news/former-convicted-killer-now-jailed-indefinitely-for-sexually-assaulting-13-year-old-girl
[51]Fraser 2018
[52]Malakieh 2019; van der Meulen et al. 2017

in custody though they represent only 8% of the child population in Canada.[53] The over-incarceration of Indigenous peoples is a stark contrast to the lack of protection and absence of justice for Indigenous peoples within the system.

The justice system also fails Indigenous women and girls by enacting violence against them; "the abuse of Indigenous women and girls at the hands of the police, judges, and lawyers" has contributed significantly to a culture of fear and mistrust.[54] This mistrust is also increased by the criminalization of Indigenous women and girls who are subjected to legal violence within institutions.[55] When the mass incarceration of Indigenous women and girls is considered alongside the failure of the justice system to protect Indigenous women and girls from violent predators, including those within the justice system, the injustice becomes clear. Rather than providing Indigenous women and girls justice, the Canadian legal system continues to fail them.

9. Peace Bonds

CAP has received reports on the practice of police seeking section 810 orders, or peace bonds, against offenders at the end of their sentences. Our members have suggested that peace bonds might be disproportionately placed upon Indigenous people as a result of racial bias. There is concern that these bonds have the effect of criminalizing additions or other compulsive behaviors. The 2019 CAP AGA asked staff to investigate by requesting statistics on this issue from the federal government.

There are two types of peace bonds: statutory and common-law. Statutory peace bonds, as described in section 810 of the Criminal Code, can last from 1 to 2 years, and can be requested by a victim or third party who fears an offense will be committed. Breech of a statutory peace bond carries a potential penalty of up to 2 years prison.[56]

Common law peace bonds have a wider scope and can be used whenever the court reasonably believes the defendant may breach the peace; there is no requirement for fear that an offense will

[53]Malakieh 2019
[54]Palmater 2016: 280
[55]de Finney 2017
[56]Criminal Code of Canada, s. 810 https://laws-lois.justice.gc.ca/eng/acts/C-46/section-810.html

be committed. Common law peace bonds may last any amount of time and bear the same potential penalty for their breach.

The Attorney general's support for peace bonds initiated by police or the CSC is based on a number of factors, including the defendant's progress in and plans for, treatment and counseling. Upon sentence completion a brief completed by CSC will inform police decision as to whether a peace bond will be pursued.

Curtis McKenzie, a member of Lac La Ronge First Nation Indian Band in Saskatchewan, is an example of the problematic use of this power by the authorities. Mr. McKenzie was a survivor of abuse in the foster care system and during his incarceration he was unable to access drug and alcohol addiction treatment. Prison staff's response to behaviors resulting from McKenzie's mental health issues was to impose long periods in solitary confinement, which further traumatized McKenzie to the point that he cut off his own nose with a razor blade and flushed it down the toilet.

Upon his statutory release he was made to sign a section 810 peace bond on the threat of an additional year of incarceration, pledging to keep the peace and refrain from drugs and alcohol. The parole board acknowledged that his mental health issues "remained unaddressed" while he was in custody. Despite numerous requests by Curtis and advocates on his behalf for alcohol and drug treatment, CSC did not provide it.

The parole board recognized that McKenzie had a pattern of doing well upon release but relapsing into drug and alcohol use during periods of stress. Lacking any supports to help him remain clean and sober, he was returned to prison after breaching his terms. In an article on his experiences in November 2019, McKenzie spoke out about both the failure of the federal justice system to address addictions and mental health and the use of criminal sanctions instead of treatment. In this article, he said "I hope they don't do it to me again." Soon afterward, McKenzie was charged with breaching recognizance and returned to Prince Albert Institution, where he died in a suicide. He was 27.[57]

[57] Congress of Aboriginal Peoples calls for inquest into inmate's death. Saskatoon StarPhoenix March 1st, 2020

The connection between the use of peace bonds and the wider question of Indigenous over incarceration is complex. If they are, in fact, being misused based on stereotypes of Indigenous offenders, then peace bonds can be seen as another facet of the heavy hand of the justice system on Indigenous people: punishment meted out for crimes that haven't been committed yet based on the stigma of past wrongs combined with racial stereotypes.

However, peace bonds can also be used appropriately, as a preventative measure to help offenders to break known patterns of offending. If this is their intention, they must be paired with appropriate interventions like mental health services to bring the change in behavior into the realm of the possible for the offender. If addictions and trauma-rooted violence could be cured by the threat of incarceration, our prisons would stand empty.

Because no federal organization oversees the use of peace bonds, national data on their use is not easily accessible. At present, no research exists on the subject of whether the use of peace bonds in Canada on Indigenous ex-offenders is, in fact, problematic.

Because Alberta and British Columbia track peace bonds through their provincial corrections systems, information about their use in these two provinces is collected through the Canadian Correctional Services Survey (CCSS). This survey is conducted by the Canadian Centre for Justice Statistics (CCJS) and collects administrative data electronically from correctional services programs in Canada on the characteristics of persons being supervised. The reference period for the CCSS is the 12-month fiscal period beginning April 1, and it has been conducted three times since 2015/16.

Since the courts in other provinces do not track statistics related to peace bonds, data for other provinces is not available. Alberta and British Columbia have Indigenous populations somewhat higher than the national average of 4.3%. Indigenous people account for 6.2% of the population of Alberta and 5.4% of the population of British Columbia.[58] Nevertheless, data from the two westernmost provinces should give some clues as to what broader trends might exist across Canada.

[58]Census 2016

Total peace bond admissions by Indigenous identity, 2017/2018					
	Indigenous	Non-Indigenous	Unknown	Total	Indigenous as % of total
Alberta	417	1,755	16	2,188	19.06%
British Columbia	314	1,035	68	1,417	22.16%
Total	731	2790	84	3605	20.28%

It is clear that peace bonds are disproportionately placed on Indigenous people in the two westernmost provinces. Indigenous people account for 6% of the population of Alberta[59] but 19% of peace bonds. In British Columbia, though only 5% of the population is Indigenous, 22% of peace bonds are given to Indigenous people.

In BC during 2018/19, one in 4145 non-Indigenous people were the subject of a peace bond. However, one in 862 Indigenous people were the subject of a peace bond. Indigenous people were nearly five times as likely to be the subject of a peace bond than non-Indigenous people.

In the same year, one in 2119 non-Indigenous Albertans were the subject of a peace bond. At one in 620, Indigenous people were almost four times as likely to be the subject of a peace bond in Alberta.

It is likely that Indigenous people are over represented among peace bond subjects for more or less the same reasons they are overrepresented in other parts of the justice system: a combination of higher rates of offending as a result of trauma, economic inequality and social disadvantage caused by the ongoing project of colonization, and biases within the justice system.

Given CAP's interest in Mr. McKenzie's case, this report also explores the practice of placing peace bonds on offenders at the time that they are released from prison. In this case, the sub-

[54]Statistics Canada. (2017). *2016 Census*

group was operationalized as any peace bond order that became effective after the commencement of a period of custodial supervision and was still active upon release, plus any peace bond orders that became effective within one week after release from custodial supervision.

Selected peace bond admissions by Indigenous identity, 2017/2018*					
	Indigenous	Non-Indigenous	Unknown	Total	Indigenous as % of total
Alberta	27	39	0	66	40.91%
British Columbia	24	35	0	59	40.68%
Total	51	74	0	125	40.80%

*Includes any peace bond order that became effective after the commencement of a period of custodial supervision and was still active upon release, plus any peace bond orders that became effective within one week (7 days) after release from custodial supervision. Includes offenders aged 18 or over at the start of the term of supervision.

Admissions to adult custody, by Indigenous identity and jurisdiction, 2017/2018 (male and female)							
	Indigenous		Non-Indigenous		Unknown Indigenous identity		Total
	number	percent	number	percent	number	percent	
Alberta	17614	41.45%	24268	57.11%	611	1.44%	42493
British Columbia	8420	32.41%	17471	67.26%	85	0.33%	25976
Total	26034	38.02%	41739	60.96%	696	1.02%	68469

Source: Statistics Canada, Canadian Centre for Justice Statistics, Adult Correctional Services Survey, Integrated Correctional Services Survey and Canadian Correctional Services Survey, 2017/2018. (https://www150.statcan.gc.ca/n1/pub/85-002-x/2019001/article/00010/tbl/tbl05-eng.htm)

It is not surprising, given how much Indigenous people are overrepresented in prison populations, that Indigenous people make up an even larger share of peace bonds given upon

release from a correctional institution. If offenders were being treated evenhandedly at the time of their release, we would expect the peace bonds in this group to be divided between Indigenous and non-Indigenous offenders in a way that is reflective of the population of the corrections system itself. In fact, this appears to be the case in Alberta, where 41% of offenders in provincial institutions are Indigenous, and 41% of the offenders who are given a peace bond upon release from custody are Indigenous. Whatever lead to that gross imbalance in the wider system, there is little evidence that they are being discriminated against upon their release though the application of unneeded peace bonds.

In British Columbia, where Indigenous offenders represent 32% of admissions to provincial prisons, but 41% of peace bonds issued at release, Indigenous offenders seem to be considerably more likely to have this instrument used against them on their release than their non-Indigenous counterparts.

In Alberta, more peace bonds fitting our criteria have been issued each year since 2015/16. In British Columbia the opposite trend can be observed.

This striking variance between the two provinces highlights the need for a more consistent national effort to track the use of peace bonds by the courts. Is British Columbia alone in its tendency to issue excessive peace bonds to offenders leaving the system? If other provinces have the same issue, what do they have in common that might explain their overuse of these orders against Indigenous persons? What explains Alberta's ability to use this tool in a proportionate way, and what other provinces are doing the same?

Conditions

Peace bonds generally include multiple conditions. Almost all peace bonds issued upon release included the order "keep the peace and be of good behaviour," and most, especially in Alberta, also required the ex-offender to seek treatment, counseling or assessment. About two thirds of peace bonds in Alberta and over four fifths of those issued in British Columbia ordered the ex-offender to refrain from contacting some individual, like the victim of their previous offence and/or a former intimate partner who fears for their safety. Peace bonds given to Indigenous and non-Indigenous ex-offenders seem to include these conditions in roughly equal proportions.

Looking at the conditions included in three years of data for peace bonds issued upon the release of offenders in BC and Alberta, only a few trends are apparent. There are no conditions that are consistently and notably more likely to appear on the peace bonds of Indigenous ex-offenders across all three years and both provinces.

However, two conditions are considerably less likely to be included in the peace bonds of Indigenous ex-offenders than those of their non-Indigenous counterparts, in all years and both provinces: area restrictions, like orders not to go near a place where the ex-offender's former partner or child can be found, and orders to reside in a particular place.

With the exception of one year in BC, 2015/16, Indigenous ex-offenders also were less likely to be bound to abstain from drugs and alcohol. In British Columbia, peace bonds given to Indigenous ex-offenders have also been less likely to include weapon restrictions, although in Alberta this does not seem to be the case.

Sex

The majority of peace bonds given upon release in Alberta and British Columbia, 87% over the three years covered by the data, are placed on men. This actually represents a greater proportion of women than would be found among all peace bond respondents, which has been estimated at 2-3%. Clearly, the release of women ex-offenders from custody is one of the few times that women are likely to be named as peace bond respondents.[60]

Mirroring the population of woman's prisons themselves, Indigenous women are even more overrepresented among ex-offenders receiving peace bonds upon release than Indigenous men. Over the three years of the data, 61% of female ex-offenders and 31% of male ex-offenders who were given peace bonds upon release were Indigenous.

Number of peace bond orders[1] by Indigenous identity and sex, Alberta and British Columbia, 2015/16 to 2017-18

[55] Solecki, André Z. Justice Canada. 2012 Section 810 Peace Bonds: Stakeholder Perceptions and Experiences

Sex	Indigenous	Non-Indigenous	total	% Indigenous
Total	134	210	344	38.95%
Female	28	18	46	60.87%
Male	106	192	298	35.57%

1. Includes any peace bond order that became effective after the commencement of a period of custodial supervision and was still active upon release, plus any peace bond orders that became effective within one week (7 days) after release from custodial supervision. Includes offenders aged 18 or over at the start of the term of supervision.

Offences

About 46% of ex-offenders who were named in peace bonds upon their release had been originally sentenced for an administration of justice offence. This is a class of offences that arise over the course of the justice process and involve disobeying the orders of the court or another part of the justice system. This includes failing to appear in court, breach of bail conditions, breach of probation or, of course, breach of a peace bond. These could be considered "secondary offences" in the sense that they rarely involve harm to a victim and arise after some other offence has been alleged.

Number of peace bond orders by Indigenous identity and offence group, Alberta and British Columbia 2015/2016 to 2017/2018			
Offence group	Indigenous identity		
	Indigenous	Non-Indigenous	Total
Total	134	210	344
Administration of justice	60	100	160
Other criminal code	51	76	127
Other 2	23	34	57

This figure is actually fairly reflective of the proportion of offenders in the justice system who have been sentences for this type of offence. In 2012, the Honourable Patrick J. LeSage, former Chief Justice of the Ontario Superior Court of Justice told a parliamentary committee that this type of administrative offence contributes to delays in the court system:

> "We see the issues of what I refer to and I think is statistically referred to as administrative offences so that now 40 per cent of the people charged with criminal offences also end up being charged with an administrative offence. That simply is an offence that has arisen because at some stage along the way in the process, which is often too long, they have failed to follow the restrictions that have been put on them, some of which were probably unnecessary and some of which do not really deserve to be in the criminal justice system. So there has been a dramatic increase in the administrative offence."[61]

The Canadian Centre on Substance Abuse told the same committee that "substance use also plays a role in administrative offences ... Imposing bail or probation conditions requiring abstinence ... has been deemed setting people up to fail."[62] It is easy to see how a vicious cycle can result. It is distressingly easy for individuals like Mr. Curtis McKenzie to become locked into a cycle where they serve time for their inability to comply with court conditions, only to be released with the same conditions placed on them again, and are inevitably returned to the system, their original offence long forgotten.

Recommendations:

- Every time a peace bond is issued, the courts should ensure that its subject has sufficient access to addictions programming or other mental health resources to be able to comply. The Courts should exercise caution when issuing peace bonds to ensure they are not setting respondents up for failure, and that the conditions are no more restrictive than is necessary to reduce the likelihood of a serious offence.
- Further research on this issue is warranted. It seems likely that in some provinces, Indigenous ex-offenders are more likely than their non-Indigenous peers to be issued a

[61] Standing Senate Committee on Legal and Constitutional Affairs, Senate of Canada, *Delaying Justice is Denying Justice: An urgent need to address lengthy court delays in Canada (Final report),* June 2017, p. 139.
[62] Ibid 140

peace bond upon release. The government of Canada in cooperation with the provinces should establish a statistical program to track peace bonds across the country.

- Research questions raised by this issue include:
  - What proportion of offenders released from correctional institutions have a peace bond order placed on them upon release?
  - What proportion of Indigenous offenders have a peace bond placed on them upon release?
  - How are these orders divided among the various potential conditions (prohibiting contact, alcohol, weapons, etc) for Indigenous and non-Indigenous former offenders?
  - In the case of individuals who are prohibited from using alcohol or other substances, are treatment programs made available to former offenders in every case?
  - Are supports and treatment made available to individuals with other compulsive behaviors to help them comply with their conditions?
  - How often does the Crown or police seek peace bonds against offenders without a request to do so by a victim or community member?

10. Lessons from Direct Engagement

CAP and its Provincial/Territorial Organizations constitute the single largest network of off-reserve Indigenous people in Canada, and we frequently leverage this network to take the pulse of our constituents. The collective lived experience of the thousands of members of our organizations from coast to coast is a powerful tool for learning what really matters in the lives of Indigenous people not living on reserves.

The Congress of Indigenous People's five-year corrections program, which ended in 2005, provided CAP with a significant opportunity to undertake activities regarding Indigenous corrections and reintegration. Awareness was raised on community corrections initiatives and Indigenous corrections policy throughout the CAP structure. A Technical Committee on

Corrections was struck with representatives from four provincial affiliates. Individuals, communities and provincial affiliate organizations were given opportunities to review Indigenous corrections initiatives and provide feedback. The lessons learned from this review are no less true now than they were then:

> Services need to be marketed to inmates in a manner that encourages ongoing learning and participation. Inmates need to be asked, "What do you want when you get out?" This is a different strategy from what their program needs are. Supports for offenders must take a more holistic approach that include essentials such as housing and employment. Information must be given to communities to overcome resistance to community corrections projects. A network must be built, and partnerships developed. Much more effort needs to be made in providing an integrated cross-governmental strategy at all levels that works with Aboriginal organizations and communities to provide a holistic set of supports for Aboriginal offenders that would give them a chance to reintegrate into society and develop and achieve their aspirations.

Efforts should also specifically target and engage youth when raising awareness and developing community capacity to participate in corrections initiatives. Youth offenders are more likely to turn to and trust other youth when seeking support. Youth can play an extremely valuable role by working with youth at risk of re-offending and inspiring them to attend school, obtain employment, live positive lifestyles, take treatment programs, participate in recreational activities and provide pro-social friendships. Youth can also participate in community awareness raising activities and develop partnerships with schools and other agencies.

In January of 2020, CAP held a national Indigenous Women's summit to discuss issues related to the violence against women. They called for government to address and prevent the trafficking of women, establish a National Task Force to investigate unresolved MMIWG files, and increase partnership between the police force and Indigenous communities.

One key theme was addressing problems in policing both through increased oversight and by increasing the number of Indigenous police and ensuring that there is intentional recruitment of Indigenous professionals throughout the justice system. Professionals within the justice system also need to possess the cultural competency to work with different Indigenous communities.

The summit also called for a focus on re-integration and healing by creating diversion and alternative measures to the justice system, a standardized health referral processes to help create a more direct healing path, and the creation of transition homes for inmates upon release from prison. They also recommended crime prevention through tackling economic inequality, such as increasing post-secondary education for Indigenous peoples to be able to work in trades.

11. Data Usage

This report was informed by open source quantitative data provided by Statistics Canada. Data sets such as “Table 13-10-0457-01 Health indicators, by Aboriginal identity, four-year period estimates” helped to establish background information on the socio-economic conditions for the populations of interest. Data sets were downloaded as comma separated values and inputted into Microsoft Excel. Then, using the tools offered in the program, pivot tables, charts, and tables were generated. These visualizations helped researchers to understand the data and to develop new research questions and hypotheses. In addition, data manipulation helped researchers to isolate specific sub-populations like women, off-reserve Indigenous peoples, and socio-economic statuses. The documentation on the data collected by surveys like the Aboriginal Peoples Surveys and the 2016 Census were also useful, as they allowed CAP to interpret findings of other researchers. The documentation was consulted to establish the scope of various variables used in other studies.

CAP also benefited from semi-custom data tabulations through an agreement with Statistics Canada as one of the five National Indigenous Organizations recognized by the Government of Canada. This was made possible by cooperation with “Canadian Centre for Justice and Community Safety Statistics.” Through this agreement, CAP researchers were able to investigate the use of peace bonds on Indigenous offenders.

12. Conclusion

The overrepresentation of Indigenous people in Canada’s justice system is a national shame. It is the result of the crushing poverty experienced by many Indigenous people living on First Nations and in cities and rural communities across the country. Addressing these social inequalities by

providing opportunities to Indigenous people and communities and by rebuilding the social safety net that Canadians once benefited from will go a long way to reducing the rate of crime among all Canadians.

More importantly, Indigenous people are being imprisoned *en masse* because of a justice system that discriminates against them, that does not reflect Indigenous values, and that worsens rather than breaks the cycles of trauma and addiction. The solution to this problem is an approach that attempts to prevent rather than suppress crime. For the most part, Indigenous offenders are wounded individuals who need the help of their communities to reorient themselves. It is the justice system that is unwilling to reform itself.

Police services also need to change their cultures to eliminate the racism that results in different outcomes for Indigenous Canadians, most dramatically manifested as police violence against Indigenous women. The flow through the "prison-child welfare" pipeline can be shut off by rethinking the assumptions that lead to breaking up families and communities, ostensibly in the best interests of the child. Providing appropriate supports to families living in poverty or with mental health challenges are cheaper and more effective than placing children in care and eventually into the prisons system.

A more restorative justice-based system that diverts offenders from incarceration, respects Indigenous law and makes a change in lifestyle possible is needed. It is clear that placing offenders already struggling with the trauma of colonization into prisons, then often releasing them with conditions they cannot hope to keep, is simply an expensive means of ensuring they will re-offend. Canada can no longer afford to pay that price.

Appendix A: Compiled Specific Recommendations from this Report

Indigenous Over Incarceration and its Causes

- Higher rates of offending among Indigenous people are associated with poverty and a lack of social capital. Initiatives that address inequalities by helping Indigenous people to gain skilled employment, decent housing or higher education will help to prevent them from coming into conflict with the justice system. CAP must advocate for significant investment in social assistance and other aspects of the welfare state.

- Investing in mental health programming and addictions treatment will pay for itself several times over by preventing crime. Furthermore, Canada has a humanitarian duty to ensure that everyone who needs these services can access them, which is doubly true in the case of Indigenous people whose traumas are often the result of the legacy of residential schools and other government policies.

- Involvement in the child welfare system is the single greatest predictor of future incarceration. Providing appropriate supports to families living in poverty or with mental health challenges is cheaper and more effective than placing their children in care and eventually into the prisons system. When weighing the best interests of the child social workers should consider the harms done to the child and the community by removing Indigenous children from their families and cultures.

- Police services should increase the number of Indigenous police and ensure that there is intentional recruitment of Indigenous professionals throughout the justice system. Professionals within the justice system also need to possess the cultural competency to work with different Indigenous communities.

Recent Amendments to the Corrections and Conditional Release Act

- The Independent External Decision Makers are the individuals with the greatest opportunity to ensure that the SIU concept in Bill C-38 is implemented as intended. CAP

should offer to provide materials or training to these individuals to help them apply a culturally relevant human rights perspective to their work.

- A contractor might be engaged to develop a toolkit or training package for IEDMs and other corrections staff.
- Alternatively, or additionally, the IEDMs could be invited to a seminar organized by CAP.

Healing and Restorative Justice

- CAP supports the Correctional Investigator's recommendation of a National Action plan for gang de-affiliation for offenders in and leaving Canadian prisons. However, we should be careful not to reinforce harmful stereotypes by playing into the media narrative of an Indigenous gang crisis.
- We should clearly articulate that given the centrality of prison in the formation and recruitment of Indigenous gangs, the best way to reduce the incidence of gang activity among Indigenous people is to reduce the number of Indigenous people being incarcerated.[63]
- More Healing Lodges should be established to meet the need for culturally relevant pre-release healing. In keeping with the original vision of the healing lodge concept, these programs should be staffed with Indigenous people and developed and run by Indigenous partners under a section 84 agreement, not by CSC. A significant proportion of these partners should be off-reserve organizations serving a pan-Indigenous community that includes non-band affiliated people.

Gladue Principles

- While CAP has been a strong advocate of *Gladue* factors in sentencing, the question of its effect on Indigenous women is a serious one, and one that divides Indigenous people in Canada. More research is needed to determine whether it is true that greater levels of

[63] Sinclair and Grekul 2012

violence against Indigenous women is an unintended consequence of Gladue. In the absence of such evidence, CAP could endorse stronger sentences against those who commit violence toward Indigenous women without taking the position that there is a problem with Gladue. A position that there is no evidence that harsher sentences are an effective deterrent to any crime would be equally defensible.

- While Bill S-215 is no longer a live issue, CAP should anticipate that such a measure may be proposed again and formally adopt a position before engaging publicly on the matter.
- CAP could propose a program that would fund individuals to become certified to write Gladue reports using an existing course, allowing CAP and its affiliates to become a nationwide network for standardized Gladue reports.

Peace Bonds

- Every time a peace bond is issued, the courts should ensure that its subject has sufficient access to addictions programming or other mental health resources to be able to comply. The Courts should exercise caution when issuing peace bonds to ensure they are not setting respondents up for failure, and that the conditions are no more restrictive than is necessary to reduce the likelihood of a serious offence.
- Further research on this issue is warranted. It seems likely that in some provinces, Indigenous ex-offenders are more likely than their non-Indigenous peers to be issued a peace bond upon release. The government of Canada in cooperation with the provinces should establish a statistical program to track peace bonds across the country.

- Research questions raised by this issue include:
    - What proportion of offenders released from correctional institutions have a peace bond order placed on them upon release?
    - What proportion of Indigenous offenders have a peace bond placed on them upon release?

- How are these orders divided among the various potential conditions (prohibiting contact, alcohol, weapons, etc) for Indigenous and non-Indigenous former offenders?
- In the case of individuals who are prohibited from using alcohol or other substances, are treatment programs made available to former offenders in every case?
- Are supports and treatment made available to individuals with other compulsive behaviors to help them comply with their conditions?
- How often does the Crown or police seek peace bonds against offenders without a request to do so by a victim or community member?

Appendix B: Works Cited

Annual Report of the Correctional Investigator of Canada, 2018-19

Barker, Brittany., Alfred, Gerald Taiaiake., Flemming, Kim., Nguyen, Paul., Wood, Eva., Kerr, Thomas & DeBeck, Kora (2015) Aboriginal Street-involved Youth Experience Elevated Risk of Incarceration, Public Health, 129 (12): 1662-1668

Beaudin, Kim."Fair access to justice must be for all Indigenous people" The Globe and Mail Published July 3, 2019

Bracken, Denis C., Deane, Lawrence & Morrissette, Larry (2009) Desistance and social marginalization: The case of Canadian Aboriginal offenders, Theoretical Criminology, 13 (1): 61-78.

Bracken, Denis C., Deane, Lawrence & Morrissette, Larry (2009) Desistance and social marginalization: The case of Canadian Aboriginal offenders, Theoretical Criminology, 13 (1): 61-78.2009: 66,.

Canadian Council of Child and Youth Advocates (2011) Special Report – Aboriginal Children Canada Must Do Better: Today and Tomorrow, Canadian Council of Child and Youth Advocates, Canada.

Congress of Aboriginal Peoples calls for inquest into inmate's death. Saskatoon StarPhoenix March 1st, 2020

Correctional Service Canada, (2018) Response to the 45th Annual Report of the Correctional Investigator

De Finney, Sandrina. (2017). Indigenous girls' resilience in settler states: Honouring body and land sovereignty. Agenda, 31(2), 10-21.

Dhillon, Jaskiran K. (2015) Indigenous girls and the violence of settler colonial policing, Decolonization: Indigeneity, Education & Society, 4 (2): 1-31.

Dyck, Lillian. 2016, January 27. "Criminal Code" Canada, Parliament. Senate. Edited Hansard 150[8]. 42nd Parliament, 1st session. https://sencanada.ca/en/content/sen/chamber/421/debates/008db_2016-01-27-e

Fraser, K. (2018, March). Former convicted killer now jailed indefinitely for sexually assaulting 13-year-old girl. Vancouver Sun. https://vancouversun.com/news/local-news/former-convicted-killer-now-jailed-indefinitely-for-sexually-assaulting-13-year-old-girl

https://nationalpost.com/news/politics/mmiw-final-report-raises-concerns-about-gladue-principle-intended-to-support-indigenous-offenders

Leo, G. (2018, July). Unresolved: Nadine Machiskinic. CBC News. https://www.cbc.ca/missingandmurdered/mmiw/profiles/nadine-machiskinic

Malakieh, Jamil (2019) Adult and youth correctional statistics in Canada, 2017/2018, Government of Canada, Statistics Canada

Manitoba Advocate for Children and Youth. (2019, March). A Place Where it Feels Like Home: The Story of Tina Fontaine. https://manitobaadvocate.ca/wp-content/uploads/MACY-Special-Report-March-2019-Tina-Fontaine-FINAL1.pdf

Martel, Joane & Brassard, Renée (2008) Painting the Prison 'Red': Constructing and Experiencing Aboriginal Identities in Prison, British Journal of Social Work, 38 (2008): 340-361.

Office of the Correctional Investigator. "Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge" Jan 21, 2020

Ontario Human Rights Commission (2018) Interrupted Childhoods: Over-representation of Indigenous and Black children in Ontario Child Welfare: 28

Parliamentary Budget Officer, Update on Costs of Incarceration, March 22, 2018

Sikka, Anette, (2010). Indigenous Women and Girls in the Criminal Justice System Trafficking of Aboriginal Women and Girls in Canada, Aboriginal Policy Research Consortium International (APRCi). 57 (2010): 201-231.

Sinclair, Raven and Jana Grekul "Aboriginal Youth Gangs in Canada: (de)constructing an epidemic" in First Peoples Child & Family Review vol 7 no 1, pp 8-28. 2012

Solecki, André Z. Justice Canada. 2012 Section 810 Peace Bonds: Stakeholder Perceptions and Experiences

Standing Senate Committee on Legal and Constitutional Affairs, Senate of Canada, *Delaying Justice is Denying Justice: An urgent need to address lengthy court delays in Canada (Final report),* June 2017, p. 139.

Statistics Canada. 2016 Census. https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm

Tauri, Juan M. & Porou, Ngati (2014) Criminal Justice as a Colonial Project in Settler-Colonialism, African Journal of Criminology and Justice Studies, 8 (1): 20-37

Van der Meulen, Emily., De Shalit, Ann & Chu, Sandra Ka Hon (2017) "A Legacy of Harm: Punitive Drug Policies and Women's Carceral Experiences in Canada, Women & Criminal Justice"

Zehr, H., & Gohar, A. (2002). The Little Book of Restorative Justice. https://www.unicef.org/tdad/littlebookrjpakaf.pdf

Appendix C: Annotated Bibliography

Indigenous Over Incarceration and Its Causes

Barker, Brittany., Alfred, Gerald Taiaiake., Flemming, Kim., Nguyen, Paul., Wood, Eva., Kerr, Thomas & DeBeck, Kora (2015) Aboriginal Street-involved Youth Experience Elevated Risk of Incarceration, Public Health, 129 (12): 1662-1668

- In a multivariate analysis controlling for a range of potential confounders including drug use patterns and other risk factors, Indigenous ancestry remained significantly associated with recent incarceration, suggesting that discrimination within the justice system is likely a key factor in Indigenous overincarceration.

Tauri, Juan M. & Porou, Ngati (2014) Criminal Justice as a Colonial Project in Settler-Colonialism, African Journal of Criminology and Justice Studies, 8 (1): 20-37.

- This is a theoretical framework for how criminal justice systems in neo-liberal settler states, including the academic study of criminology, exist to marginalize Indigenous cultures. It is not specific to the Canadian context, but applicable.

Newell, Ryan. (2013) Making Matters Worse: The Safe Streets and Communities Act and the Ongoing Crisis of Indigenous Over-Incarceration. Osgoode Hall Law Journal 51 (1): 199-249.

- A critique of the 2012 Safe Streets and Communities Act (SSCA), which was part of the of the Conservative Party of Canada's tough-on-crime agenda. Newell argues the bill will exacerbate the ongoing crisis of Indigenous over-incarceration. This includes a review of the causes of Indigenous overrepresentation in the Canadian criminal justice system, concluding that Indigenous criminality is related to poverty, but this itself is the result of a deliberate policy of colonization. Note that poverty itself is punished through the bail process which privileges economic security.

- SSCA will restrict courts' resort to Gladue, thus resulting in the incarceration and increasing numbers of Indigenous people. Drawing on insights from Gladue and from the cases that followed it, the author argues that the meaning of "cruel and unusual punishment" under section 12 of the Canadian Charter of Rights and Freedoms should shift in the case of Indigenous offenders to account for the well-established connections between colonialism and the over-incarceration of Indigenous people.

Recent Amendments to the Corrections and Conditional Release Act

Public Safety Canada. The Investigation, Prosecution and Correctional Management of High-Risk Offenders: A National Guide (2009)

- A handbook intended to provide justice officials with useful information about the law and operational issues surrounding the use of dangerous offender, long-term offender and judicial restraint procedures to help deal with high-risk offenders. The publication also

provides information about and contact information for key high-risk offender resources in each province and territory.

Martel, Joane & Brassard, Renée (2008) Painting the Prison 'Red': Constructing and Experiencing Aboriginal Identities in Prison, British Journal of Social Work, 38 (2008): 340-361.

- Social workers have largely failed to integrate Indigenous traditional knowledges and practices on healing and helping. This piece examines Indigeneity from both institutional and individual points of view. It draws on documentary analyses and interviews with Indigenous women prisoners in Canada to assert that prisons endorse a hegemonic vision of Aboriginality, which social worker tend to adhere to but which by have little to do with Indigenous women prisoners' concept of Indigeneity. Service delivery in prison may be enhanced by considering individual modes of resisting identity-based oppression in prison, and by challenging prisons' master narrative on Indigeneity.

Malakieh, Jamil (2019) Adult and youth correctional statistics in Canada, 2017/2018, Government of Canada, Statistics Canada

- An overview of statistics of adults and youth in correctional systems in Canada at both the federal and provincial levels. Data is from 2017/18 and highlights changes over time. While the adult prison population is shrinking, Indigenous overincarceration is getting worse: in 2017/2018, Indigenous adults accounted for 29% of admissions to federal custody. In comparison, ten years ago Indigenous adults represented 20% of federal admissions. Indigenous women are particularly overrepresented; they make up 42% of female admissions, an increase of 66% over ten years.

Office of the Correctional Investigator of Canada, Annual Reports (available at https://www.oci-bec.gc.ca/cnt/rpt/index-eng.aspx)

- The Correctional Investigator of Canada (Dr. Ivan Zinger) is a federal ombudsman for prisons with a mandate to "“to conduct investigations into the problems of offenders related to decisions, recommendations, acts or omissions of the Commissioner (of Corrections) or any person under the control and management of, or performing services for, or on behalf of, the Commissioner, that affect offenders either individually or as a group.” Issues raised in these investigations are often resolved through negotiation with CSC but where they are not or are indictive of a serious systematic problem they will be noted in the Investigator's Annual report.

- Naturally, Indigenous corrections have been a recurring issue, earning a section in every recent annual report. The Correctional Investigator's recent reports recommend:

  - A greater devolution of responsibility over Indigenous offenders to Indigenous communities, along with an appropriate level of resources
  - The development of national gang and dis-affiliation strategy.

- CSC spending and community resource allocations should reflect the proportion of Indigenous people under federal sentence.
- Changes to CSC organizational structure to enable the prioritization of better outcomes for Indigenous people under federal sentence.
- A more consistent application of Indigenous social history (*Gladue* factors) in CSC decision-making.
- More support for participation of Elders.

Healing and Restorative Justice

Bracken, Denis C., Deane, Lawrence & Morrissette, Larry (2009) Desistance and social marginalization: The case of Canadian Indigenous offenders, Theoretical Criminology, 13 (1): 61-78.

- For individuals involved in Indigenous street gangs, desisting from gang or criminal activity is not a simple matter of choice. Gangs are formed in response to needs arising from a lack of social capital, including networks, relationships and marketable skills, that is a result of marginalization, colonization and personal trauma. Prisons are a prime recruiting ground since by design they cut the prisoner off from whatever social capital they have.

- Indigenous gangs are imbued with an "oppositional ideology" which is built upon Indigenous identity and sees the gang as a refuge from a hostile and discriminatory society. Since this worldview ensures all efforts to build social capital are directed inward, desistance seems to be an impossible goal. Programs that help to connect the offender with their Indigenous culture can be helpful because they offer a way to envision oneself as part of a broader community without abandoning Indigenous identity.

- For the choice to desist to seem like a realistically achievable goal it is necessary to address the root problem of a social capital deficit. Building of social networks, healing of trauma, development of marketable skills are necessary pieces in this puzzle.

- This piece also presents the Winnipeg based program Ogijiita Pimatiswin Kinamatwin (OPK) as a possible model for Indigenous culturally appropriate desistance programming.

Gutierrez, L., Chadwick, N., & Wanamaker, K. A. (2018). Culturally Relevant Programming versus the Status Quo: A Meta-analytic Review of the Effectiveness of Treatment of Indigenous Offenders. Canadian Journal of Criminology and Criminal Justice, 60(3), 321–353.

- This meta-analysis examines the effectiveness of culturally relevant programs for Indigenous offenders compared to conventional programs. Results based on seven studies (total participants 1,731) indicate Indigenous offenders who participate in these programs have significantly lower odds of recidivism (39% compared to 48%) compared to Indigenous offenders who participate in generic programs. Four of the studies included were from Canada, while the rest were in New Zealand.

- Although considerable methodological limitations were observed in the studies reviewed, and although the number of studies that meet the inclusion criteria is small, the results suggest that treatment effectiveness is maximized when programming is targeted specifically to ensure that the learning environment is engaging and relevant to an Indigenous audience. However, it is possible that the Indigenous-focused programming was simply better designed,. The authors indicate that further research of higher methodological quality is needed to further evaluate culturally relevant programs and determine with greater confidence how correctional interventions best work for this population.

Public Safety Canada, 2017. A Meta-analysis of the Effectiveness of Culturally relevant Treatment for Indigenous Offenders Department of Justice.

- A summary of Gutierrez et al 2018, above.

Marchetti, Elena, and Kathleen Daly. Indigenous Partner Violence, Indigenous Sentencing Courts, and Pathways to Desistance. *Violence Against Women*, vol. 23, no. 12, Oct. 2017, pp. 1513–1535,

- This piece focuses on the experiences of partner-violence offenders sentenced though Australia's Indigenous court system. Those who were most successful at desistence were motivated by kinship bonds, long-term partner relationships, and the desire to be good partners, fathers and uncles. This is in contrast to Braken et al's concept of social capital acquisition in the form of respectable employment and community ties.

Chartrand, L. And K. Horn. 2016. A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada. Ottawa: Department of Justice Canada.

- Most Indigenous legal systems include elements of restorative justice. However, Indigenous legal systems and restorative justice systems are not synonymous. Restorative justice is a framework that conceptualized justice as a process of repairing interpersonal relationships. In Canada, such processes tend to be pragmatic and based on a sense that the mainstream justice system is not working for the community. Among the most widely used are victim-offender mediation and sentencing circles. Indigenous law by contrast, was often directly implemented by the community itself or a group of elders, as specialized justice institutions such as police and courts often did not exist. Obligations based on kinship ties tended to be the fundamental organizing principle, as opposed to prohibition of particular acts. A strong spiritual element tended to be included. While Indigenous legal traditions have been historically suppressed or denied in Canada, UNDRIP, the TRC report and the Gladue decision all support their growing influence. Restorative Justice has been very much influenced by Indigenous legal traditions, and the two frameworks will likely continue to influence each other.

Milward, David. "Making the Circle Stronger: An Effort to Buttress Aboriginal Use of Restorative Justice in Canada against Recent Criticisms" [online]. International Journal of Punishment and Sentencing, Vol. 4, No. 3, 2008: 124-158.

- Just as proponents of restorative justice have criticisms of the traditional western justice system, its detractors have critiqued the efficacy of restorative justice:
    - the offender's pledges to take responsibility may be insincere,
    - that the sanctions are too light,
    - that the process fails to address victim interests,
    - that in some cases power imbalance between the victim and offender may open the door to coercion of the victim,
    - that there is a lack of denunciation,
    - that it is inconsistent with sentencing parity,
    - that there are questionable success rates,
    - and that there is the potential for a disturbing level of social control over offenders.
- The author argues that while some of these critiques are more well-founded than others, none are enough to dismiss the value of restorative justice over. If they are kept in mind, they can be used as tools to build more robust restorative justice mechanisms in the future.

Sinclair, Raven and Jana Grekul "Aboriginal Youth Gangs in Canada: (de)constructing an epidemic" in First Peoples Child & Family Review vol 7 no 1, pp 8-28. 2012

- Risk factors for Indigenous gang involvement are principally grounded in intergenerational trauma and involvement in the child welfare system, which leads to greater risk of homelessness, poverty, low educational attainment, and juvenile criminality, which in turn can lead to incarceration. Canadian prisons seem to be the main recruiting ground for street gangs.

- The research to date on Indigenous gangs in Canada has been sparse and largely redundant, calling into question the truth of the perception of a "gang crisis." Virtually all articles citing statistics about Indigenous gang membership are based on one source, the Results of the 2002 Police Survey of Youth Gangs (Chettleburgh, 2003). The authors suggest this study is basically qualitative with "contrived numbers." From this basis, the media and criminal justice system has built up a narrative that stereotypes Indigenous offenders as gang involved. To determine the real scope of the issue more substantive research is needed. In particular, there is no real evidence of a serious gang problem in Canada outside of major urban areas.

- Even in the neighborhoods in cities like Winnipeg where gangs are a serious problem, it is important to contextualize them as along a continuum that runs from groups of close-knit friends seeking camaraderie to structured groups connected to organized criminal enterprises. Some so called "gangs" are in fact constructs of the media or police who wish to label a much more loosely knit collectivity.

- This piece also offers an overview of the Str8Up program in Saskatchewan, as a possible Canadian model for future interventions.

Caputo, Tullio, and Katharine Kelly. "Community level factors and concerns over youth gangs in first nation communities." Journal of Gang research 22 (2015): 37-52.

- This is a qualitative study based on interviews with police officers and community officials on First Nations in British Columbia. It found that youth gangs were not considered a problem in most communities, except in a few communities located near urban centers where they were a low-level problem. Contact with criminally involved adults from cities is the key risk factor. The availability of social, recreational and job opportunities is necessary but not sufficient to discourage gang involvement. Communities described poverty, the legacy of residential schools and loss of cultural identity as risk factors, but the most important capacity for reducing gang involvement seems to be the availability of engaged, positive adult role models.

Dunbar, Laura K. *Youth gangs in Canada: A review of current topics and issues*. Public Safety Canada, 2017.

- Defining youth gangs is challenging, but a set of criteria can be set out: a self-formed group, related to youth, with a sense of identity, often symbols, and some form of organization and a claim of territory, as well as involvement in some form of criminal behavior.

Public Safety Canada. "Youth gang involvement: What are the risk factors?" 2007 (https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/yth-gng-nvlvmnt/index-en.aspx)

- Self explanatory. This is a government publication on the risk factors for youth gang involvement.

Gladue Principles

Supreme Court of Canada. R. *v*. Gladue, [1999] 1 S.C.R. 688

- This was the first Supreme Court decision to interpret s. 718.2 (e) of the Criminal Code. Ms. Gladue was an Indigenous woman who had stabbed her common law husband during an argument and was convicted of manslaughter and sentenced to three years in prison and a ten-year weapons ban. The trial judge had found that because she did not reside in an Indigenous community there was no need to consider her Indigenous heritage as a factor. The Supreme Court rejected that and found that the section applies to Indigenous people regardless of where they live.

- The decision sets out the issues that must be considered by a sentencing judge: (a) the unique systemic or background factors which may have played a part in bringing the particular Indigenous offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Indigenous heritage or connection. The decision directs judges to seek alternatives to imprisonment where possible but notes that the more

serious the offence the more likely that imprisonment for a similar period as another offender is a practical necessity. Ms. Glaude's sentence was upheld.

Supreme Court of Canada R. *v.* Ipeelee, 2012 SCC 13, [2012] 1 S.C.R. 433

- Essentially an expansion of the reasoning behind Gladue, this case ties s. 718.2 (e) factors to the common law principle that sentencing must be proportional to 1) the severity of the crime and 2) the degree of responsibility of the offender. It finds that 718.2(e) does not offer an alternative to proportionality but rather codifies it, since no sentence can be crafted that is fully proportional without considering the Gladue factors that apply to the offender. Defends Gladue from critiques that paint it as a race-based discount on sentencing or a violation of the principle of sentencing parity by pointing out that no other group of offenders exists in the same historical context as Indigenous peoples. The principle of sentencing parity does not require that any two offenders get the same sentence, but rather that differences are justifiable.

Rudin, Jonathan "A Court of Our Own: More on the Gladue Courts" 2006

- The Gladue decision of 1999 was the first attempt to understand s. 718.2(e) of the Criminal code, which directs judges to take the circumstances of Indigenous offenders into account when making their decisions. This plain language article gives a general overview of the history of the implementation of this decision, to 2006, with emphasis on the establishment of special "Gladue courts" for Indigenous offenders.

Canada. Department of Justice. 2018. "Spotlight on Gladue: Challenges, Experiences, and Possibilities in Canada's Criminal Justice System" https://www.justice.gc.ca/eng/rp-pr/jr/gladue/toc-tdm.html

- This is analysis of the key issues in the literature regarding the application of s. 718.2(e) and the *Gladue* and *Ipeelee* decisions in sentencing Indigenous individuals, justice system initiatives and programs that have been put in place to support the application of s. 718.2(e) in Canadian provinces and territories, and experiences of members of the court system and Indigenous accused who have participated in them.

Indigenous Women and Girls in the Criminal Justice System

Sikka, Anette, (2010) Indigenous Women and Girls in the Criminal Justice System Trafficking of Aboriginal Women and Girls in Canada, Aboriginal Policy Research Consortium International (APRCi). 57 (2010): 201-231.

- This piece critiques the representation of trafficked sex workers as victims in contrast to Indigenous sex workers who are portrayed as complicit in their exploitation due to racial stereotyping. Based on interviews with 25 front-line social service workers in three cities on the Canadian Prairies, the author argues that many Indigenous women can be considered to be "trafficked" within Canada, given the coercive elements in play when addictions, geographical displacement, and the inherent vulnerability of children are

factors, and while dividing the victims of sexual exploitation along these line is problematic, framing Indigenous women and girls' stories in this way may be a pragmatic necessity in order to have them taken seriously.

Van der Meulen, Emily., De Shalit, Ann & Chu, Sandra Ka Hon (2017) "A Legacy of Harm: Punitive Drug Policies and Women's Carceral Experiences in Canada, Women & Criminal Justice"

- Based on a snowball sample of women who have experienced or worked directly with those in the federal prison system, this study finds that there is an urgent need for harm reduction policies inside federal prisons to address the outcomes of widespread injection drug use. Punitive drug laws only contribute to overincarceration and have done nothing to reduce levels of substance misuse.

Amnesty International (2018) Final Written Submission – National Inquiry on Missing and Murdered Indigenous Women and Girls, Amnesty International Canada, Ottawa: Canada.

- This report calls for a human rights based approach to violence against Indigenous women and notes that this violence is very much tied up in intersectionality. Only respect for the collective rights of Indigenous people, nation-to-nation, will address this problem. This draws a line between the conditions that put Indigenous women and girls at risk for gendered crimes of exploitation and hate and large-scale natural resource exploitation projects on Indigenous land. A gender-based analysis should be included in Impact assessments. Calls for a National, not just federal, action plan, including the collection of disaggregated data and independent oversight of investigations into police misconduct.

Dhillon, Jaskiran K. (2015) Indigenous girls and the violence of settler colonial policing, Decolonization: Indigeneity, Education & Society, 4 (2): 1-31.

- The ongoing police brutality against Indigenous girls demonstrates the hollowness of Canada's narratives about itself as a progressive, post-colonial, state.

Human Rights Watch (2013) "Those Who Take Us Away Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada"

Human Rights Watch (2017) "Police Fail Indigenous Women in Saskatchewan: Abuse, Neglect Raise Safety Concerns; Fuel Mistrust of Law Enforcement"

- These two articles from Human Rights Watch highlight police brutality against Indigenous women and girls in Western Canada. They frame this violence as constant, endemic and rooted in a racist police culture that sees Indigenous women as disposable. This systematic racism is supported by and reinforces the overall colonial justice system. The impacts go beyond the immediate victims of police violence, as Indigenous women across Canada have learned they must fear the police and therefore have no one to turn to turn to for protection from violence.

Palmater, Pamela (2016) Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence against Indigenous Women and Girls in the National Inquiry, Canadian Journal of Women and the Law, 30 (3): 371-397.

- This is a survey of the problem of police-involved racialized and sexualized abuse and violence against Indigenous women and girls which it argues is a root cause of the large numbers of murdered and missing Indigenous women and girls in Canada. This has resulted in the over-incarceration of Indigenous peoples, numerous deaths of Indigenous peoples in police custody, and the national crisis of thousands of murdered and missing Indigenous women and girls. It calls for a national inquiry including a look at police-involved disappearances, sexual assaults, and murders of Indigenous women and girls.

Razack, Sherene H. (2016) Gendering Disposability, Canadian Journal of Women and the Law, 30 (3): 371-397

- This article uses the case of Cindy Gladue, among others, to argue that sexual violence against Indigenous women is rooted in a colonial culture that conceptualizes them as sexually available, dehumanized and disposable.

Wesley, Mandy. "Marginalized: The Aboriginal Women's Experience in Federal Corrections." Public Safety Canada, 2012.

- This is a Public Safety Canada publication on the marginalization of Indigenous women in the federal correctional system.

Canada. Department of Public Safety. "Corrections & Conditional Release in Canada: A General Primer" 2008

- Although somewhat dated, this document provides a good basic orientation to the relationship of federal organizations and an introduction to key concepts in the justice and corrections system. It includes an overview of the available rehabilitation programs, offender management (the corrections cycle), sentencing calculations, conditional release (parole), and post sentence measures (including peace bonds).

Public Safety Canada 2018 "Corrections and Conditional Release Statistical Overview"

- From 2008-2009 to 2013-2014, the in-custody population increased consistently but started to decline in 2014-2015 and has been declining since then. From 2013-14 to 2015-16, the average provincial/territorial in-custody offender population increased by 4.1% from 24,455 to 25,448. The remand population increased by 13.0%, from 13,650 to 15,417 during this period. Since 2006-07, the number of remanded inmates has exceeded the number of sentenced inmates in provincial/territorial custody.

Peace Bonds

Justice Canada, 2017. "Peace Bonds Factsheet". (https://www.justice.gc.ca/eng/cj-jp/victims-victimes/factsheets-fiches/pdf/peace-paix.pdf)

- A basic resource on peace bonds.

Justice Canada 2008 Peace Bonds and Violence Against Women: A Three-site Study of the Effect of Bill C-42 on Process, Application and Enforcement

- Bill-42 was a 1994 amendment to the Criminal Code that made it possible for third parties to seek section 810 peace bonds and that increased the penalties for violating the conditions of a bond. The legislation had no apparent deterrent effect on breach rates. The paper also provides a snapshot of the use of peace bonds including breach rates and conditions, based on interviews with police in Halifax, Hamilton and Winnipeg. No information is provided on Indigenous offenders in particular.

Solecki, André Z. Justice Canada. 2012 Section 810 Peace Bonds: Stakeholder Perceptions and Experiences

- This is a piece on the stakeholders involved in peace bonds.

Appendix D: Recent Public Statements

Compiled here are recent public statements of policy by CAP that are relevant to the Criminal Justice and Corrections files. These include AGA resolutions (whether published externally or not) as well as press releases and media articles in which CAP spokespersons have been quoted.

Press Statement

The Congress of Aboriginal Peoples views Bill C-93 as an adequate step for simple Cannabis possession charges

August 1, 2019 (Ottawa, ON) The Congress of Aboriginal Peoples (CAP) views Bill C-93 as a small step in the right direction. However, it does not go far enough to expunge the record of the estimated 250,000 people who have simple cannabis possession charges. Minster Lametti acknoedges that Indigenous people are over-represented in this number.

National Chief Robert Bertrand commented that: “The issue of simple cannabis possession has had negative effects on Indigenous people in this country and has caused great harm to families and closed many opportunities for employment.”

National Vice-Chief Kim Beaudin CAP stated: “I want to see amnesty for any unpaid victim surcharges and fines paid for simple cannabis possession and financial compensation with interest for our people who paid fines and victim surcharges.”

In addition, CAP is concerned that Indigenous people who have other convictions for various minor offences may not be eligible for this pardon.

Currently, Indigenous inmates represent 30% of the federal inmate population, while only comprising 4.3% of the total Canadian population, with Indigenous women shockingly representing 44% of female federal inmates. These numbers are likely reflective of the number of Indigenous people with simple cannabis possession criminal charges.

In the coming days, CAP will be using social media to provide its constituents, with information regarding on obtaining a pardon for simple cannabis possession convictions.

Press Statement

The Congress of Aboriginal Peoples is pleased the Senate passed Bill C-83

June 14, 2019 (Ottawa, ON) The Congress of Aboriginal Peoples (CAP) is pleased that the cruel and inhumane approach to solitary confinement will cease with the passing of Bill C-83 – an act to amend the Corrections and Conditional Release Act.

Vice-Chief Kim Beaudin commented that: "Although the passing of Bill C-83 is an important step. There is a tremendous amount of work that must to be started immediately on the overrepresentation of our people in prisons."

Currently Indigenous inmates represent 30% of the federal prison population while comprising 4.3 % of the population, with Indigenous women shockingly representing 44% of female federal inmates. CAP's nationwide constituency made it a key resolution at our 2017 Assembly to advocate for a national inquiry into Canada's justice system and the policies relating to solitary confinement.

With the federal government implementing the Truth and Reconciliation Commission of Canada's Calls to Action regarding justice. CAP is firm that restorative justice initiatives such as Gladue Reports and anti-gang strategies need to be much better resourced and implemented in urban and rural Indigenous communities.

Press Statement

The Congress of Aboriginal Peoples Demands Real Changes to Bill C-83

May 7, 2019 (Ottawa, ON) The proposed changes to Bill C-83 are just window dressing. Despite clear calls for meaningful change to the Bill from numerous advocates, including Senator Pate and Congress of Aboriginal Peoples National Chief Robert Bertrand, the proposed Bill offers only a superficial re-labeling of archaic and inhumane solitary confinement practices.

The Congress of Aboriginal Peoples participated in a roundtable on the Bill where Chief Bertrand made CAP's position clear: Indigenous peoples are disproportionately victimized by cruel and excessive confinement practices and this must stop. By failing to make real changes to the Bill, the government is ignoring the voices of CAP's constituents and refusing to engage in real consultation.

CAP's position is that Bill C-83 fails to provide real change to current practices and will fail to address the needs of Indigenous peoples who are disproportionately policed, over-incarcerated, and who receive longer and harsher sentences. Change to the Bill must ensure real systemic transformation and end solitary confinement for Indigenous prisoners who should be provided diversionary care through culturally safe mental health and trauma services.

CAP's nationwide constituency made it a key resolution at our 2017 Assembly to advocate for a national inquiry into Canada's justice system and the policies relating to solitary confinement. CAP demands that solitary confinement, under any name, be acknowledge as a form of torture and calls on all levels of government to implement the Truth and Reconciliation Commission's Calls to Action regarding justice for Indigenous peoples.

Press Statement

Congress of Aboriginal Peoples pleased with Canada's move to end solitary confinement in federal prisons

October 17, 2018 (Ottawa, ON) The Congress of Aboriginal Peoples (CAP) is pleased with the introduction of Bill C-83, Corrections and Conditional Release Act, tabled yesterday by Public Safety Minister Ralph Goodale. If passed, the inhumane treatment of inmates through solitary confinement will end in federal correctional facilities. It will also require that Correctional Services Canada consider systemic and background factors affecting Indigenous offenders in all decision-making.

Proposed Structured Intervention Units (SIU) will include programming for Indigenous offenders related to culture and healing. The use of cultural teachings has proven effective in the rehabilitation of our peoples who are incarcerated. CAP believes this is a positive step forward for the rights of Indigenous Peoples in the Canadian justice system, and could improve outcomes for CAP's constituency of off-reserve Indigenous Peoples.

In Canada, Indigenous people account for 25% of the inmate population yet only 4% of the total population. Indigenous inmates also have longer prison sentences, spend more time in segregation or maximum security, and are less likely granted parole, or have their parole revoked than non-Indigenous offenders. In January 2018, B.C. Supreme Court Justice Peter Leask ruled that existing laws surrounding solitary confinement are cruel, inhumane, and discriminate against Indigenous inmates and the mentally ill, violating Charter Section 15, which enshrines equality rights. National Chief Robert Bertrand and National Vice-Chief Kim Beaudin expressed their discontent in the federal government's decision to appeal Justice Leask's ruling.

"Bill C-83 is an important step forward to ensure the humane treatment of all inmates and tackle discrimination against Indigenous peoples within the Corrections system. This is merely a first step. CAP believes it is crucial to work with all National Indigenous Organizations, and looks forward to its participation in the proposed national Indigenous advisory committee. Only by working together and offering the necessary supports will we decrease the over-incarceration of Indigenous people in Canada, and reduce recidivism" National Chief Robert Bertrand.

"CAP's nationwide constituency made it a key resolution at our 2017 Assembly to advocate for a national inquiry into Canada's justice system and the policies relating to solitary confinement. As such, we commend the federal government for Bill C-83, which implements some of the Truth and Reconciliation Commission of Canada's Calls to Action regarding justice" says National Vice-Chief Kim Beaudin.

Press Statement

Indigenous Overincarceration Crisis Hits Record Numbers

January 22, 2020 (Ottawa, ON) – The proportion of Indigenous people behind bars has hit a record high, according to new figures from Dr. Ivan Zinger, the Correctional Investigator of Canada. Indigenous people are 5 per cent of Canada's population[1], but they make up a shocking 30 per cent of inmates in federal custody, an increase from 25 per cent only four years ago. These figures are even worse for Indigenous women, who make up 42per cent of the women in federal prisons.

Dr. Zinger notes that the Correctional Service of Canada (CSC) contributes to these "disturbing and entrenched imbalances" as Indigenous inmates are more likely to be put into maximum security, to be involved in use of force incidents and, historically, to be placed in segregation[2]. Even though they enter rehabilitative programs more quickly and complete them at higher rates than other prisoners, Indigenous offenders are released later and have their release revoked more often.[3]
"Canada locks up Indigenous people at a rate six times higher than the rest of the population. That is shameful," notes Congress of Aboriginal Peoples (CAP) National Chief Robert Bertrand. "CAP has been speaking out about this issue for over forty years now. No leader in Canada can claim ignorance about this crisis."

Not only do Indigenous people struggle with economic inequality, discrimination and the legacy of residential schools, but research shows they are also treated more harshly at every stage of the justice system[4 5]. "Elders and communities have to be involved in people's healing," says CAP Vice-Chief Kim Beaudin, "and we need to give them the tools they need to re-integrate into their communities." Both CAP and the Office of the Correctional Investigator have called for a national strategy on gang disaffiliation, an increase in the funding and availability of Indigenous-specific programming and an increased number of healing lodges.

"CSC seems to think their current policies are enough to deal with this crisis and reverse the trends of overincarceration, but things aren't getting better," says National Chief Bertrand. "They are getting worse." The statement from the Office of the Correctional Investigator is available at https://www.ocibec.gc.ca/cnt/comm/press/press20200121-eng.aspx

1 2016 Census. https://www150.statcan.gc.ca/n1/daily-quotidien/171025/dq171025a-eng.htm
2 Office of the Correctional Investigator. "Indigenous People in Federal Custody Surpasses 30% Correctional Investigator Issues Statement and Challenge" Jan 21, 2020
3 Annual Report of the Correctional Investigator, 2018-19 4 Bracken, Denis C., Deane, Lawrence & Morrissette, Larry (2009) Desistance and social marginalization: The case of Canadian Aboriginal offenders, Theoretical Criminology, 13 (1): 61-78.2009: 66,.
5 Tauri, Juan M. & Porou, Ngati (2014) Criminal Justice as a Colonial Project in Settler-Colonialism, African Journal of Criminology and Justice Studies, 8 (1): 20-37.

Media Coverage

Congress of Aboriginal Peoples calls for inquest into inmate's death

Saskatoon StarPhoenix March 11, 2020 (link)

Days after the death of 27-year-old Saskatchewan Penitentiary inmate Curtis McKenzie, the Congress of Aboriginal Peoples (CAP) is calling for the Saskatchewan Coroners Service to complete an inquest into his death, believing that Correctional Services Canada (CSC) refused to acknowledge that McKenzie was suicidal.

According to CAP, McKenzie committed suicide while in custody. In a statement to the StarPhoenix on Tuesday, the CSC would not confirm the cause of death.

"I am deeply disturbed about what has happened to Curtis. I know that he cried out for help and Correctional Services Canada refused to acknowledge that he was suicidal. I believe CSC was derelict in their duties. I have sent out an email to the Office of the Correctional Investigator," CAP National Vice-Chief Kim Beaudin said in a statement.

Beaudin, who had previously supported McKenzie as an outreach worker, also noted that McKenzie was "made to sign" a Criminal Code Section 810 order, also known as a peace bond, before he was released from a previous sentence. He was then re-incarcerated in May 2018 after violating the order by succumbing to a drug addiction he had continuously battled in the past.

Refusal to sign a peace bond can result in up to another year in custody.

"Signing the … 810 was his death sentence," Beaudin's statement read. "How many times has the corrections system failed Indigenous people? He was struggling with trauma, mental health issues and addiction, and not once received proper care from Correction Services Canada. His mental health deteriorated after CSC put him in extended solitary confinement. That is considered torture by the United Nations. He needed treatment, not torment."

"These orders were created to protect individuals who have reasonable grounds to fear for themselves or their family's safety," added CAP National Chief Robert Bertrand. "But now they are being used on a wide range of cases, laying conditions on people even if no specific individual has reasonable grounds to fear for their safety."

According to the statement, the parole board had previously acknowledged that McKenzie's mental health issues had "remained unaddressed" while in custody, despite numerous requests by both McKenzie and other advocates for alcohol and drug treatment.

McKenzie was receiving support from Str8 Up, an organization that helps people leave the gang lifestyle, before he was re-incarcerated in 2018. While in court in August 2017 after assaulting a police officer during a river rescue, his lawyer, Kim Armstrong, said McKenzie had been doing

well on statutory release: he was sober and had secured a job, but when stressful situations arose in his life, he coped by mixing alcohol with meth.

The CSC said McKenzie had been serving a federal sentence of two years and one day for breach of recognizance and break and enter (not a dwelling house). The sentence had started on May 30, 2018.

The CSC said it will review the circumstances of McKenzie's death and police and the Saskatchewan Coroners' Service will be notified in accordance with CSC policy.

Media Coverage

Fair access to justice must be for all Indigenous people

Kim Beaudin
Contributed to The Globe and Mail

Published July 3, 2019 (link)

Kim Beaudin is the national vice-chief of the Congress of Aboriginal Peoples.

At the release of the final report of the Missing and Murdered Indigenous Women and Girls Inquiry, commissioner Qajaq Robinson reflected on how our criminal justice system fails to protect Indigenous women, girls and 2SLGBTQQIA people, and how the men responsible for their victimization must be held to account.

In Ms. Robinson's view, Gladue provides Indigenous offenders with a "get out of jail free card […] resulting in violence against Indigenous women." This is a deeply troubling understanding of Gladue and its potential impacts for Indigenous offenders.

Gladue is a set of sentencing requirements that directs courts to consider the "unique background and circumstances" of Indigenous offenders as well as any reasonable alternatives to imprisonment. The requirements stem from a section of the Criminal Code that became law in 1996. This reflected Parliament's concerns about the courts' use of incarceration for Indigenous offenders, who at the time comprised roughly 3 per cent of the Canadian population but 11 per cent of federally-sentenced offenders. The purpose of the section was to remedy the over-incarceration of Indigenous people.

A 1999 Supreme Court interpretation of the law in a case called R v Gladue prompted the creation of "Gladue reports," which detail the histories of offenders to help judges craft appropriate sentences.

Twenty years after Gladue, the Indigenous population of Canada has risen to over 4 per cent while the Indigenous prison population has soared: Federally-sentenced Indigenous men constitute 28 per cent of the total male prison population, and Indigenous women make up just over 40 per cent of the female prison population. In 2018, Indigenous boys and girls accounted for 46 and 60 per cent, respectively, of incarcerated youth nationally. In Saskatchewan, Indigenous boys and girls comprise 92 per cent and 98 per cent of incarcerated youth.

Respectfully resisting the characterization that Gladue causes violence against Indigenous women is important. The disproportionate and devastating measure of violence experienced by far too many Indigenous women is a direct result of colonialism. There is no question that Indigenous women and girls have survived much violence, but they are now also facing the highest rates of over-incarceration in the country; yet another form of colonial violence.

Ms. Robinson's criticisms of Gladue are balanced by the commission's calls for justice, which press the government to recognize Gladue reports as a right and to adequately fund these reports and the community-based, culturally appropriate alternatives to incarceration that are integral to Gladue's remedial goals.

At present, Gladue is not a guaranteed right. Whether an offender can get a report depends on where they are located, the perceived seriousness of the offence, the availability of funding for reports, and whether the court and client are willing to wait the three to eight months it can – but shouldn't – take to complete a Gladue report. As such, the failings of Gladue are better understood as further examples of the failings of governments to respect and fund the rights of Indigenous people.

The commission also urges the creation of national standards for Gladue reports. At present, research indicates that the quality of Gladue reports is at best inconsistent. Reports, writers and those who train them are not subject to any oversight or clear standards of practice. For every good report produced there are many that do not serve the courts or fully respect Indigenous life stories that are the heart of the Gladue process.

At present, we are participating in a national working group on Gladue, led by Dr. Jane Dickson of Carleton University, who is also leading a national research project on Gladue in Canadian courts. The group has made great progress toward a set of standards and approaches that respect Indigenous cultures and practices, and dovetail these with the legal requirements of Gladue.

Gladue reports are a vessel for Indigenous stories and are integral not only to legal justice for Indigenous people before the courts, but to the larger social justice goals intrinsic to reconciliation. But in the absence of robust support and standards for writers, reports and healing interventions, we will never realize Gladue's remedial goals.

Until governments respect the spirit and intent of Gladue, they will continue to be complicit in the violence visited upon Indigenous peoples and their spirits, leaving justice and reconciliation as dim and distant dreams.

Therefore, the Congress of Aboriginal Peoples calls on the government of Canada to produce, enforce, and fully fund national standardization of the Gladue process to ensure equitable access to justice for all Indigenous offenders.

AGA resolutions:

2017- Therefore be it resolved that the Congress of Aboriginal Peoples (CAP) advocate for a national inquiry into Canada's justice system and those policies as they relate to solitary confinement.

Section 810 Orders – Disparate Impact

Resolution #02-2019

Whereas courts are empowered to make a protection order against an individual under section 810 of the Criminal Code, also known as a Peace Bond, where they believe that individual might commit an offence, even where there is no evidence that an offence has occurred.

Whereas section 810 orders can have the effect of criminalizing medical conditions such as addictions and compulsive behaviours, without providing adequate medical supports.

Whereas concerns have been raised regarding unequal application of 810 orders against Indigenous inmates, based on discriminatory stereotypes and negative perceptions of Indigenous peoples,

Whereas concerns have been raised by Indigenous persons regarding orders signed without adequate counsel or through deceptive means.

Therefore be it resolved that the Congress of Aboriginal Peoples call on Justice Canada and Corrections Services Canada to produce data regarding the use of 810 orders, the conditions under which these orders are signed, the demographics of those who have orders applied against them and the nature of those orders.

Therefore be it further resolved that, if supported by analysis of this data, the Congress of Aboriginal Peoples take action through the Human Rights Commission and/or the United Nations Human Rights Council, to address the unequal application of these orders based on discrimination and/or stereotyping against Indigenous persons.

Moved by: Kim Beaudin, Vice Chief of the Congress of Aboriginal Peoples

Seconded by: Robert Bertrand, National Chief of the Congress of Aboriginal Peoples