

**Legal Strategy Coalition on Violence Against Indigenous Women
(LSC)**

Analyzing the 2014 Royal Canadian Mounted Police (RCMP) Report,
Missing and Murdered Aboriginal Women: A National Operational
Review

A Guide for the Study of the RCMP Statistics in the 2015 Report

Members of the LSC

Aboriginal Legal Services Toronto (ALST)

Amnesty International Canada

B.C. Civil Liberties Association (BCCLA)

Canadian Association of Elizabeth Fry Societies (CAEFS)

Canadian Feminist Alliance for International Action (FAFIA)

Carrier Sekani Family Services

Professor Aimee Craft, Professor, Faculty of Law, University of Manitoba

Professor Brenda Gunn, Faculty of Law, University of Manitoba

Law Office of Mary Eberts

Constance MacIntosh, Associate Professor of Law; Director, Health Law Institute, Schulich School of Law, Dalhousie University

Nova Scotia Native Women's Association (NSNWA)

Kim Pate, Sallows Chair in Human Rights, Faculty of Law, University of Saskatchewan College of Law

Pivot Legal Society, Vancouver

Union of British Columbia Indian Chiefs (UBCIC)

Women's Legal Education and Action Fund (LEAF)

West Coast LEAF

The work of the LSC is provided technical support by the Nova Scotia Barristers Society, and research support from the Institute for Feminist Legal Studies at OHLS; Osgoode Hall Law School; June Callwood Fellowship, University of Toronto Faculty of Law; Public Interest Fellowships and Bursaries, University of Toronto Faculty of Law and Osgoode Hall Law School.

Table of contents

<u>Introduction</u>	3
<u>RCMP Findings</u>	3
<u>Flaws in the reporting of murdered Aboriginal women in the 2014 Report</u>	4
The RCMP analysis of missing Aboriginal women is based only on cases uploaded to CPIC	
Police have likely misidentified some Aboriginal people as non-Aboriginal because Aboriginal origin is a recent ethnicity field in CPIC	
“Probable cause” of disappearance options in CPIC are too narrow	
<u>Lack of effort to resolve cases of missing women</u>	7
<u>Aboriginal Affairs Minister Bernard Valcourt’s statement on Aboriginal offenders</u>	8
Using only solved cases provides a biased sample size	
Aboriginal women are still more likely to be killed by strangers than non-Aboriginal women	
Lateral violence within Aboriginal communities is a legacy of the <i>Indian Act</i>	
Aboriginal communities have been working effectively to combat lateral violence	
<u>Conclusion</u>	10

Introduction

This document summarizes critiques of the 2014 Royal Canadian Mounted Police (“RCMP”) *Missing and Murdered Aboriginal Women: A National Operational Review*. We hope it will be useful to those studying the second report released by the RCMP this Wednesday June 17th, 2015, both in identifying issues, and measuring if there has been any progress made in the RCMP’s approach to data reporting.

RCMP Findings

In 2014 the RCMP released the *Missing and Murdered Aboriginal Women: A National Operational Review* (“2014 Report”).¹ Perhaps the most useful and groundbreaking part of the 2014 Report is the admission by the RCMP that the total number of missing and murdered Aboriginal women not only exceeds previous public estimates,² but also the estimates in prior RCMP statements.³

The report found the following (for the period 1980-2013):

- There are a total of 1,017 cases of murdered Aboriginal women. Of these, 120 cases are unsolved.
- There are a total of 164 cases of missing Aboriginal women. Of these, 105 cases are unresolved.
- The overall total of missing and murdered Aboriginal women is 1,181 with 225 unsolved cases.

Based on census data and the 2011 Statistics Canada National Household Survey, Aboriginal females comprised 4.3% of the overall female population in 2011⁴, yet comprised 16% of all female homicides.⁵ Over-representation holds for most provinces and territories.⁶ Despite the finding that fewer Aboriginal females were murdered between 1996 and 2011 per unit of population (7.60 to 4.45 per 100,000 population),⁷ the situation is getting worse for Aboriginal females relative to females in general. 8% of female homicide victims in 1984 were Aboriginal compared to 23% in 2012.⁸

¹ *The Queen in Right of Canada as represented by the Royal Canadian Mounted Police*, “Missing and Murdered Aboriginal Women: A National Operational Review” (2014).

² *Ibid* at 3.

³ *Ibid* at 6.

⁴ *Ibid* at 7.

⁵ *Ibid* at 9.

⁶ *Ibid*.

⁷ *Ibid* at 10.

⁸ *Ibid*.

Flaws in the reporting of murdered Aboriginal women in the 2014 Report

To compile homicide statistics for the 2014 Report, the RCMP used data reported to Statistics Canada via the Homicide Survey.⁹ The figure of 1,017 murdered Aboriginal women is based on Homicide Survey data from 1980 to 2012 and follow-up review with police,¹⁰ which was not elaborated upon in the report.

The Homicide Survey only includes incidents that have been substantiated by officials as culpable homicide; suspected homicides and deaths deemed suspicious were not included in the study.¹¹ “Homicides that were never reported to Statistics Canada via the Homicide Survey” were also not included in the study.¹² This means it is likely that the number of homicides included in the study is lower than the actual number of homicides.

At the end of its report, the RCMP identified a source of inaccuracy in their data; their data sources have varying definitions of “Aboriginal”, and police practices vary among forces for identifying Aboriginal victims.¹³ Some agencies use official Aboriginal “status” as the means to determine identity. Some rely on self-identification by individuals or their associations (family, friends, etc.). Some rely on officer discretion, meaning, whether the officer perceives that the victim looks Aboriginal,¹⁴ or as the report puts it, “how an individual looks in terms of complexion and/or ancestry.”¹⁵ Inconsistency in terminology inevitably leads to an under-recording of the number of Aboriginal victims.

To address the high number of Homicide Survey reports where the identity of the victim was unknown, the RCMP conducted a “file-by-file review”.¹⁶ The 2014 Report states that this brought the unknown origin factor down from 20% to 1.5%,¹⁷ but it is not apparent from the report how the review was conducted, or if it was also perception-based. Additionally, there does not appear to have been an attempt to verify whether the identification of victims as Aboriginal or non-Aboriginal was correct.

As the recent CEDAW *Report on Indigenous Women* notes, “the inadequacy and lack of accurate data to identify the victims and perpetrators of murders and disappearances of Aboriginal women and girls, disaggregated by race and ethnicity, over a long period of time, impaired the development of effective strategies and solutions within the criminal justice system,”¹⁸ with many of these deficiencies remaining in current RCMP and state responses.

⁹ *Ibid* at 21.

¹⁰ *Supra* note 1 at 20.

¹¹ *Ibid* at 21.

¹² *Ibid*.

¹³ *Ibid* at 21-22.

¹⁴ *Ibid* at 21.

¹⁵ *Ibid*.

¹⁶ *Ibid* at 22.

¹⁷ *Ibid*.

¹⁸ Committee on the Elimination of Violence against Women, “Report of the inquiry concerning Canada of the Committee of the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women” CEDAW (6 March 2015), online: <http://www.fafia-afai.org/wp-content/uploads/2015/03/CEDAW_C_OP-8_CAN_1_7643_E.pdf>.

Flaws in the reporting of missing Aboriginal women in the 2014 Report

The RCMP analysis of missing Aboriginal women is based only on cases uploaded to CPIC

A missing person who is reported to police is to be entered into the Canadian Police Information Centre ("CPIC"). CPIC is a national police database used by all police jurisdictions.¹⁹ The RCMP reports that the number of missing Aboriginal women based on CPIC review totals 164.²⁰

It is very likely that there are more cases of missing Aboriginal women than the 164 identified by the RCMP. There are six factors that suggest CPIC's estimates may be unreliable:

1. CPIC is backlogged by at least two years. Canada's auditor general first expressed concern about the backlog in 2009, then again in 2011 when it had only worsened. There have been no improvements made during this time. The most recent report on the backlog showed that as of 2013 there were 400,000 criminal records that had not yet been added to the database.²¹
2. The RCMP Report suggests that some missing persons reported to a police service were never uploaded to CPIC.²²
3. Even though the RCMP in their report acknowledge that it is standard practice that all missing persons reported to police be entered into the CPIC database, they state that policy and procedure may differ from one police service to another about what gets reported and when.²³
4. Women missing for a period of less than 30 days as of November 4, 2013 were not included in the RCMP study.²⁴
5. Although there exists no necessary waiting period prior to reporting someone missing, in many cases of missing Aboriginal women there is a gap between the date when they first go missing and when they are reported missing.²⁵
6. According to Dr. Pamela D. Palmater, "Given the high level of overt and systemic racism in policing as confirmed in the Donald Marshall Jr., Manitoba Justice, Ipperwash, and Pickton inquiries, the numbers of those missing never recorded could be extremely high."²⁶

¹⁹ *Supra* note 1 at 19.

²⁰ *Ibid* at 3.

²¹ Brigitte Bureau, "RCMP database remains out of date, police and prosecutors say" *CBC News* (11 Mar 2015) online: <<http://www.cbc.ca/m/news/politics/rcmp-database-remains-out-of-date-police-and-prosecutors-say-1.2989397>>.

²² *Supra* note 1 at 20.

²³ *Ibid* at 19.

²⁴ *Ibid* at 20.

²⁵ Doug LePard, "Missing Women Investigation Review Summary Report", *Vancouver Police Department* (2010) online: <<http://vancouver.ca/police/media/2010/mw-summary-report.pdf>> at 12.

²⁶ Pamela Palmater, "RCMP report on murdered and missing Aboriginal women is statistically skewed" *Rabble* (13 Apr 2015) online: <<http://rabble.ca/blogs/bloggers/pamela-palmater/2015/04/rcmp-report-on-murdered-and-missing-aboriginal-women-statisti>>.

Police have likely categorized some Aboriginal people as non-Aboriginal because Aboriginal origin is a recent ethnicity field in CPIC

Aboriginal origin is only a recent addition to the ethnicity field in CPIC.²⁷ Therefore, file review for the 2014 Report was limited to missing women whose CPIC entry categorized their ethnicity as “non-white” or “blank” (a total of 710 records).²⁸ Missing Aboriginal women who were mistakenly recorded as white, or another ethnicity, would not be accounted in the report.²⁹

Of the 710 records, file reviews determined that 164 were Aboriginal females.³⁰ There were 10 cases omitted from the study because the file review could not confirm an ethnicity.³¹

The 2014 Report does not provide details regarding how the file review was conducted; therefore it is difficult to assess the review’s accuracy.

“Probable cause” of disappearance options in CPIC are too narrow

When a person is reported missing to police, a police officer enters the “probable cause” of disappearance into CPIC.³² In March 2015, CBC News reported that the CPIC database is an “out-of-date” and “seriously backlogged” system.³³ Failure to ensure that the probable cause of disappearance is kept up-to-date may affect the accuracy of the figures regarding missing women. Such a failure may also misinform police efforts to locate the missing persons.

CPIC provides officers with nine probable cause options,³⁴ however, the 2014 Report used five: accident; wandered off/lost; runaway; unknown; and foul play suspected – a consolidated category for cases where “violence has likely befallen the missing person.”³⁵ Further, there is no preamble to explain why the CPIC category of “presumed dead” was omitted from analysis.

The 2014 Report further aggregates the categories into suspicious/unknown circumstances (64%) and non-suspicious circumstances (36%). Of the 59 non-suspicious cases of missing Aboriginal women, 43 are presumed to have drowned³⁶ however, this figure is not elaborated on in the report.

²⁷ *Supra* note 1 at 19.

²⁸ *Ibid.*

²⁹ *Ibid* at 20.

³⁰ *Ibid* at 19.

³¹ *Ibid* at 19-20.

³² *Ibid* at 20.

³³ Brigitte Bureau, “RCMP database remains out of date, police and prosecutors say” *CBC News* (11 Mar 2015) online: <<http://www.cbc.ca/m/news/politics/rcmp-database-remains-out-of-date-police-and-prosecutors-say-1.2989397>>.

³⁴ *Supra* note 1 at 20.

³⁵ *Ibid.*

³⁶ *Ibid* at 8.

Lack of effort to resolve cases of missing women

The 2014 Report does not include attempts to resolve what has happened to the missing women. Dr. Maryanne Pearce notes that it is possible through careful cross-checking to determine whether a woman once reported missing has later been found or has returned.³⁷ Attempting to resolve the cases of missing women is necessary for ensuring that violence has not ensued, and also to improve the accuracy of record-keeping..

Since 2005, Sisters in Spirit had been compiling data on violence against Aboriginal women and had recorded 582 cases of missing or murdered Aboriginal women in Canada.³⁸³⁹ In October 2010, the Canadian government diverted cut funds from the Sisters in Spirit research project in order to “move to a more concrete focus”. Funds were substantially redirected to government departments which did not specifically address Aboriginal women. The largest portion of the funding (\$4 million) was spent on a missing-persons database and amendments to the criminal code.⁴⁰ Significantly, although the government’s diversion of resources was said to be in aid of more concrete steps to solve the issue of murdered and missing Aboriginal women, the 2014 Report was also a statistics-gathering exercise. It proved that the problem of missing and murdered Aboriginal women was greater in scope than had previously been documented. While thus emphasizing the importance of data collection, the methodology of the 2014 Report, as discussed above, was based on many assumptions or aspects of police practice that ensured that it was underestimating the extent of the problem. With funding that had been diverted from the Sisters in Spirit program, the RCMP in 2011 established the National Centre for Missing Persons and Unidentified Remains, which is not restricted to Aboriginal, or Aboriginal women’s, statistics. Whether a case will be included in the NCMPUR database depends on police discretion. Already, there are criticisms of the data base for underreporting the number of deaths, and also for not including DNA samples that can be used to identify remains.⁴¹

³⁷ Maryanne Pearce, “An Awkward Silence: Missing and Murdered Vulnerable Women and the Canadian Justice System”, (thesis submitted to the Faculty of Graduate and Postdoctoral Studies in partial fulfillment of the requirements for the Doctorate in Laws degree), Ottawa, Canada (2013) online: <<https://www.ruor.uottawa.ca/handle/10393/26299>> at 27.

³⁸ Native Women’s Association of Canada, Canadian Feminist Alliance for International Women “An Information Update prepared for the United Nations Committee on the Elimination of Discrimination Against Women”, brings the figure of missing and murdered Aboriginal women to 668 as of March 2013, at 7.

³⁹ “Sisters in Spirit What Happened”, *Voices* (2012) online: <<http://voices-voix.ca/en/facts/profile/sisters-spirit>>.

⁴⁰ *Ibid.*

⁴¹ Renate D’Aliesio and Kathryn Carlson, “Substantial gap discovered in RCMP database of anonymous dead” (16 Mar 2015) *The Globe and Mail* online: <<http://www.theglobeandmail.com/news/national/substantial-gap-discovered-in-rcmp-database-of-anonymous-dead/article23467796/>>.

Aboriginal Affairs Minister Bernard Valcourt's statement on Aboriginal offenders

A national roundtable on missing and murdered Indigenous women and girls took place in Ottawa in February 2015. Minister Valcourt rejected calls for a national inquiry despite calls for one by Indigenous leaders and 16-year-old Rinelle Harper, who survived a horrific assault and attempted murder just months prior to the roundtable. The Minister stated at the Round Table that up to 70% of murdered Aboriginal women in the past 30 years were killed by Aboriginal men.⁴²

Using only solved cases provides a biased sample size

"The national police service based its conclusions on information obtained from about 300 law enforcement agencies and couldn't confirm the accuracy of each report."⁴³

Only data from solved murders was used in the 2014 Report. If the perpetrator of a murder was not arrested, data was not collected.⁴⁴ This means the report does not account for unsolved murders, or women who are believed to be missing but were the victims of violent crime.

Generally, crimes committed by persons known to the victims are easier to solve than crimes committed by complete strangers.⁴⁵ Thus data from the solved crimes may skew the numbers to include more domestic assaults than those that may be committed by strangers.

Aboriginal women are still more likely to be killed by strangers than non-Aboriginal women

RCMP Commissioner Bob Paulson confirmed Valcourt's statement after calls by First Nations Chiefs that the Minister should be fired for blaming Aboriginal men. Commissioner Paulson noted "It is not the ethnicity of the offender that is relevant, but rather the relationship between the victim and offender that guides our focus with respect to prevention."⁴⁶

The 2014 Report concluded that in most female homicides (Aboriginal and non-Aboriginal), the perpetrators were men who knew their victims. The report states that more than 90% of all female homicide victims had a previous relationship with their killer. The term "previous relationship" as used in police record-keeping captures any relationship except a total stranger.⁴⁷ The ethnicity of perpetrators was not revealed in the 2014 Report. It did reveal that in 62% of cases, female

⁴² The Canadian Press, "Aboriginals behind most female aboriginal homicides, RCMP says" *The Toronto Star* (10 Apr 2015) online:

<<http://www.thestar.com/news/canada/2015/04/10/aboriginals-behind-most-female-aboriginal-homicides-rcmp-says.html>>.

⁴³ Doug Cuthand, "Cuthand: Valcourt using statistics as diversionary tactic" *The Stark Phoenix* (17 Apr 2015) online:

<<http://www.thestarphoenix.com/mobile/story.html?id=10979801>>.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ The Canadian Press, "Aboriginals behind most female aboriginal homicides, RCMP says" *The Toronto Star* (10 Apr 2015) online: <<http://www.thestar.com/news/canada/2015/04/10/aboriginals-behind-most-female-aboriginal-homicides-rcmp-says.html>>.

⁴⁷ *Supra* note 1 at 12.

Aboriginal homicide victims were killed by a spouse, family member or intimate relation however, this was even more so for Canadian women at 74%.⁴⁸

According to the 2014 Report, 30% of Aboriginal female victims were murdered by an acquaintance. "Acquaintance" encompasses a broad variety of relationships from close friends to authority figures and other casual acquaintances.⁴⁹

The report actually found that Aboriginal women were less often murdered by a current or former spouse than non-Aboriginal women (29% compared to 41%).⁵⁰ Aboriginal female victims are more likely than non-Aboriginal women to be killed by a stranger (8% compared to 7%).⁵¹

In contrast to the 2014 Report which found that perpetrators were "strangers" to the Aboriginal female homicide victims only 8% of the time, the 2010 *NWAC Sisters in Spirit* report claims that almost 17% of those charged with murder were strangers.⁵² A recent investigative report by Maclean's magazine indicates that more than half of the Aboriginal female victims of violence with whom they consulted were attacked by non-Aboriginal men.⁵³

Lateral violence within Aboriginal communities is a legacy of the *Indian Act*

It cannot be ignored that the lateral violence experienced within Aboriginal communities is a legacy of the *Indian Act*. The *Indian Act* reduced the position of Aboriginal women within communities where they had once held positions of power, both in the short term and long term.

In the short term, by failing to address the issue of family law, while also preventing provincial matrimonial laws from applying to reservations, the *Indian Act* created a gap in family law in Aboriginal communities. This gap existed until 2014 leaving women with no access to their matrimonial home, and no access to machinery in the case of domestic disputes. This gap combined with the lack of housing available on reserves resulted in many women and children being forced off reserves, placing vulnerable women in a precarious situation.⁵⁴

The *Indian Act* also created an imbalance in gender relations in the long term. In spite of the fact that women had traditionally held important positions in society as clan leaders and elders, and that many Aboriginal communities were matrilineal, the *Indian Act* gave preference to men over women for most of its history. Women were not given positions of leadership. Women were not granted the right to vote in Band Council elections until 1951.⁵⁵

⁴⁸ Gloria Galloway, "70 per cent of murdered Aboriginal women killed by indigenous men: RCMP" (10 Apr 2015) <<http://www.theglobeandmail.com/news/politics/70-per-cent-of-murdered-aboriginal-women-killed-by-indigenous-men-rcmp-confirms/article23868927/>>.

⁴⁹ *Supra* note 1 at 12.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² "Fact Sheet Missing and Murdered Aboriginal Women and Girls," *NWAC* online: <http://www.nwac.ca/files/download/NWAC_3D_Toolkit_e_0.pdf> at 5.

⁵³ "Wake up. The threat to our Indigenous women is Canada's problem." *Macleans* (2 June 2015) online: <<http://www.macleans.ca/news/canada/wake-up-the-threat-to-our-indigenous-women-is-canadas-problem/>>.

⁵⁴ Mary Hurley and Jill Wherrett, "The Report of the Royal Commission on Aboriginal Peoples", *Royal Commission on Aboriginal Peoples* (1999) at 4.2.

⁵⁵ *Ibid* at 8.

Aboriginal communities have been working effectively to combat these instances of violence

The existence of lateral violence has not been denied by Aboriginal communities. Rather, such violence has been the subject of targeted programming including workshops and counselling. This targeted programming has led to the steady decline of the rate of fatal violence against women within Aboriginal communities.⁵⁶ Evidence suggests that the rate of fatal lateral violence against women within Aboriginal communities is continuing to decline.⁵⁷

Conclusion

This paper identifies a number of ways in which RCMP and police methods of keeping and gathering statistics on crime may cause the nature of violence against Aboriginal women to be misapprehended or misunderstood. It similarly may cause our perception of the women who are victims of these crimes to be inaccurate. Data gathering and investigative methods which emphasize the high-risk lifestyles of female Aboriginal victims can divert our perception from the overall scale of the problem of missing and murdered Indigenous women, omit many cases from the range of police investigation, and underemphasize the social injustices which make Aboriginal persons particularly vulnerable. The 2014 RCMP estimates of the numbers of missing and murdered Indigenous women, while more comprehensive than those previously produced, continue to underestimate the numbers affected by this crisis, because their statistical methods are tied so closely to police policy and practices, and insufficiently reflect the reality of Aboriginal peoples.

June 16, 2015

⁵⁶ Doug Cuthand, "Cuthand: Valcourt using statistics as diversionary tactic" *The Stark Phoenix* (17 Apr 2015) online: <<http://www.thestarphoenix.com/mobile/story.html?id=10979801>>.

⁵⁷ *Ibid.*