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USING THE LEGAL SYSTEM TO ADVANCE EQUALITY FOR INDIGENOUS WOMEN, GIRLS, AND 2SLGBTQQIA PEOPLE

Written by: Alana Robert

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Part I: Acquiring Foundational Knowledge

Indigenous women, girls, and 2SLGBTQQIA (two-spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex, and asexual) people carry significant and sacred roles in their communities.[1] Actions and structures of colonialism have targeted this demographic in unique ways, often serving to fuel violence against them and seeking to erase Indigenous identities and cultures. This paper explores the possible pathways for using the legal system to advance the rights of Indigenous women, girls, and 2SLGBTQQIA people. The discussion that follows should be treated as a starting point – it is not exhaustive nor a substitute for building relationships with Indigenous peoples, which all Canadians are called to form.

There are three distinct groups of Indigenous/Aboriginal peoples in Canada: First Nations, Inuit, and Métis. Indigenous peoples have been in the territory now known as Canada since time immemorial, but have incurred deliberate attacks on their populations and lands by colonial actors. Understanding the history between Indigenous peoples and Canada is critical to this work, as it helps to contextualize the modern challenges facing Indigenous peoples. The National Inquiry into Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA ("**MMIWG2S**") concluded that the violence towards this demographic amounts to genocide. The National Inquiry found that although Indigenous women, girls, and 2SLGBTQQIA people have distinct backgrounds, "what connects all these deaths is colonial violence, racism and oppression." This violence also manifests through the justice system.

Part II: Review of Litigation

A wide range of areas are covered by case law which seek to advance the rights of Indigenous women, girls, and 2SLGBTQQIA. Central among them are legal challenges to the *Indian Act*, which has deployed a scheme that passes Indian Status differently based on gender, and has been subject to decades of legal challenges. Indigenous children's rights have

also been a focal point of litigation efforts. A landmark decision in *First Nations Child and Family Caring Society of Canada v Canada (Attorney General)*, 2016 CHRT 2, found that Canada has racially discriminated against First Nations children on reserves and in Yukon by underfunding child welfare services. Canada has been subject to a series of non-compliance orders related to this ruling and filed for judicial review of the compensation ordered.

The case law also reveals that *Charter* violations and discrimination in the criminal justice system are rampant. Case law in this area covers the actions of police, conditions in prisons, and sentencing (including the use of mandatory minimum penalties). The application of *R v Gladue*, [1999] 1 SCR 688, which provides considerations for sentencing, offers helpful commentary on the systemic forces that fuel the over-representation of Indigenous peoples in the criminal justice system. In *R v Ipeelee*, 2012 SCC 13, Canada's top court recognized that this overrepresentation is "intimately tied to the legacy of colonialism."

The case law has explored several other topics including education, housing, health, and identity. There is also a body of case law on the experiences of discrimination in the workplace and when accessing services and benefits. There are judicial decisions that grapple with the application of Indigenous laws in Canada, which is an important area for future work. Moreover, the use of class actions is gaining momentum as a forum to advance the rights of Indigenous peoples.

COVID-19 has posed additional challenges for Indigenous peoples, where access to clean water, poverty, and overcrowding of housing have put these communities at greater risk of contracting and spreading the virus. The pandemic has also facilitated the isolation of Indigenous women, girls, and 2SLGBTQQIA, causing increased experiences of violence. Deaths from drug overdoses have also heightened.

Part III: Recommended Approaches

Central to this work is recognizing that Canada's justice system is unrecognizable to many Indigenous peoples. Its frequent exclusion of Indigenous knowledge and treatment of Indigenous peoples have often inflicted harm on Indigenous peoples. When using the legal

system to advance the rights of Indigenous women, girls, and 2SLGBTQQIA people, there are a number of recommended approaches that can be adopted to reduce harm.

Legal actors have been urged to build cultural competency, including by the Truth and Reconciliation Commission and the National Inquiry into MMIWG2S. Building a culturally competent legal profession is essential to addressing the historic and ongoing distrust that many Indigenous peoples have of lawyers and the legal system. Canada's legal processes have often been designed and deployed to cause further trauma, which strikingly differs from Indigenous laws which often focus on repairing relationships and promoting healing.

Building cultural competency requires learning, including from Indigenous peoples, and taking the time needed to form meaningful relationships. A distinctions-based approach built from a recognition that there are unique identities and experiences between and among First Nations, Inuit, and Métis, should be adopted in this work. Lawyers should ensure that the legal work to be performed stems from the desire of the individual, community, or nation, where the client's priorities are pursued. Lawyers must detail options, explain the legal issues at play, breakdown legal processes, and describe their role at each stage of the case. This will remove the mystery that Indigenous peoples often encounter when they interact with the law, and helps to foster trust. Legal work should be conducted with Indigenous peoples, rather than for them. Legal actors must also recognize their biases by considering their knowledge about Indigenous peoples and where this knowledge comes from. Lawyers are generally advised to "slow down, talk less, listen more, and take their time." Humility is important in this work.

The alarming experiences of Indigenous peoples in the criminal justice system emphasize the importance of cultural competency when practising in this area, which requires additional considerations. *Gladue* instructs judges to give attention to the unique circumstances of Indigenous peoples, and Gladue reports and submissions are an important tool for criminal cases. When Gladue reports are used, Indigenous offenders feel more engaged with the process. Lawyers should ask their clients if there is any content that they do not want shared in open court, and explore alternative options for presenting this information.

Indigenous courts with specialized knowledge and programming also exist, though their availability ranges across the country. Sentencing circles are a form of restorative justice, which is gaining momentum in Canada. These circles focus on "rebalancing the relationship damaged by the offence," and powerfully demonstrate the operation of Canadian and Indigenous laws simultaneously.

There are also numerous ways to transform legal spaces. Lawyers can take active roles in facilitating court proceedings in a manner that accommodates Indigenous peoples, inspire the legal profession to become more culturally competent, build relationships with Indigenous peoples, and engage in ongoing education and training on related topics. The ability of the legal system to cause harm is well known: the residential schools settlement and the case of Cindy Gladue provide important teaching moments for the legal profession. Harm reduction approaches guide lawyers to understand the implications of legal action, the importance of fostering inclusion and accessibility when cases are pursued, and to recognize when not to act and to instead share other available supports.

Lawyers can reduce harm by promoting cultural safety (fostering a space where all Indigenous peoples feel safe); sovereignty (working on a basis of non-interference by respecting that the client knows what is best for them); reclamation (listening and reflecting on Indigenous stories and experiences, and acknowledging how you may be complicit in supporting colonial structures); and self-determination (honouring the client's agency and restoring power back to Indigenous peoples and communities). Lawyers have the responsibility to not cause trauma to Indigenous peoples. Practises for trauma-informed lawyering are explored in this paper, and include adopting a client-centred approach, focusing on relationships, and embracing the strength of Indigenous peoples throughout this work.

Part IV: Settler-Allyship

Allyship goes beyond the approaches detailed above, and involves taking an active role in confronting and transforming the systems of oppression that fuel harmful realities for Indigenous peoples. Allyship goes beyond the trend of the day, and instead is part of a life-long

commitment. Critical to allyship is a tremendous amount of learning, which includes Indigenous perspectives on history, Indigenous traditions and cultures, and the ways that systems of oppression and assimilation continue today.

Allyship is about recognizing that the challenges confronting Indigenous peoples have been shaped by the colonialism, racism, and sexism which continue to operate in Canada. These are Canadian issues – not Indigenous ones. Legal professionals play a critical role in challenging power structures and systemic issues. Central to allyship is building meaningful partnerships with Indigenous peoples, communities, and nations, which identify the talents of each participant and embrace Indigenous knowledge. Allies are called to work in solidary with Indigenous peoples, where "allies walk beside, not in front." Respectful allies – not saviours – are sought in this work.

Allies can play an important role in advocacy to heighten Indigenous representation, voices, and work to address the critical issues of today. In allyship, how issues are framed, the way the narrative is crafted, how Indigenous identities are constructed, how history is portrayed, and whether settler-colonial positions are challenged should all be considered and impact the transformative potential of the work.

There are various principles offered in this paper to guide partnerships, including embracing Indigenous self-determination – where Indigenous women, girls, and 2SLGBTQQIA people "actively construct solutions that work for them, according to their own experiences." Indigenous peoples, representation, knowledge, and laws, all help to advance self-determination. The *United Nations Declaration on the Rights of Indigenous Peoples* is an important tool in this work.

Self-determination encompasses a "recognition of Indigenous peoples' own political and legal institutions." This is about Indigenous peoples maintaining their own institutions, as well as Canadian institutions creating space for these institutions. This includes Indigenous laws, which are invaluable mechanisms for navigating conflict and repairing relationships. Indigenous laws exist in conjunction with the common law and civil law. The operation of

Indigenous law and Canadian law simultaneously is possible, as evidenced by the use of sentencing circles in Canada.

Self-determination is also advanced through the inclusion of Indigenous peoples in the body politic. This is about Indigenous peoples "determining their relationship with the state." Indigenous peoples are under-represented in Canadian governments and courts across the country. There are widespread calls for an Indigenous judge to be appointed to the Supreme Court of Canada, which would help "to recognize Indigenous legal traditions as a founding legal system in Canada." Indigenous peoples must also be extended the right to participate in decision making in areas that impact their future. This includes the implementation of the standard of free, prior, and informed consent. Indigenous women, girls, and 2SLGBTQQIA must be included in these pursuits of self-determination, to ensure that they address the full impacts of colonialism and are an authentic expression of the vision of Indigenous peoples. Addressing the ongoing consequences of colonialism and building authentic relationships are foundational to the pursuit of reconciliation in Canada. Allies are called to reflect and act in order to move forward in a good way.

Part I: Foundational Knowledge

Introduction

"[A]ll things – creation, life – begin with women."[2] In traditional Indigenous societies, women played significant roles, where they were recognized as "essential and equal."[3] Women often acted "at the core of formal governance structures"[4] where their "responsibilities are crucial to helping communities thrive."[5] While the role of women may vary among Indigenous cultures,[6] the reality is that women have always held foundational and sacred roles in their families, communities and nations.[7]

Colonialism and assimilative government policies tried to change this, seeking to undermine the value and roles of Indigenous women, girls, two-spirit, and gender diverse peoples.[8] Colonial actions targeted Indigenous women in unique ways – often dictating their Indigenous status, constraining their actions, and fueling violence against them.[9] These actions attacked the integral roles of Indigenous women as "parents, grandparents, and Elders… [and] carriers of memory, through which culture, language and identity are transmitted from one generation to the next."[10] The differential impacts of colonial policies and actions continue to influence the realities of Indigenous women and girls today.[11]

Colonial actions attacked 2SLGBTQQIA, and their "stories of cultural loss and violation" continue to be felt today.[12] There was a shift from the "value and respect gender-diverse people held within many traditional Indigenous cultures to extreme and at times violent exclusion and erasure from those communities."[13] This includes through "enforced colonial gender binaries."[14] Recognizing the distinct ways that Indigenous women, girls, and 2SLGBTQQIA people have been targeted is essential, as the adoption of "gender-neutral" approaches will often actually reflect male perspectives.[15]

Many Indigenous peoples are reclaiming their identity and culture, which colonial forces attempted to erase.[16] The path forward requires the involvement and leadership of Indigenous women, as "the healing of Indigenous societies must also begin with women."[17]

Indigenous women are frequently at the forefront of movements to address some of the greatest challenges confronting Indigenous peoples.[18] The journey towards reconciliation requires the partnership of Indigenous and non-Indigenous peoples, where Indigenous strengths are recognized and embraced. Together, we can build a country where all Indigenous peoples can reach their full potential, which will produce benefits for everyone.[19] Lawyers carry an integral role in this process, as Indigenous peoples' engagement with the legal system is "an opportunity for continued advancement towards reconciliation."[20]

This paper provides insight to the path forward for using Canada's legal system to advance the rights of Indigenous women, girls, and 2SLGBTQQIA. The following topics will be explored:

(1) A review of the foundational knowledge required to perform work in this area;

(2) A summary of past efforts, to use Human Rights Codes, the Bill of Rights, and the *Canadian Charter of Rights and Freedoms* to advance equality for Indigenous women, girls, and 2SLGBTQQIA;

(3) An examination of the anticipated challenges to using settler-colonial legal systems as an advocacy tool for Indigenous rights, as well as recommended approaches to reduce harm in this work; and

(4) A summary of existing research in settler allyship with Indigenous peoples and organizations, including partnerships that advocate for Indigenous rights through colonial legal structures.

This paper is a starting point, and it is not exhaustive. Learning in this area must be continual, as there is always more to learn, and developments are constantly occurring. Lawyers must also adapt to the protocols of different Indigenous communities and nations. In preparing this brief, efforts were made to integrate knowledge from various Indigenous identities, cultures, and regions – however, not all are represented, nor equally included, and many stories remain unknown. For work involving 2SLGBTQQIA people, additional resources should be consulted.

This brief cannot replace meaningful relationships with Indigenous peoples, which all law enforcement officers, court staff, lawyers, judges, and Canadians are called to form.

Glossary

Term[21]	Definition
Indigenous peoples	Typically an umbrella term for First Nations, Inuit, and Métis people in Canada, it is used in international instruments including the *United Nations Declaration on the Rights of Indigenous Peoples* ("**UNDRIP**").[22] It is the most common term used internationally, and carries a positive meaning for many.[23] There is no universal definition for this term, but in Canada, it largely "mirrors the constitutional terminology of Aboriginal Peoples."[24] For more on each of the distinct groups of Indigenous peoples in Canada, see "Overview of Historic Moments – Who Are Indigenous/Aboriginal Peoples?" below.
Aboriginal peoples	Used in section 35 of Canada's *Constitution Act* to encompass First Nations, Inuit, and Métis peoples.[25] For many, it is not a preferred term, as "the 'ab' in aboriginal is a Latin prefix that means 'away from' or 'not.' Therefore, aboriginal can mean 'not original.'"[26]
Reconciliation	This term carries different meanings for everyone. Generally, reconciliation is about "establishing and maintaining a mutually respectful relationship" between Indigenous and non-Indigenous peoples, where there is an "awareness of the past, acknowledgement of the harm that has been inflicted, atonement for the causes, and action to change behaviour."[27]
Aboriginal law	The body of law that is "made by the courts and legislatures, that largely deals with the unique constitutional rights of Aboriginal peoples and the relationship between Aboriginal peoples and the Crown."[28] It is "largely found in colonial instruments."[29]
Indigenous law	Legal orders that originate from Indigenous societies and nations. This may include laws that relate to "relationships to the land, the spirit world, creation stories, customs, processes of deliberation and persuasion, codes of conduct, rules teachings and axioms for living and governing."[30]
Two-Spirit	This term carries different meanings for those who identify with it. To some, it is about "referring to those who have both male and female spirits."[31] For others, "it encompasses both…queer identity and…[I]ndigenous identity."[32]
Turtle Island	The continent of North America, which carries a creation story.[33]
Settler	Describes those whose "ancestors migrated to Canada and who still benefit from ongoing colonialism."[34]
Pan-Indigenous	The assumption that all Indigenous cultures are the same, or substantially alike.[35] It puts all Indigenous peoples, communities, or nations into a single group, rather than recognizing

	their vast diversities.[36] This is not a preferred approach, as there is no single Indigenous culture.[37]
Elder	Used by communities to describe those who hold a "high degree of understanding of First Nation, Métis, or Inuit history, traditional teachings, ceremonies, and healing practises. Elders have earned the right to pass this knowledge on to others and to give advice and guidance." Elders are valued and given the highest degree of respect.[38]
Colonization	Refers to the "process by which Indigenous Peoples were dispossessed of their lands and resources, subject to external control, and targeted for assimilation, and in some cases, extermination."[39]

Overview of Historic Moments

This section highlights some of the historic moments that have shaped the realities of Indigenous peoples.[40] The National Inquiry into MMIWG2S detailed the importance of understanding violence in the context of Canada's history:

> an essential part of making meaning from…experiences of violence comes with learning about the broader historical forces and policies of colonization that shaped their individual lives. These forces are key historical encounters between Métis, Inuit, and First Nations women, girls, and 2SLGBTQQIA people and settler states that are at the root of the violence they experience today.[41]

Colonialism can be viewed as a "structure that includes many different events."[42] Learning about the "targeted policies designed to sever [Indigenous peoples'] cultural and kin connections" provides foundational insight for understanding the violence towards Indigenous peoples that we see today.[43]

Who Are Indigenous/Aboriginal Peoples?

Section 35 of the *Constitution Act* states that "[t]he existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."[44] The *Constitution Act* defines "aboriginal peoples of Canada" as those who are Indian, Inuit, and Métis.[45] Under section 91(24), Canada is responsible for "Indians, and Lands reserved for the Indians," which has been interpreted to be inclusive of First Nations (Status and Non-Status), Inuit, and Métis.[46]

First Nations

"Canada's history has not been kind to our people. And yet, our resilience as a people is astonishing" – Perry Belgrade, National Chief of the Assembly of First Nations.[47]

First Nations are the "descendants of the original inhabitants of the territory south of the Arctic…[and] whose territories are primarily south of the treeline."[48] First Nation refers to a "distinct nation in Canada," though the term is also regularly used to refer to individuals. [49] This is the more frequently used term today, and is generally favoured over the term "Indian."[50] The term First Nations encompasses both Status and Non-Status persons.[51] Provisions pertaining to "Indians" are defined and detailed in the *Indian Act* (explored further below), which determines whether a First Nations person has Status, which attaches certain rights,[52] or whether they are Non-Status.[53]

First Nations have a unique relationship with the Crown, detailed through the Royal Proclamation of 1763, treaties,[54] the Constitution Acts of 1867 and 1982, and law.[55] There are 634 First Nations across Canada, which are "part of unique linguistic and cultural groups that vary across the country."[56] There are 3,100 reserves in Canada, which are lands "designated for the use and occupancy of members of a First Nation."[57] First Nations did not always live on reserves.[58] Following contact, it was not uncommon for First Nations people to be moved from one area to another.[59] Today, about half of First Nations people live off of reserve.[60] An elected Chief and a Band Council are "the governing body of a band set up" pursuant to the *Indian Act.*[61] Nationally, the Assembly of First Nations represents First Nations.[62]

Inuit

"Our ancestors were ingenious and innovative, prospering in an environment that many outsiders have unfairly characterized as bleak and inhospitable" – Natan Obed, President of Inuit Tapiriit Kanatami.[63]

Inuit are largely in the Arctic region of Canada, in Inuit Nunangat – the Inuit Homeland, covering Nunavut, Nunavik (northern Quebec), Inuvialuit (northern Northwest Territories), and

Nunatsiavut (northern Labrador).[64] Today, most Inuit continue to live in Inuit Nunangat, with approximately one-quarter of the Inuit population living outside of the homeland.[65] There are 53 communities in Inuit Nunangat, of which, more than one third have a population of less than 500 people and the majority are only accessible by air throughout the year.[66] There are an increasing number of Inuit moving south of the Arctic.[67] Inuit share "common language and identity."[68] Nationally, the Inuit Tapiriit Kanatami represents Inuit.[69]

Métis

"The remarkable resiliency of the Métis Nation is a testament to the strength and determination of our ancestors" – Clément Chartier, President of the Métis National Council.[70]

Métis are a distinct people and nation forming from French, Scottish, and British fur traders and voyageurs who built alliances with and married First Nations women.[71] The Métis originate from the Métis Nation Homeland – which is the "3 Prairie Provinces and extends into Ontario, British Columbia, the Northwest Territories and the northern United States."[72] Métis are those who "self-identify…[are] of historic Métis Nation Ancestry and who [are] accepted by the Métis Nation."[73]

Métis does not refer to Indigenous peoples of mixed ancestry, but rather to a distinct people and nation.[74] The Métis Nation had "recognized Aboriginal title, which the Government of Canada attempted to extinguish through the issuance of "scrip" and land grants in the late 19th and 20th centuries."[75] Métis membership attaches certain rights.[76] Nationally, the Métis National Council represents the Métis.[77]

Each of these groups is distinct, emphasizing the importance of adopting a distinctions-based approach to this work.[78] An individual may also have multiple Indigenous identities that span these distinct groups.

Population at a Glance

There are over 1.6 million Indigenous peoples in Canada, equivalent to nearly 5% of the population.[79] Within this, 977,230 identified as First Nation (Status and Non-Status), 587,545 as Métis, and 65,025 as Inuit.[80] The population of Indigenous peoples is rising,[81] and is expected to

reach 2—2.6 million by 2036. While the average age of non-Indigenous peoples in Canada is 40.9 years old, Indigenous peoples are nearly one decade younger on average, at 32.1 years old: Inuit at 27.7, First Nations at 30.6, and Métis at 34.7.[82]

Ontario is home to the largest number of Indigenous peoples, with a population of 374,395.[83] Provincially, Manitoba has the largest percentage of Indigenous peoples, who comprise 18% of the total population, followed by Saskatchewan at 16%.[84] The largest territorial percentage of Indigenous peoples is found in Nunavut, where 86% identify as Inuit.[85] Winnipeg is home to the highest Indigenous population of a population centre in the country, with 92,810 Indigenous peoples residing in the city.[86] Generally, the population of urban Indigenous peoples is growing, and this group incurs unique challenges.[87]

Europeans Bring Different Views and Diseases

Indigenous peoples have been living in the territory now called Canada for thousands of years – since time immemorial.[88] Many have creation stories about their territory, and their own words to describe their territory.[89] Indigenous peoples practised their own languages, cultures, and traditions.[90] Indigenous laws, social structures, and trade agreements governed the territory.[91] Before European contact, approximately 500,000 to 2 million Indigenous peoples filled Canada.[92] The Aboriginal Law Handbook provides the following snapshot of European arrival:

> The historic encounter between European adventurers and settlers and the Indigenous peoples of Canada brought together on the same continent two peoples with very different views of the world and their place in it…The encounter began with the new European arrivals convinced that their rights, powers, and entitlements were securely founded on the sovereignty of the kingdoms from which they came. They showed up with an unbridled sense that their religions, customs, languages, and laws were superior and deserved to dominate.
>
> Their first conceit was to think they had "discovered" new lands. They believed that the people who lived in these new lands were ignorant and savage souls of no particular consequence, other than the fact that they were there, and were capable of responding to invasion with resistance.[93]

> …The first explorers were given broad mandates to "invade, search out, capture, vanquish, and subdue all…pagans whatsoever" and "seek out and discover certain islands and mainlands remote and unknown not hitherto discovered by others and…lead the peoples dwelling in those lands and countries to embrace Christian religion" (as papal bulls at the time instructed).[94]

With European arrival also came several diseases, for which Indigenous peoples had no immunity. This resulted in 50—90% of Indigenous peoples dying in just a few generations.[95] The surviving Indigenous peoples had to modify their lifestyles following contact.[96] Shortly thereafter, it became evident that "French and British empires would have to 'treat' with the Indigenous peoples they encountered."[97]

Historical Treaties, the Creation of Canada, and the formation of Modern Agreements

Treaties are "formal agreements between two or more nations" – such as the Crown and Indigenous nations, detailing the "rights, responsibilities, and relationships" between the parties.[98] Numerous treaties have been made with Indigenous peoples.

Before the 18th century, there were several treaties between First Nations and Europeans throughout the territories now known as southern Ontario and the northern United States. This includes the **Two-Row Wampum Treaty**, which was an agreement recorded through a wampum belt representing "peace, friendship, and respect" between the Haudenosaunee and the Dutch.[99]

In 1701, the **Great Peace of Montreal** saw approximately 40 First Nations sign peace treaties with the French, which included the exchange of several wampum belts. These agreements halted "decades of conflicts over the fur trade."[100]

Peace and friendship treaties were crafted in the 18th century, during the "early days of settlement."[101] These treaties did not surrender land, but rather, focused on "strengthening the relationship, ending hostilities, forming military alliances and encouraging peaceful co-existence" between First Nations and the British.[102]

Then, Britain had "won the Seven Years War and acquired all of French territory across North America – which did not mean they conquered the Indians."[103] King George III issued the

Royal Proclamation, in 1763, which "acknowledged Indians had rights to their land [which] could not be taken without consent."[104] Among other things, the *Royal Proclamation* stipulated that "only British Crown could buy or make agreements regarding Indian lands."[105] Today, the significance of this documents is contested.[106]

In 1764, the *Royal Proclamation* was "ratified at the **Treaty of Niagara**" where approximately 2000 leaders from 24 First Nations and the British formed "a treaty of peace and friendship."[107] The treaty included "language about the respectful, and essential equal status of all nations brought together."[108] The Aboriginal Law Handbook reports that the Royal Proclamation and the Treaty of Niagara aimed to "cement the loyalty of Indigenous groups to the British Crown" and to prevent settlers from buying 'Indian lands,' which "create[d] the sense that maintaining a 'government to government' relationship was a hallmark of British statecraft."[109]

Following the American Revolution and the War of 1812, there was a "disastrous, shift in the relationship…[a]s colonial settlement expanded."[110] From the late 1700's through mid-1800's, several agreements were signed by First Nations and the British – however, they often carried different meanings for the parties.[111] First Nations viewed these agreements as "sharing lands with the British – while continuing to hunt, fish, trap and live in peace as they always had," while the British viewed them as "outright land purchases – once completed, the land was theirs to do whatever they chose."[112] Among others, this includes the **Robinson-Huron** and **Robinson-Superior Treaties** in Ontario and the **Douglas Land Purchases** in Vancouver.[113]

In 1867, Canada formed as a country, and sought to advance development and settlement.[114] This includes through Canada's purchase of Rupert's Land from the Hudson's Bay Company in 1870 (which covered most of Ontario, Manitoba, Saskatchewan, and Alberta), and the signing of **11 Numbered Treaties** from 1871—1921 with several First Nations.[115]

The "intent and integrity" of the numbered treaties is questioned, as "from the outset the Indigenous groups objected that their oral understanding of what happened was quite different from the written text," with each numbered treaty "containing…key language around

the alleged surrender of title."[116] Indigenous peoples maintain their willingness to share the land, but not to give it up for essentially nothing in return.[117]

Other promises in the numbered treaties were also broken. For example, Treaty 1 promised that there would be a school on each reserve, but this never came to fruition.[118] Cree leaders resisted Treaty 6, which was signed, "in part because government supported mass extinction of bison and withheld needed food rations – counting on the subsequent starvation to coheres cooperation."[119] While several treaties were signed, many First Nations in British Columbia, Quebec, and Northern Canada continued to be unceded territory.[120]

Evidently, treaties were not agreements to "sign away" First Nations rights and lands for goods or a single treaty payment.[121] To "avoid paying large lump sums" the government introduced **annuities** which "could be funded from revenue earned of the surrendered land."[122] This meant that "Britain and later Canada earned billions of dollars on First Nations land from mining, forestry, and resource development – but the annuities have never increased."[123] The modern amounts of these payments has been contested.[124]

More recently, the **Williams Treaties** of 1923 included 7 First Nations in Ontario.[125] This treaty has been the centre of litigation and negotiations for decades, only recently reaching a settlement.[126] It is not uncommon for First Nations to bring legal action as a means of getting Canada to honour treaty promises.[127]

In *Calder et al. v Attorney-General of British Columbia*, [1973] SCR 313, the Supreme Court of Canada "confirmed that Aboriginal peoples' historic occupation of the land…was the source of Aboriginal peoples' legal rights to the land."[128] **Land Claims** refer to various types of land disputes.[129] This includes **Comprehensive Claims**, which are larger claims that may concern "jurisdiction and rights over vast territories that have not been formally ceded by Aboriginal peoples."[130] The first Comprehensive Claim to form was the **James Bay Northern Quebec Agreement** in 1975, which provides Cree and Inuit in the region with further control over their lives, such as through settlement land, harvesting rights, and self-government.[131]

These agreements can take significant time to form: the **Nisga'a Nation** engaged in negotiations for 24 years, coming to an agreement in 2000.[132]

Land Claims can also include **Specific Claims**, which concern the illegal removal of reserve land or its occupation, or errors in surveying reserve land.[133] It can also include **Treaty Land Entitlements** – a form of Specific Claims – pertaining to the "government's failure to provide the reserves agreed to in the treaty."[134]

Several of these land claim agreements have been made between Canada and Indigenous peoples, including in the Yukon, the Northwest Territories, and British Columbia.[135] This includes agreements made with First Nations and Inuit.[136] The contents of these agreements vary, ranging from provisions on the ownership of land by Indigenous peoples, self-government, and resource development and management.[137]

Nunavut formed in 1999 becoming the largest "Land Claims Agreement in Canadian history."[138] The Government of Nunavut and its powers are like those of other territories; however, the land claim agreement between the Inuit and Canada which created the new territory "guarantees that the Inuit receive benefits flowing from Aboriginal title."[139] As such, the territorial government of Nunavut has unique laws which safeguard Inuit language and cultural rights.[140] Other regions across Inuit Nunangat have also had success in gaining the recognition of rights.[141] For example, the Inuit in Labrador completed a land claim with the Government of Newfoundland and the Government of Canada, which guaranteed Inuit certain rights in the region, such as clauses pertaining to self-government and royalty sharing.[142]

In addition to these negotiations, Indigenous self-government agreements are forming.[143] Self-government agreements between Canada and Indigenous nations are designed to "put decision-making power into the hands of Indigenous governments."[144] The Métis Nation has had recent success in negotiating self-government agreements with Canada.[145] While many Indigenous nations engage in land claims and self-government agreements, some do not participate, including because of the desire to protect

extinguishment of Aboriginal title.[146] Others have flagged that the land claims process results in Indigenous nations retaining only a fraction of their traditional territories.[147]

The Indian Act, 1876 Regulates All Aspects of Life

Words and actions of intolerance towards Indigenous peoples were widespread and normalized.[148] In 1876, Canada amalgamated its legislation on Indigenous peoples into the *Indian Act*[149] – which deployed "restrictive and repressive regulations that dictated all ways Indians on reserve expected to live," instantaneously impacting all First Nations living on reserve.[150] The legislation defined who is considered an "Indian." Other provisions included the formation of **Indian Agents**, who were Canada's representatives on reserves from the 1830's through 1960's, and "managed day-to-day affairs of Status Indians."[151] There was also a **Pass System** from 1885 through the 1940's, which required First Nations living on reserve to obtain permission from any Indian Agent to leave the community – failure to do so resulting in prison or being brought back to the reserve.[152] The legislation also banned Indigenous spiritual practises.[153]

The *Indian Act* made it illegal from 1927 through 1951 for Status Indians to retain lawyers to "bring about land claims against the government without the government's consent."[154] It was not until 1960 that Status Indians obtained the right to vote without having to lose their Status or treaty rights.[155] Moreover, in 1961 the "compulsory enfranchisement" section of the *Indian Act* became no longer in force, which, among other things, caused "[a] First Nations person [to] [lose] status if they graduated university, became a Christian minister, or achieved professional designation as a doctor or lawyer."[156]

Residential Schools and the Truth and Reconciliation Commission

In Canada, it was a customary expectation that "Indigenous peoples were a disappearing people, doomed to recede in the face of progress."[157] This supported the notion that policies like residential schools would allow Indigenous children to "adjust."[158] As an architect of the residential schools system, Sir John A. Macdonald detailed the following to the House of Commons in 1883:

> When the school is on the reserve the child lives with his parents who are savages; he is surrounded by savages, and though he may learn to read and write, his habits and training modes and thought are Indian. He is simply a savage who can read and write.[159]

Shortly thereafter, in 1885, "every Indian child on reserve was forced to attend a regional school."[160] 139 residential schools operated in Canada, which were attended by 150,000 Indigenous children.[161] These schools were far away from their homes – children were unable to see their families, speak their language, or practise their culture.[162] Physical, emotional, and sexual abuse was rampant in these schools.[163] Horrific accounts of these schools have been shared, such as those of St. Anne's Residential School in Ontario:

> The documents revealed stories of being locked up in the school basement for days, being forced to wear soiled underwear on their heads for hours, and being forced to eat their own vomit. Staff used metal fashioned whips for corporal punishment. The most shocking account that emerged was the use of a homemade electric chair to punish children, often for the amusement of staff working at the school. The electrocutions were often administered in front of other children.[164]

It was not until 1996 that the last residential school closed.[165] The number of children who died at these schools exceeds 6,000 – though the exact number is unknown, as records are incomplete.[166] While residential schools were operating since the late 1800's, it was not until 1935 that Canada "adopted a formal policy on how deaths at the schools were to be reported and investigated."[167]

The Truth and Reconciliation Commission of Canada ("**TRC**") formed as a result of the Indian and Residential Schools Settlement Agreement, hearing stories from Indigenous peoples who were "taken away from their families as children, forcibly if necessary, and placed for much of their childhoods in residential schools."[168] Persons from all Indigenous backgrounds in Canada – First Nations, Inuit, and Métis attended these schools.[169] The subsequent generations of these students often continue to experience intergenerational trauma.[170] In 2015, the TRC released its Final Report, which details that these schools were an integral aspect of Canada's Aboriginal policy, which sought to "cause Aboriginal peoples to

cease to exist" – finding that this amounted to cultural genocide.[171] It also provides 94 Calls to Action – including calls specifically on the legal profession and other related sectors.[172]

Incidents of Trauma Extend to Day Schools

In addition to residential schools, Day Schools run by Canada also existed from the 1860's, with many not closing or transferring to community control until the 1970's through 1990's, being attended by approximately 200,000 Indigenous kids.[173] At these schools, "[m]any students…experienced trauma, and in some cases, physical and sexual abuse at the hands of individuals entrusted with their care."[174] These schools are the topic of a recent class action settlement.[175]

Issuance of Scrip and Other Actions Target Métis

The Métis have "generally been excluded as potential treaty parties in Canadian history."[176] In 1869, Canada's purchase of Rupert's Land from the Hudson's Bay Company sought to advance development and settlement.[177] No consultation occurred with Métis and First Nations living in the area.[178] Subsequently, surveyors went across the area – including Red River – which was comprised primarily of Métis,[179] to set up townships for Canada.[180] Métis recognized that the purchase of Rupert's Land would threaten their rights, and "question[ed]…how the Company had gained ownership of the Northwest."[181] As a result, the Métis "strategized methods of resistance."[182]

During the **Red River Resistance**, the Métis detailed their rights and created a **Provisional Government** from 1869—1870, which "force[d] Canada to negotiate with the Métis to bring the region into Confederation as a province."[183] This was foundational to the formation of Manitoba through the *Manitoba Act, 1870*, which recognized Métis rights and land, and "assured all the native inhabitants of Manitoba that the land they already occupied would not be jeopardized by the transfer of the west to Canada."[184] This made Manitoba the only province to "join Confederation through the actions of an Indigenous people."[185]

In Spring 1870, Thomas Scott, a surveyor employed by Canada and anti-Métis agitator was "executed by a Métis tribunal."[186] Consequently, this "brought serious reprisals to the Métis."[187] By Summer 1870, Manitoba became a province, though Louis Riel and the Métis were not recognized by Canada as founders of the province.[188] The influx of settlers arriving in the area were "openly hostile to Métis."[189] Métis endured persecution for their roles in the Red River Resistance and the execution of Scott, which resulted in many Métis leaving the area.[190] In Fall 1870, a military force of 1,000 Canadian troops were sent to Manitoba to "pacify" the area, who inflicted a **Reign of Terror** against the Métis, where "women were raped and some Métis men…were murdered" at the hands of Canadian soldiers.[191] This violence caused over half of the Métis in Manitoba to leave the province.[192]

The Métis made numerous petitions to Canada relating to land title and political representation, which went unaddressed.[193] The **Northwest Resistance** came to a head at the 1885 **Battle of Batoche** of Métis, Cree, and other First Nations against Canada.[194] The Indigenous peoples lost the battle, with the majority of those who fought being imprisoned or hanged – including leader Louis Riel for treason.[195]

Métis rights and land have historically been denied. The process of scrip was devised in the 1870's in "the aftermath of the resistance" where Canada deployed **Scrip Commissioners** from the 1880's to 1920's, which got Métis to complete "application forms for their entitlements" on an individual, rather than collective basis.[196] When Métis took scrip from Canada, they "extinguished their Aboriginal title and ceded title to any lands they occupied" in exchange for money or land.[197] Numerous Métis did not engage in this process, and those who did often did not understand what they were doing.[198] Many of the Métis who signed scrip were illiterate, and terms relating to "extinguishment of title" were absent from these applications.[199] Upon acceptance of scrip, Métis had to apply for land that was available, obtain a land patent (which were usually located far from their homes), and then move to the land and occupy it.[200] Many Métis did not understand nor complete this process, which was inherently unfamiliar to Métis ways.[201] Ultimately, the scrip system resulted in the "systemic

loss of Métis lands."[202] There were no safeguards to detect fraud, and many forgeries occurred.[203]

In *Manitoba Métis Federation Inc. v Canada (Attorney General)*, [2013] 1 SCR 623, the Supreme Court of Canada recognized the failure of government to "provide land to Métis" pursuant to the *Manitoba Act, 1870*.[204] David Chartrand, the President of the Manitoba Métis Federation explains:

> We know all too well that not all the promises of rights in the *Manitoba Act* were respected. The guarantee of Métis land rights of 1.4 million acres was not honoured…We know that we endured a long, difficult period in Manitoba, a time when Métis people were not respected. Riel himself was elected three times to the House of Commons without being allowed to take his seat. In fact, the Government of Canada placed a bounty on his head of five thousand dollars.[205]

The loss of land, poverty, and discrimination endured by Métis resulted in many hiding their identity for survival.[206] Métis have been referred to as "the forgotten people" for being "essentially written out of the…history of Canada" and their "exclusion from many…programs and services offered" to other Indigenous peoples, which has "directly contributed to violence" towards them.[207] The only government in Canada to recognize Métis lands is Alberta, which created settlements for Métis in the province.[208]

Forced Relocation and Discrimination Target Inuit

In the early 20th century, as a result of the fur trade, the Royal Canadian Mounted Police and Christian churches entered northern Canada, affecting Inuit life.[209] Northern development expanded, and Inuit were pushed into housing that was overcrowded, which exacerbated the spread of disease.[210] In 2013, the **Qikiqtani Truth Commission** ("**QTC**") released its Final Report, which details Inuit perspectives throughout colonization, and the impacts of government decisions on the lives of Inuit.[211]

Inuit were **forced to relocate** by Canada.[212] During the 1950's, military were sent throughout the Arctic to protect the border of the north, which caused Inuit communities to be "suddenly exposed to southern media, technology, and a huge influx of non-Inuit."[213] In 1953,

the RCMP moved several Inuit families from Inukjuak, Quebec to Grise Fiord and Resolute which are very far north in the Arctic.[214] While the government states that this was voluntary, Inuit explain that this was mandatory, with "underlying motivations, such as…exerting Canadian sovereignty."[215] Families were moved 2,000 kilometers north to a region with a climate and wildlife which they were not familiar with.[216] Many lacked adequate food, clothing, and essential supplies which resulted in their death.[217] It was not until the 1980's that Canada "supported 40 Inuit who wanted to move back south."[218] These forced relocations also extended to Labrador, as both the federal and provincial governments wanted to "centralize services" by "forc[ing] some to move to other Inuit communities."[219] This caused many Inuit to "struggle[] to survive and adapt."[220]

Other harmful actions include the attack of **qimmit** (sled dogs) which were used for hunting and fishing, and were "an integral part of Inuit culture, daily life, maturity, and survival."[221] The treatment of qimmit is often referred to as "the dog slaughter."[222] There was a drastic decline of qimmit between 1957 through 1975, which was connected to disease and the "undisputed fact that hundreds – and perhaps thousands – of qimmit were shot by the RCMP and other authorities in settlements," as non-Inuit viewed the dogs as dangerous.[223] Inuit were often provided no explanation as to why their dogs were shot.[224] Inuit and qimmit had "existed together for uncounted generations without such restrictions being necessary" and Canada "failed in its obligations to Inuit when it placed restrictions on their use of dogs without providing the means to make those restrictions less onerous and without involving Inuit directly in finding solutions."[225]

Often referred to as the "**Eskimo Identification System**,"[226] from 1941 through the 1980's, every Inuk was given a number on a disk, which "looked and felt like dog tags" and were to be worn at all times. Moreover, Inuit did not gain the right to vote until 1950, though many were unable to exercise this right until 1962 when ballot boxes were put in more communities.[227]

With colonization came infectious diseases to Inuit communities. Inuit were "hit particularly hard by tuberculosis in the late 1800's" such that by the 1950's, "1 in 7 Inuit [were] living in a southern sanitorium."[228] Tuberculosis continues to be felt today, with Inuit rates of the disease being nearly 300x higher than non-Indigenous peoples.[229] The widespread impacts of disease among Inuit are linked to the ongoing over-crowding of housing and lack of access to health and medical services.[230]

Hunting continues to be widely practised by Inuit – as an expression of culture, as well as for sustenance.[231] In the north, the cost of food is very expensive. Striking examples of this include a $29.99 price tag for a 24-pack of bottled water for those in a community with a boil-water advisory, and over 70% of children in Nunavut live with food insecurity.[232] Climate change is also creating challenges for Inuit across Inuit Nunangat.[233] Despite these challenges, the Inuit continue to practise their culture. They have also signed "four major land claim agreements" and created the new territory of Nunavut.[234]

Additional Notable Moments in History

Sixties Scoop

The Sixties Scoop targeted 20,000 Indigenous children by "scooping" them from their families for placement in foster homes or adoption in the homes of non-Indigenous families.[235] These adoptions occurred between 1960 and 1990, and placements were often far from the child's home and community – in Canada, the United States, and overseas.[236]

1969 White Paper

Despite the wide-spread efforts targeting Indigenous peoples, "a population that was supposed to assimilate and disappear proved far more resilient than had ever been estimated by the colonial governments."[237] Indigenous leaders "demanded equality, a fulsome recognition of the meaning of treaty, and willingness to re-negotiate the relationship."[238] Canada responded to these demands with the Hawthorn Commission which touched on the fact that Indigenous peoples' "prior status…gave them rights that were unique to them."[239]

However, it was rejected by the new Government of Canada, which put forward the 1969 White Paper which planned to re-shape Canada's relationship with First Nations by disposing of the *Indian Act*, Indian Status, and eliminating "any existing Indigenous rights or title."[240] It also proposed to "transfer responsibility of Indian affairs to provinces, and convert reserves to private land."[241] This plan sought to go back on treaty agreements and promises made.[242] Indigenous peoples resisted, and the White Paper never came to fruition.[243]

Events Spark RCAP

Other waves of resistance by Indigenous peoples spanned the country. This includes the 1990 **Oka Crisis**, when a golf course and condominiums were going to be developed on disputed land that contained a Mohawk burial site, without consulting the Mohawk, completing an environmental review, or plan for burial grounds.[244] The resistance by Mohawk ultimately resulted in the expansion being stopped.[245]

Other historic moments were also happening, such as the 1990 **Meech Lake Accord** . The federal and provincial governments sought to change Canada's Constitution which "required unanimous ratification by parliament and all 10 provincial legislatures" but Elijah Harper, an MLA in Manitoba opposed it as it "did not tackle First Nations issues," and the reform failed.[246] The 1992 **Charlottetown Accord** also failed at referendum.[247] These accords:

> produced a strong sense within Indigenous communities that the inherent right to self-government, including a full range of jurisdictional and economic and social rights, had to be…centre in the ongoing political relationship between Indigenous communities and Canadian governments.[248]

In 1996, the Royal Commission on Aboriginal Peoples ("**RCAP**") released its final report, which details Indigenous women's perspectives and provides 440 recommendations.[249] The commissioners of RCAP explain that "there cannot be peace or harmony unless there is justice."[250] Despite the promise of RCAP, many of its recommendations have gone unfulfilled, though recently are gaining more momentum.[251]

Further Inquiries and Reports Explore Other Challenges

Additional reports explore challenges facing Indigenous peoples, including:

- 1983 Penner Report on Indigenous self-government;[252]
- 1991 Manitoba Aboriginal Justice Inquiry on the deaths of Helen Betty Osborne and John Joseph Harper, and the relationship between Indigenous peoples and the justice system;[253]
- 2008 Ipperwash Inquiry on the death of Anthony O'Brien (Dudley) George, who was killed in 1995 by Ontario Provincial Police during a protest;[254]
- 2012 Missing Women Commission of Inquiry in British Columbia, which included a review of serial killer Robert Pickton;[255] and
- 2013 Ontario Review of First Nations Representation on Juries in the province.[256]

Millennium Scoop

Indigenous children are over-represented in care, accounting for 52.2% of children in foster care, yet comprising only 7.7% of the population of children.[257] Many are placed in homes far away from their communities, where they are deprived of connection to family, language, and culture.[258] Recently, 11 Indigenous children in Ontario who had "'society involvement' within the last 12 months before their death" died over the span of just four months.[259] Children also face tremendous challenges when the "age out" of care: in British Columbia, these children die at a rate that is five times higher than their peers.[260] Additionally, Indigenous girls are particularly vulnerable to human trafficking when they age out of care.[261]

Tina Fontaine, a 15-year-old child whose body was found in a river in Winnipeg, was also "in the care of Child and Family Services at the time of her disappearance."[262] The horrifying circumstances of her death exemplifies the "direct link" between the child welfare system and MMIWG2S.[263]

MMIWG2S Report

In 2019, the National Inquiry into MMIWG2S released its Final Report, which details the ways that First Nations, Inuit, and Métis women, girls, and 2SLGBTQQIA people are "the targets of violence."[264] The exact number of MMIWG2S is unknown, though is in the thousands.[265] The

rates of violence are alarming: “Indigenous women and girls are 12 times more likely to be murdered or missing than any other women in Canada, and 16 times more likely than Caucasian women.”[266] While they have “different circumstances and backgrounds, what connects all these deaths is colonial violence, racism and oppression.”[267]

The MMIWG2S Final Report concluded that this violence amounts to genocide, and is empowered by colonialism including through the events and structures discussed above.[268] The following four pathways “maintain colonial violence”[269] and are themes shared by First Nations, Inuit, Métis, and 2SLGBTQQIA:

(1) historical, multigenerational and intergenerational trauma;

(2) social and economic marginalization;

(3) maintaining the status quo and institutional lack of will; and

(4) ignoring the agency and expertise of Indigenous women, girls, and 2SLGBTQQIA.[270]

Consequently, the intersection of these pathways translates to a heightened likelihood of violence.[271] Violence towards this demographic contravenes that the right to culture, health, security, and justice, thereby inhibiting the right to self-determination.[272] Importantly, the MMIWG2S Inquiry proposes a re-framing of how self-determined solutions are established, including by “conceptualizing rights as founded in all relationships, rather than in contracts, and understanding that at the centre of it all, we begin with our relationships to each other.”[273]

While this crisis is gaining further attention, many families of MMIWG2S have shared “the difficult realities of media representations of their loved ones that they [described] as unfair, inaccurate, or distorted. For other families, the counterpart of this – a lack of coverage – is also a painful reality.”[274] The depiction of these stories in media, or the lack thereof, “sends the message that Indigenous women, girls, and 2SLGBTQQIA people are not “newsworthy” victims, contributing to the Canadian public’s apathy toward this crisis and the continuation of violence toward [them] by characterizing them as deserving of it.”[275] This violence is reinforced through policies, laws, and the justice system, and violence has become normalized.[276] The MMIWG2S Inquiry called on Canada to develop a National Action Plan in

partnership with Indigenous peoples to address this violence, which advocates continue to urge Canada to execute.[277]

The Justice System and MMWIG2S

The MMIWG2S Final Report emphasizes the importance of access to justice, explaining that "without the right to justice, people can't be heard, exercise their rights, challenge discrimination or hold states accountable."[278] The following excerpt provides insight to some of the challenges incurred by Indigenous peoples and families when seeking assistance from the justice system during times of crisis:

> When the unthinkable happens and First Nations, Métis, and Inuit families become concerned that their loved one may be missing or in danger of violence, they are faced with a difficult dilemma: to seek help in finding that loved one requires reaching out to institutions – the police and the criminal justice system – that have historically ignored and continue to ignore their concerns. More than that, they are forced to reach out to institutions that are directly at the heart of significant pain, division, cultural destruction, and trauma experienced in their family and perhaps by the loved one they seek help in finding. In some cases, they are forced to reach out to the very people who have perpetrated acts of physical and sexual violence against them or their loved ones.
>
> If families do reach out to the police or another representative of the criminal justice system, they are often confronted with an individual, policy, procedure, or way of relating that shows little to no awareness or understanding of the histories of and complexities in the relationship between Indigenous Peoples and the police. Instead, within this institution, the family and their lost loved one are viewed through a lens of pervasive racist and sexist stereotypes – stereotypes that ultimately blame Indigenous people, and especially Indigenous women, girls, and 2SLGBTQQIA people – for the violence and difficulties they face, and, in some cases, see them as guilty of committing violence or other crimes themselves.[279]

There are numerous instances where these representatives have responded inappropriately to concerns raised by Indigenous peoples, including through victim-blaming and stereotyping.[280]

United Nations Declaration on the Rights of Indigenous Peoples

There are several international human rights instruments that detail the rights of Indigenous peoples.[281] Critical among them is the UNDRIP, which puts "self-determination and

Indigenous autonomy and legal personality at its heart."[282] The UNDRIP was released in 2007, though Canada did not endorse the declaration until 2010.[283] In 2019, British Columbia became the "first jurisdiction in Canada to pass legislation" implementing the UNDRIP.[284] Canada has also promised legislation to "enshrine" the UNDRIP into law by 2020.[285] Ellen Gabriel, a Mohawk advocate explains that the rights enshrined in the UNDRIP "have always existed – now, they must be affirmed."[286]

Aboriginal Law Continues to Develop

Canadian courts have crafted legal tests for determining a wide-range of rights, duties, and processes in Aboriginal law – ranging from Aboriginal rights, treaty rights, and Aboriginal title, to the Honour of the Crown and the duty to consult and accommodate. Courts have also ruled on a variety of related issues, including the harvesting rights of different communities, the ability to practise these rights without a licence, and the scope for practising these rights commercially to make a moderate livelihood. Additional case law and resources should be consulted to obtain a better understanding of the development of Aboriginal law, remembering that this area of law is distinct from Indigenous law.[287]

Realities Today and Working Towards Reconciliation

This overview of history illustrates the intentional mechanisms of assimilation and harm inflicted on Indigenous peoples, and helps to contextualize the modern consequences of these actions. As the MMIWG2S Inquiry concludes, violence results from colonialism:

> [V]iolence against Indigenous women and girls is a crisis centuries in the making. The process of colonization has, in fact, created the conditions for the crisis of missing and murdered Indigenous women, girls and 2SLGBTQQIA people that we are confronting today.[288]

Indigenous women, girls, and 2SLGBTQQIA people "live with an almost constant threat to their physical, emotional, economic, social, and cultural security," and security is "compromised by deficits in…accessibility to services; funding; cultural training and culturally relevant services, particularly related to trauma; and policies and procedures in legislation." [289]

Evidently, there are significant barriers to reconciliation across Canada.[290] The TRC emphasizes:

> Reconciliation must support Aboriginal peoples as they heal from the destructive legacies of colonization that have wreaked such havoc in their lives. But it must do even more. Reconciliation must inspire Aboriginal and non-Aboriginal peoples to transform Canadian society so that our children and grandchildren can live together in dignity, peace, and prosperity on these lands we now share.[291]

The strength of Indigenous peoples, communities, and nations cannot be overlooked. Though much work lies ahead, the resilience of Indigenous peoples, beauty and wisdom of Indigenous cultures, and the people and organizations that have been carrying this work for decades must be recognized and embraced in this work. Indigenous languages, traditions, and spirituality continue to be practised today, and tremendous efforts continue to be carried by Indigenous peoples to reclaim and revitalize Indigenous identity and culture.

Part II: Review of Litigation

There is no shortage of areas for legal action. Indigenous women account for 31% of admissions to federal custody yet Indigenous peoples comprise 4% of the Canadian adult population.[292] Indigenous women and girls make up 24% of female homicide victims.[293] More than half of the children in foster care are Indigenous.[294] The health outcomes of two-spirit are worse than the rest of the population.[295] If you are an Indigenous person living in Canada, you are more likely to be in poverty,[296] incur barriers to adequate housing,[297] and experience violence.[298] Indigenous suicide rates reflect the intergenerational trauma as a result of forced assimilation policies – for example, Inuit suicide rates are 10x the rest of Canada.[299] These injustices and many others provide insight to the ways that the legal system can be used to advance equality for Indigenous women, girls, and 2SLGBTQQIA.

Past Litigation of Major Areas Impacting Indigenous Women, Girls, and 2SLGBTQQIA

The following areas of litigation echo the major themes identified by the MMIWG2S Final Report. Each of these injustices needs to be addressed, as violence against Indigenous women is "the outcome of the long-term, multi-faceted denial of measures that foster and protect the security of Indigenous women throughout their lives."[300] After summarizing pass efforts, I will highlight some promising ongoing cases.

Status Under the Indian Act

One of the first areas that Indigenous women advanced their rights in the Canadian justice system was through cases challenging discriminatory provisions of the *Indian Act*.[301] Indian Status comes with material benefits such as health coverage and assistance with post-secondary education, but also intangible benefits such as feeling recognized as a member of one's own community.[302] As such, the denial of Status of many Indigenous women has resulted in "not only a denial of home, but also a denial of connection to culture, family, community, and their attendant supports," forming "multigenerational effects" by creating obstacles to safety for disenfranchised First Nations women and their children.[303] In *Attorney General of*

Canada v Lavell (1973), [1974] SCR 1349, Jeanette Corbiere Lavell advanced that her loss of Status under the former section 12(1)(b) of the *Indian Act* after marrying a non-Indian violated the *Canadian Bill of Rights* because a man would have kept his Status if he married a non-Indian. The Supreme Court of Canada upheld the law. In *Lovelace v Canada*, Sandra Lovelace who similarly lost her Status brought a complaint to the United Nations Human Rights Committee, arguing that this was a violation of the *International Convention on Civil and Political Rights*. In a 1981 decision, the Committee agreed with her and concluded that these sections were discriminatory. The early resistance by these women paved the way for a 1985 amendment to the *Indian Act* eliminating this clear form of gender discrimination and restoring the Status of women who had lost Status by "marrying out."[304]

Gender discrimination still prevailed in other aspects of the *Indian Act*. *McIvor v Canada*, 2009 BCCA 153, established that despite the 1985 amendments which made the law neutral on its face, there was still a continuing disadvantage for those with female parentage which violated section 15 of the *Charter*, leading to the *Gender Equity in Indian Registration Act*, SC 2010, c 18.[305] Then, in 2015, *Descheneaux c Canada*, 2015 QCCS 3555, found that the 2010 amendments to the legislation continued to perpetuate discrimination. Numerous aspects of the sections 6(1) and (2) scheme contravened section 15 of the *Charter*, and the court decided those provisions were of no force or effect. Canada waited until 2017 to rectify this. The government passed *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur general)*.[306]

In *Gehl v Canada*, 2017 ONCA 319, a refusal of Status based on a strict proof of paternity policy was found to be unreasonable, and the Ontario Court of Appeal declared that the appellant was entitled to registration. Justices Lauwers and Miller reached this result solely on administrative law principles, while Justice Sharpe in a separate opinion brought *Charter* values and the historic disadvantages of Indigenous women in the *Indian Act* into the analysis.[307] In *Miller c Mohawk Council of Kahnawà:ke,* 2018 QCCS 1784, the plaintiffs showed that a council's own membership law violated sections 7 and 15 of the *Charter* by discriminating against people with non-Indigenous spouses.

Off-reserve members of First Nations have also challenged discrimination, most notably in *Corbiere v Canada*, [1999] SCR 203, which found the old section 77(1) violated section 15(1) of the *Charter* by restricting elections to members "ordinarily resident on the reserve." This was found to target the "cultural identity" of off-reserve Indigenous peoples in a stereotypical way by presuming they are unable to meaningfully participate in the band and are therefore less deserving members. The Court noted that many of those affected were women and descendants of women who had previously lost their Status by marrying non-Indigenous men, further highlighting the importance of "maintaining a sense of belonging to the band" for off-reserve band members.

Human rights complaints challenging sections of the *Indian Act* have had mixed success. In *Raphael v Montagnais du Lac Saint-Jean Council,* 1995 CanLII 2748, the CHRT decided the complaints against a band council by several women who married non-members before April 17, 1985. Discrimination was substantiated on several items, including the refusals to provide them with a house or hunting permit, or to allow them to stand for election on a committee, or to take language courses.

In *Beattie v Aboriginal Affairs and Northern Development Canada,* 2014 CHRT 1, discrimination based on family status was substantiated where 'child' was interpreted to mean biological children, initially excluding custom adopted children (where children are adopted pursuant to the traditional practises of Indigenous communities), causing an Indigenous woman to not receive the benefits of being properly recognized, the ability to have her name removed from the band list she did not want it on, nor the ability to transmit the proper category of Status to her children.

Appeals of human rights complaints in *Matson* and *Andrews* were heard together in *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31. *Matson* focused on a legacy of gender discrimination while *Andrews* was the result of enfranchisement provisions where people were stripped of their Status in certain situations. Both complaints discussed how the *Indian Act* even with the 1985 and 2011 amendments left

gaps where the litigants were only eligible for Section 6(2) Status even though they should have been eligible for Section 6(1) Status. The Supreme Court agreed with the Tribunal and the lower courts that the complaints were attacking the *Indian Act* and therefore were not challenging a "service" under human rights law, and dismissed the complaints.

Child Welfare System

A landmark decision in *First Nations Child and Family Caring Society of Canada v Canada (Attorney General)*, 2016 CHRT 2, concluded that the Canadian government has racially discriminated against First Nations children on reserves and in Yukon by underfunding child welfare services in violation of section 5 of the *Canadian Human Rights Act*. Even after this ground-breaking ruling, there have been a series of non-compliance orders against the government.[308] In 2019, the Tribunal ordered financial compensation to be paid to Indigenous children in care,[309] and this process is ongoing with Canada continuing to judicially review the compensation ruling. The MMIWG2S Inquiry explains that status quo maintains "child welfare systems [to] diminish Indigenous cultures and values in favour of non-Indigenous models of parenting."[310]

The definitions for Indigenous children in child protection legislation have been challenged. *Catholic Children's Aid Society of Hamilton v G.H., T.V. and Easter Woodlands Métis of Nova Scotia*, 2016 ONSC 6287, concerned a child's apprehension at birth. The child's family advanced that Métis children should be treated in the same manner as those falling under the definition of 'Indian' or 'Native' in the provincial *Child and Family Services Act*, RSO 1990, c. C-11, which Métis were not included under. The definitions of 'Indian' and 'Native' were declared invalid for violating section 15 of the *Charter*, and the Métis child was to be treated as an 'Indian' or 'Native' within the meaning of the legislation in future child protection proceedings.

Similarly, in *Native Child and Family Services of Toronto v C.R.*, 2017 ONCJ 440, the court found that the definitions of 'Indian' and 'Native' under the *Child and Family Services Act* contravened the child's equality rights under the *Charter*. The child did not fit into the definitions of 'Indian' or 'Native' in the legislation, despite his maternal grandmother having

Indian Status and Band membership. However, his mother did not apply for membership, and therefore, the child did not have membership. The court provided powerful commentary on the "careless attitude to the question of the children's Indian or Native status," describing it as "disturbing" as all children's aid societies are to determine Indigenous status, and that the legislation provides unique protections for Indigenous children. The court went on to state that:

> A child welfare system which is purportedly designed to protect Indigenous children, families, and their culture identity can easily become inattentive to the issue of Indigenous identity once it is determined the family does not fit within the formal definitions in the [legislation]. As a result the children and the parents may be denied their rights under the [legislation].[311]

Charter damages were awarded, and the child was to be treated as if they were an 'Indian' or 'Native' under the legislation. The legislation was repealed, and the definitions were replaced to instead be membership or identification with a First Nation, Inuit, or Métis community.

Child welfare claims under the *Charter* have had mixed success. In *Children's Aid Society of the Regional Municipality*, 2017 ONCA 93, parents advanced that there had been a miscarriage of justice, which made the child protection process unfair, and sought a declaration that their and their child's section 7 *Charter* rights had been contravened. The court found that the declaration was not available.[312] In *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130, a father who was being deported argued the *Charter* required *Gladue*-like principles to be applied in considering the impact of the removal of a custodial parent from the country on their Indigenous child. The court rejected that *Gladue*-like considerations apply, but allowed the appeal on other grounds.

However, it has been accepted that child protection proceedings engage the *Charter* rights of parents and children. In *Kawartha-Haliburton Children's Aid Society v M.W.*, 2019 ONCA 316, the court reviewed the considerations for summary judgment in child protection proceedings, noting that they should be pursued with caution, as "[c]hild protection litigation engages the *Charter* rights of both parents and children."[313] In *Dakota Ojibway Child and Family Services v KRF et al,* 2018 MBCA 104, a mother appealed a permanent order of guardianship of

her children in favour of a child welfare agency. She based her argument on several grounds including procedural issues and failing to place sufficient weight on the children's Indigenous identity. The appeal was dismissed, though the court commented that "[o]ne cannot lose sight of the fact that child protection proceedings present unique challenges for the courts. They engage both the parents' and children's section 7 *Charter* rights."[314]

Human rights claims have also been pursued in cases relating to children. In *R.R. v Vancouver Aboriginal Child and Family Services Society (No. 2)*, 2019 BCHRT 85, a First Nations mom and intergenerational residential schools survivor whose children have repeatedly been apprehended from her care and returned to her, filed a complaint of discrimination against the child welfare society. She advances that the decisions to deny custody and restrict her access are based on stereotypical and prejudicial assumptions about her ability to care for her children based on her Indigeneity and mental health. This case is ongoing.[315]

Education

Once Indigenous children are old enough to go to school, they experience barriers in pursuit of education. Courts have addressed a wide array of education-related issues. This includes actions against Indigenous and Northern Affairs Canada ("**INAC**") for educational funding decisions.

In *Courtois v Canada (Department of Indian and Northern Affairs*), 1990 CanLII 702, the court found discrimination based on marital status and sex, as INAC contravened their education obligations by denying access and funding to on-reserve schooling for the child of an Indian woman who married a non-member before April 17, 1985.

Nearly two decades later, *Jean v Canada (Indian Affairs and Northern Development)*, 2009 FCA 377, considered INAC's decision to refuse financial assistance under an elementary and secondary education program to student members of a First Nations band. The Minister can contribute education services funding for band schools and federal schools for students listed on the Nominal Roll who are ordinarily resident on reserve. Here, the band's members live in surrounding areas and have no reserve, and therefore they did not satisfy the resident

criteria. The Chief and Council sought to have the Minister's decision set aside, and a declaration that the residence on reserve criteria violated section 15 of the *Charter* and is of no force or effect for bands without a land base. The court dismissed the appeal, holding that the exclusion of non-residents on reserve from the program did not violate the *Charter*.

Moreover, litigation to advance education promises enshrined in treaties have generally not gained traction. In *Beattie v Canada (Minister of Indian Affairs and Northern Development)*, [1998] 1 FC 104, an action was brought by registered band members who live off-reserve. They argued that the rights under the education provision of Treaty 11, where the Crown agreed to pay the salaries for teachers, included reimbursement for related costs including for tuition and program fees. The court held that the benefits of the education provision only applied to the area defined in the treaty, and the action was dismissed. In *Beattie and Bangloy v Indigenous and Northern Affairs Canada*, 2019 CHRT 45, the Tribunal did not find that the complainants had been discriminated against due to the denial of education funding.

In *Kelly v Canada (Attorney General)*, 2014 ONCA 92, various Treaty 3 Chiefs advanced that the Crown had breached its obligation to maintain schools for the 28 reserves covered by the treaty. The court set aside the motion judge's finding that the action was not justiciable and dismissal of the action, and allowed the action to proceed as a representative action. No further decisions on this case are found.

Housing

Economic hardships challenge this demographic in a variety of ways, including through insecure housing and homelessness.[316] Cases on this topic have touched on a range of issues uniquely impacting Indigenous women, girls, and 2SLGBTQQIA.

In *Laslo v Gordon Band Council*, 1996 CanLII 455 (CHRT), the complainant argued that her Band Council discriminated against her by denying her accommodation on reserve because of her sex. She was married to a non-Indigenous person, and lost her Status based on the *Indian Act* provisions at the time. The CHRT determined that the Band Council discriminated against her by denying her residential accommodation based on sex, marital

status and the race of her husband – noting that Indigenous men who married non-Indigenous women obtained housing on reserve. However, the complaint was ultimately dismissed, as the *Canadian Human Rights Act,* 1985, c H-6, stipulated that its contents do not affect any provision of the *Indian Act*, and the decisions of Band Councils in allocating land on reserve are made under the *Indian Act*.

In *Bruyere v Canada*, 2005 FC 1371, a low-income Indigenous woman sought a declaration that Canada owes her a fiduciary duty which has been breached by the transfer of a housing program for Indigenous peoples from Canada to Manitoba. She also argued that this was also contrary to her section 15 *Charter* rights. The court determined that the existence of a fiduciary duty, or lack thereof, could not be determined based on the record before them.

Additional housing cases have been brought more broadly, though unsuccessfully. This includes *Pivot Legal Society v Downtown Vancouver Business Improvement Association and another (No. 6)*, 2012 BCHRT 23. Pivot advanced a discrimination complaint on behalf of individuals sleeping in public spaces or panhandling, against an organization contracting a security company, noting that such policies disproportionately impact Indigenous peoples. It also includes *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852, which considered whether there is a positive right to housing under the *Charter*. No positive duty was found. Feldman JA's dissent recognizes that homelessness and inadequate housing is "often disproportionately members of other groups protected from discrimination under s. 15," including women and Indigenous peoples.[317] The dissent hints that the issue is best addressed on a full evidentiary record,[318] and comments on the importance of not foreclosing social and economic rights.[319]

In *Abbotsford (City) v Shantz*, 2015 BCSC 1909, the evidence discusses the experiences of Indigenous peoples with homelessness. The court found that to the extent that a bylaw applied to the city's homeless and prohibited sleeping or being in a city park overnight or creating a temporary shelter without permits, it violated section 7 of the *Charter* and was of no force or effect.

Health and Wellness

It is well-established that Indigenous peoples experience worse health outcomes compared to non-Indigenous peoples in Canada.[320] Indigenous peoples are also more likely to live with a disability due to political, social, environmental, and economic factors. Among these factors includes inaccessibility to healthcare and the "prevalence of poverty, malnutrition, poor housing conditions [and] climate change."[321] Indigenous women, girls, and 2SLGBTQQIA with disabilities are vulnerable to violence, and may not be able to see, hear, detect, or physically escape perpetrators.[322] The MMIWG2S Inquiry details the importance of addressing the right to health when tackling violence against this demographic.[323] The report explains violence as a health issue, noting that "when the right to health is in jeopardy, so is safety."[324]

While some of the systemic challenges have not yet been addressed through the courts, litigation has sought to address some of the glaring incidents of discrimination in health care at the individual level. Manitoba judges made some preliminary rulings in an action by Brian Sinclair's family following his 2008 death in a hospital after spending 34 hours in an emergency room without medical assistance.[325] Also, in *R v Doering*, 2019 ONSC 6360, a London police officer failed to intervene as an Indigenous woman suffered a heart attack in police custody and later knowingly misled the Ontario Provincial Police about her condition, which played a contributing role in her death. He was convicted for a failure to provide the necessities of life and criminal negligence causing death. Justice Pomerance also discussed the stereotypes and assumptions at play in this case, citing the MMIWG2S Report.[326]

In *Y v Clinic and Dr. H*, 2018 BCHRT 261 a First Nations woman filed a complaint after the respondents refused to provide a necessary medication. The respondents' application to dismiss the main complaint was successful but a separate complaint saying the respondents retaliated against her by terminating the doctor-patient relationship was allowed to proceed. No subsequent decisions have been reported.

Systemic issues including access to clean water, poverty, overcrowding of housing, and existing health conditions have also made Indigenous communities at greater risk of COVID-19.[327] At the time of this writing, Inuit communities and remote First Nations have generally avoided the virus. However, many of these communities have had to set up barricades, and there is limited data on Métis and urban Indigenous peoples, as these statistics are collected by provincial authorities.[328] Métis communities have also faced jurisdictional issues and equipment shortages in responding to the virus.[329]

Drug use and deaths from overdoses have significantly increased during COVID-19, signalling "the need for accessible treatment, a safer drug supply and culturally appropriate medical care."[330] The pandemic has also fueled the isolation of Indigenous women, with domestic violence worsening,[331] and alternative housing solutions needed to meet demand and social distancing requirements.[332] Lorraine Whitman, the President of the Native Women's Association of Canada ("**NWAC**") has explained that "[s]ince the outbreak of COVID-19, the situation of violence has significantly increased for Indigenous women" with more women experiencing violent incidents.[333]

Employment and the Workplace

Indigenous peoples have often attempted to address discrimination in the workplace by launching complaints to the Canadian Human Rights Tribunal, as discrimination, harassment and sexual harassment are breaches of the *Canadian Human Rights Act*, RSC 1985, c H-6. For example, in *Pitawanakwat v Canada (Secretary of State)*, 1992 CanLII 7190 (CHRT), the Tribunal found an Indigenous employee was subjected to discriminatory comments, harassment, and stereotyping due to the employer's "inaction and lack of sensitivity to the concerns respecting discrimination." On judicial review in [1994] 3 FC 298, the Federal Court overturned some of the remedies ordered by the tribunal but agreed there was "no question" the employee was harassed because she was Indigenous. A similar complaint was brought to the Canadian Human Rights Tribunal in *Vollant v Canada (Department of Health)*, 2011 CanLII 38329 (CHRT), where an Inuk woman incurred harassment and discrimination from her

employer and later lost her job. The Tribunal determined that complaint had not been proven. In *Nastiuk v Couchiching First Nation*, 2012 CHRT 12, an Indigenous woman brought a human rights complaint after a pattern of sexual harassment in the workplace, but it was dismissed. Another case before the Tribunal considered a disparity in allowances paid to Indigenous and non-Indigenous teachers on a reserve. After the Federal Court sent this matter back to the Tribunal twice for redetermination, in *Malec v Conseil des Montagnais de Natashquan*, 2014 CHRT 33, the Tribunal decided a distinction in teacher benefits was based on residence outside the reserve rather than race and therefore was not discriminatory.

In recent years, provincial human rights tribunals have also been addressing discrimination against Indigenous employees contrary to provincial human rights law. In *Maracle v Free Flow Petroleum*, 2017 HRTO 437, an Indigenous woman incurred discriminatory comments from her restaurant manager including that she was socializing too much with residents of a nearby reserve and that Indigenous people "get all the breaks." The employer was ordered to pay damages. Similarly, in *Ross v 4888970 Manitoba Ltd.*, 2017 CanLII 149348 (MBHRC), an employee was subjected to "months of insults and slurs, touching upon both her Black and Indigenous ancestries, all in breach of the Human Right Code." The Tribunal ordered the employer to pay her damages for injury to dignity, feelings and self-respect as well as exemplary damages. In another complaint, *Grant v Absolute Spa*, 2020 BCHRT 113, an Indigenous woman was given different tasks than her coworkers and subjected to racist comments while working at a spa but her complaint was dismissed because a settlement agreement had been reached between the parties. Moreover, a law professor who was denied tenure and promotion likewise pursued a complaint to the British Columbia Human Rights Tribunal in *McCue v The University of British Columbia (No. 4)*, 2018 BCHRT 45. After a lengthy hearing, the Tribunal dismissed her complaint which focused on the university's discriminatory treatment of her oral publications.

In addition to these work-related human rights cases, in *Moore v The Law Society of British Columbia*, 2018 BCSC 1084, an Anishinaabe member of the Law Society of Alberta judicially reviewed decisions rejecting her application to practise law in British Columbia and

later allowing her to practise with conditions. She said that the series of decisions failed to consider underrepresentation of Indigenous lawyers, *Gladue* factors, and the TRC's Calls to Action. The Court found that the decisions were reasonable in the circumstances but did acknowledge "the Law Society and the Credentials Committee could have better supported and assisted Ms. Moore in the application process."[334]

Access to Services and Benefits

Indigenous peoples have sought to address the discriminatory provision of services by private and public bodies through human rights complaints. A striking example is *Radek v Henderson Development (Canada)*, 2005 BCHRT 302, where an Indigenous woman was subjected to ongoing harassment by security at a Vancouver mall. Given that this conduct was part of a larger pattern where "Aboriginal people were likely to be viewed as 'suspicious' or 'borderline suspicious' and thus subject to heightened scrutiny and intrusive questioning," the complainant was awarded damages and broader remedies were put in place to address the systemic discrimination. In *Martell v Docker's Night Club*, 2008 CanLII 90181 (SKHRT), two Indigenous women were awarded damages after being denied entry to a club due to a "dress code" requiring black pants, while a group of non-Indigenous people were allowed entry without wearing black pants. Similarly in *Pritchard v Ziedler*, 2007 CanLII 86937 (SKHRT), the Tribunal substantiated the complaint of an Indigenous family who were denied service. See also *Friday v Westfair Foods Ltd.*, 2002 CanLII 62874 (SKHRT), where a store had to pay damages to an Indigenous person living with a disability after refusing to sell him groceries and escorting him out of the store because they assumed he was intoxicated. Furthermore, in *D.D. v The Hotel*, 2020 BCHRT 109, the Tribunal allowed a human rights complaint by a man who was subjected to demeaning comments based on his Indigenous heritage and sexual orientation to proceed after the hotel brought an unsuccessful application to dismiss the complaint. Often in these discrimination cases a lack of meaningful policies and employee training is clear, and the tribunals order the business to implement these items moving forward.

Indigenous women have also used litigation to address discrimination when accessing social services provided by governments.[335] In *MacNutt v Shubenacadie Indian Band Council*, 1995 CanLII 1164 (CHRT) [*MacNutt*], an Indigenous woman took action after being refused the social assistance benefits to which her household was entitled because her husband was not Indigenous. The Tribunal ordered the payment of the benefits and damages to her and two other complainants for this discrimination on the grounds of both race and marital status.[336] *Dawson v Eskasoni Indian Band*, 2003 CHRT 22, relied on *MacNutt* and reached the same result. These cases relied on section 5 of the *Canadian Human Rights Act* prohibiting discrimination with respect to "goods, services, facilities or accommodation." However, in *Beattie v Aboriginal Affairs and Northern Development Canada*, 2016 CHRT 5, upheld in 2016 FC 1328 and 2017 FCA 214, a couple's challenge of the formal requirements to register a lease under the *Indian Act* was dismissed because the legislation was not a "service" and such legislation should instead be challenged in a different forum.[337] In a different context, in the test case *Shilling v Canada*, 2001 FCA 178, an Indigenous woman advanced that a section of the *Indian Act* meant that her salary from Six Nations Reserve was exempt from income tax even though she was working in Toronto. She succeeded at the Federal Court, but this decision was overturned and the Court of Appeal denied her the benefit of this section.[338]

Finally, class actions are an alternative approach to achieving equal benefits or services. For example, in *Davis v Canada (Attorney General)*, 2008 NLCA 49, Mi'kmaq litigants argued that upon Newfoundland and Labrador entering Canada, the government failed to create legislation to provide the same level of programs, services and benefits available to other Indigenous peoples. The Court found a class action was not the preferable procedure and did not allow the claim to proceed, but class actions involving discriminatory provision of services are a possible avenue for future litigation.

Criminal Justice System

The Supreme Court acknowledged in *R v Ipeelee*, 2012 SCC 13, that the overrepresentation of Indigenous peoples in the criminal justice system is "intimately tied to

the legacy of colonialism."[339] As Justice Langston noted in a sentencing decision in *R v Holmes*, 2018 ABQB 916, it is a system that "is imposed upon Aboriginal people, and I use that word deliberately. Our history, in relation to Aboriginal people, is one of deliberate destruction."[340] Courts and tribunals have documented the consistent discrimination in the criminal justice system including through decisions about policing, prisons, and sentencing.

Policing

Discriminatory treatment of Indigenous peoples is starting to receive more scrutiny, although it is not a new phenomenon.[341] In Thunder Bay, the police service's racism became so glaring that the police services board had to be dissolved and temporarily replaced with a special administrator.[342] At the MMIWG2S Inquiry, survivors of violence testified that "stereotyping and mistrust create a reluctance to reach out to the police for help" through police responses of "indifference or victim-blaming" with many generations in their families sharing these experiences.[343] The Inquiry also reported that "the historical denial of and unwillingness to investigate the disappearances or deaths of many Indigenous women, girls, and 2SLGBTQQIA people have, for many years, sent the message that police are indifferent to such violence."[344]

Human rights complaints are one tool to address discriminatory policing. *Campbell v Vancouver Police Board (No. 4)*, 2019 BCHRT 275, was a human rights complaint by an Indigenous mother who watched police arrest her teenage son. She was removed from the scene with enough force to cause bruising and was prohibited from asking questions. The Tribunal awarded her damages because she had been treated in a discriminatory manner.[345] The Tribunal also ordered the Vancouver Police to create annual training after the officers in this case had relied on stereotypes, had not heard of the TRC, and had only heard of the MMIWG2S Report through the media.[346] A complaint was dismissed by the same Tribunal in *Kostyra v Victoria Police Department*, 2015 BCHRT 124, where the police approached an Indigenous security guard and later initiated a review of her license which she said was motivated by racism.

Prisons

Conditions in prison have been the subject of recent *Charter* litigation by Indigenous women. Two mothers successfully challenged the cancellation of a program allowing them to have their babies with them in provincial institutions in *Inglis v British Columbia (Minister of Public Safety)*, 2013 BCSC 2309. The Court found that the cancellation violated the protection of the security of the person in section 7 of the *Charter*, as well as the section 15 equality rights of provincially sentenced mothers. These women were disproportionately Indigenous, which informed the *Charter* analysis.[347] In *R v Balfour and Young*, 2019 MBQB 167, an Indigenous woman's section 11(e) *Charter* rights were breached when she was held in custody without a timely bail hearing. She was held in jail for 51 days before charges against her were dropped. The Court found that a lack of access to bail is a systemic problem in northern Manitoba that "should shock the conscience of any reasonable person."[348] Courts have also found Indigenous peoples in prisons are psychologically assessed using culturally biased tools[349] and disproportionately subjected to unlawful solitary confinement.[350] In the latter series of cases, two levels of British Columbia courts agreed that Canada's solitary confinement laws were unconstitutional as they violated the section 15 *Charter* rights of Indigenous inmates among other rights.[351] In April 2020, the federal government abandoned its attempt to uphold the solitary confinement laws, dropping its appeal to the Supreme Court of Canada where it was seeking to overturn British Columbia and Ontario decisions striking down the legal regime.[352]

Sentencing

Mandatory minimum penalties ("**MMPs**") under the *Criminal Code*[353] have sustained the overrepresentation of Indigenous women in correctional facilities.[354] The effectiveness of these strict penalties is questionable,[355] and Call to Action #32 of the TRC Report called for an amendment to the *Criminal Code* to allow trial judges to depart from MMPs. Yet many MMPs remain in effect, so Indigenous peoples have had to resort to courts in cases where the MMP would constitute "cruel and unusual punishment" contrary to section 12 of the *Charter*.[356] In an encouraging case demonstrating the importance of reducing the overrepresentation of

Indigenous women in the criminal justice system, one judge noted that imposing a criminal record "would run counter to the National Inquiry into Missing and Murdered Indigenous Women and Girls call for the hiring of more Indigenous women to staff local child and family service agencies so as to ensure that those critical services are provided by those better able to understand the discriminatory history of those services."[357]

The conflict between MMPs and the proper application of *R v Gladue*, [1999] 1 SCR 688 [*Gladue*], has been well-documented. *Gladue* highlights the failings of the criminal justice system and sets out a series of factors for courts to consider when sentencing Indigenous offenders to embrace the "restorative goal" of section 718.2(e) of the *Criminal Code*.[358] MMPs prohibit Indigenous peoples from benefitting from *Gladue*'s attempt to ameliorate discrimination.[359] On the other hand, *R v King*, 2007 ONCJ 238, allowed a constitutional exemption from the MMP for repeated drunk driving as it ran counter to *Gladue* and failed to "take into account the claimant's already disadvantaged position within Canadian society" contrary to section 15(1) of the *Charter*.

Most recently, *R v Sharma,* 2020 ONCA 278, concerned a 20-year-old Indigenous mother, who imported cocaine after requiring money to avoid eviction from her home, and had a history of substantial trauma.[360] The majority held that section 742.1(c) and 742(e)(ii) of the *Criminal Code*, which constrains the use of conditional sentences as they relate to Ms. Sharma's case (importing drugs), violate sections 7 and 15 of the *Charter*.[361] The court explains that the "impugned provisions, in their impact on Aboriginal offenders…create a distinction on the basis of race; and…that the provisions deny Ms. Sharma a benefit in a manner that has the effect of…exacerbating her disadvantage as an Aboriginal person," and also found that the provisions were overbroad.[362] The court struck down the sections of the *Criminal Code*.[363]

Many other sentencing decisions that apply *Gladue* provide commentary on the systemic issues leading to the overrepresentation of Indigenous women in the criminal justice system. For instance, *R v Doxtator*, 2019 ONCJ 420, noted *Gladue* factors "have to do with recognition that the circumstances of [I]ndigenous people is largely as a result of colonialism

and that direct and systemic discrimination still exists within the justice system." The Court detailed that the young Indigenous woman was a grandchild of residential school survivors and raising two children while trying to break a cycle of poverty, and should not receive the substantial fine the prosecutor was requesting. Similarly, in *R v T.L.C.*, 2019 BCPC 314, Judge Wolf stated:

> [C]ourts are too quick to give accused people criminal records and we should *stop and think* before we do it. When the accused is an Indigenous female, we need to *stop and think twice* before we potentially affect the rest of her life. On the surface, this approach may look like that would be giving Indigenous women special treatment in the sentencing process. I am fine with that – and I would say it is about time. On a deeper level, it is not really a preferred treatment, but rather a recognition of the *Gladue* factors that are specific to being an Indigenous woman in this country.[364]

These are encouraging steps towards reducing the overincarceration of Indigenous women. In response to the MMIWG2S Inquiry, another noteworthy sentencing principle came into effect in September 2019 to denounce and deter violence against Indigenous women.[365] Recent sentencing decisions have cited the MMIWG2S Final Report, noting the disproportionate rates of sexual assault for Indigenous women and girls. These cases include *R v RC*, 2019 SKPC 51[366] and *R v Berg*, 2019 ABQB 541.[367] Both *Gladue* and the new aggravating factor are addressed in cases where both the victim and the accused are Indigenous: see *R v Doucette*, 2020 BCSC 907[368] and *R v P.M.M.*, 2019 BCPC 276.[369]

Indigenous Identity, Culture, and Spirituality

Attacks on Indigenous identity, culture, and spirituality have also been the subject of human rights litigation. Even in their own homes, Indigenous women have had to resist demeaning comments. In *Smith v Mohan (No. 2)*, 2020 BCHRT 52, a landlord insisted a tenant stop smudging and attempted to evict her even after she explained it was a cultural practise to cleanse spaces, bodies, and minds. The Tribunal further noted the landlord shared "a pattern of comments and invasive questions" based on stereotypes about Indigenous peoples including asking "why the typical white name" if she was Indigenous – she testified she "shouldn't have to explain what [her] name is." The Tribunal ordered the landlord to pay

damages for these discriminatory comments and actions. *Raweater v MacDonald*, 2005 BCHRT 63, was another British Columbia case where a landlord was ordered to pay damages after making unwelcome comments based on an Indigenous woman's heritage including asking her if she would complain "to Indian Affairs" and telling her that if her son's father was around then her son would be more controlled.

In a case that went on for twelve years due to preliminary disputes, in *Davis v Canada Border Services Agency*, 2014 CHRT 34, the Tribunal concluded that an Indigenous woman had experienced discrimination due to racial stereotyping by an officer at the Canada-United States border. The officer acted aggressively, questioned her employment without basis, overreacted to her comments, and stated they were on the property of Canada Customs even though there was an ongoing dispute about whether the border crossing is on Mohawk land. The Tribunal noted that Indigenous peoples crossing the border "should be reassured that their culture, identity and security as Aboriginal people will be better preserved and protected."[370]

Indigenous Laws

Another area recognized by the MMIWG2S Inquiry is the importance of Indigenous laws. The Final Report cited expert Tuma Young on the importance of "two-eyed seeing" where "[a]n issue has to be looked at from two different perspectives: the western perspective and the Indigenous perspective, so that this provides the whole picture for whoever is trying to understand the particular issue."[371] As discussed below, Indigenous laws must become part of the legal landscape of Canada.

An early case that embraced these ideas is *Re Katie's Adoption Petition*, 1961 CanLII 443 (NWT TC) [*Katie's Adoption*], where the Court granted a petition for adoption in accordance with Inuit customs despite strict adoption requirements which were "unrealistic having regard to the conditions in the Northwest Territories." The Court found the *Canadian Bill of Rights* protects Inuit "rights, freedoms, laws and customs," including customary adoption practises that have "stood the test of many centuries" and which "these people should not be forced to abandon."[372] The Ontario Court of Appeal cited *Katie's Adoption* in *Wasauksing First Nation v*

Wasausink Lands Inc., 2004 CanLII 15484 (Ont CA), indicating that if a practise or custom is proven then the relevant legislation can be "interpreted and applied in light of the proven aboriginal practise or custom."[373] Similarly, Justice Mandamin of the Federal Court cited *Katie's Adoption* in a case dismissing Canada's objection to testimony from an expert on hunting customs in *Alderville First Nation v Canada*, 2014 FC 747, stating: "the common law is capable of giving recognition to and incorporating Aboriginal customary law." Justice Grammond commented on Indigenous legal traditions in the customary election code case *Pastion v Dene Tha' First Nation*, 2018 FC 648.[374] Justice Grammond observed that acceptance of Indigenous legal traditions has so far primarily taken place in "matters involving family relationships" but there has recently been a "renewed interest in Indigenous legal traditions" especially among academics. Together these types of precedents have opened a window allowing future litigants to infuse Indigenous law into their submissions to bring a more holistic perspective into the colonial legal framework.

The interpretation and application of Inuit Qaujimajatuqangit – Inuit law in Nunavut courts has been mixed.[375] Most recently, *R v Itturiligaq*, 2020 NUCA 6, concerned a young Inuk man with no criminal record who intentionally fired a rifle at the roofline of a house he knew was occupied by his girlfriend, following an argument. The sentencing judge found that the MMP was unconstitutional, noting the importance of using Inuit Qaujimajatuqangit in court judgments, which provides "meaningful application" of *Gladue*.[376] Justice Bychok found that no alternatives to prison were available, which was "consistent with traditional Inuit justice."[377] He determined that a fit sentence was less than the MMP, to be served in a territorial jail. The sentencing judge also noted the differences between Canadian notions of justice (e.g. denunciation and deterrence) and Inuit ones (e.g. reconciliation, reintegration, and harmony), and detailed that a sentence in a southern prison would be contrary to Nunavummiut's notions of justice, including because the offender would be isolated from their community. However, the Court of Appeal's considerations of Inuit Qaujimajatuqangit came to a different conclusion. At appeal, the judges explained that "without any evidentiary record to assess whether the Inuit community's application of its own Inuit Qaujimajatuqangit would have

necessarily…resulted in a lower sentence," it was not an accurate assumption that mitigating weight would be extended to the continuation of the couple's relationship.[378] The court detailed the potential for such evidence, if admitted, to instead focus on a "revulsion of intrafamilial violence" or the value and protection of women from domestic violence in Inuit societies.[379] As such, on appeal, the sentence was found to be demonstrably unfit. The declaration of the MMP's unconstitutionality was set aside, with the offender receiving a substituted higher penalty as his sentence. This decision provides insight to judge's considerations of Indigenous laws, and the ability of evidence to guide its application by Canadian courts.

2SLGBTQQIA

Few reported decisions exist concerning the rights of 2SLGBTQQIA. Notably, in *Bro and Scott v Moody*, 2010 BCHRT 8, the Tribunal awarded damages to a two-spirit complainant and their partner after they were subjected to hostile behaviour from their landlord including slurs, violence, and an attempt to remove them from the property.[380] This case is just one example of a concerning trend of discrimination against 2SLGBTQQIA, though strong advocates have been working to promote their rights. Encouragingly, Justice Rowe who identifies as two-spirit was recently appointed to the Nova Scotia Supreme Court.[381]

Claims Within Indigenous Communities

In other cases, Indigenous women have turned to the Canadian Human Rights Tribunal to address discrimination by Band Councils based on gender. For example, in *Tabor v Millbrook First Nation*, 2015 CHRT 9 [*Tabor*], the complainant showed that she was denied employment at a fishery because of her gender. Her case highlighted discriminatory comments made by a Band Councillor and a broader trend of women being treated differently than men by the Band Council.[382] In some cases, Band Councils have been found to have discriminated against their female members based on prohibited grounds other than gender such as their religious beliefs,[383] family status,[384] or ethnicity.[385] In one such case, *Deschambeault v Cumberland House Cree Nation*, 2008 CHRT 48 [*Deschambeault*], a Métis woman showed she was discriminated

against based on ethnic origin when she was twice passed over for jobs despite being the most qualified candidate. When these complaints are substantiated, the Tribunal typically orders damages and/or for the Band Council to implement policies to address discrimination.[386]

Claims by Indigenous Women's Organizations

In a notable line of cases, Indigenous women's organizations have challenged their exclusion from negotiations or their lack of funding. In *Native Women's Association of Canada v Canada*, [1994] 3 SCR 627 [*NWAC*], the NWAC challenged their exclusion from 1992 constitutional reform discussions which led to the Charlottetown Accord. They advanced that even though the government was funding the participation of four national Indigenous organizations, Indigenous women were underrepresented in these groups and therefore excluded from the process in violation of sections 2(b) and 15 of the *Charter*. The Court observed "in certain circumstances, positive governmental action may be required in order to make the freedom of expression meaningful." Yet on the facts of this case, the Court found insufficient evidence about a lack of female representation within the broader Indigenous groups and NWAC had the chance to express its views in other ways. *Métis National Council of Women v Canada (Attorney General)*, 2006 FCA 77, reached the same result in a section 15 *Charter* challenge to Métis women's exclusion from an Indigenous labour market development program. The Court of Appeal was hesitant to interfere with the program and endorsed the Federal Court's conclusion that there was "insufficient evidence that Métis women are not properly represented by the [Métis National Council], or that Métis women have encountered difficulties in accessing programming or funding under the current arrangements."[387] Similar arguments were raised to challenge underinclusive funding in *British Columbia Native Women's Society v Canada,* 2001 FCT 646, and *Paukttuutit Inuit Women's Association v Canada*, 2003 FCT 139, but each claim was ultimately either moot or later settled. Depending on the facts of the case, underfunding of Indigenous women's groups in important future discussions could one day lead to a successful *Charter* challenge, even though courts have been slow to recognize positive obligations.[388]

Recent Cases of Prejudice and Allyship

Recent human rights complaints show a resistance to Indigenous peoples among some members of Canadian society. In *Kersman v Ontario (Energy, Northern Development and Mines)*, 2019 HRTO 1590,[389] the Tribunal dismissed an application by a man who described mandatory training on Indigenous peoples in Canada for his government job as "harassment" and "an attempt at indoctrination." The Tribunal observed it was plain and obvious that this was not discrimination within the meaning of the *Human Rights Code*. Similarly, in *Smyth v University of Ottawa*, 2020 HRTO 284, a man complained about course materials, having to do a "privilege exercise" and being asked to acknowledge the university was on unceded Algonquin territory. The complaint was found to have no reasonable prospect of success because he could not show these actions had an adverse impact on him based on a prohibited ground.

Servatius v Alberni School District No. 70, 2020 BCSC 15, considered a complaint from a non-Indigenous woman who resisted teachings from a Nuu-chah-nulth Elder along with smudging, prayer, and dance at school events in a district where one-third of the students are Indigenous. These events were intended to increase knowledge and understanding of Indigenous culture and history in the area. The Tribunal rejected her argument that these activities interfered with the religious freedoms of the applicant and her children. The Tribunal cited the UNDRIP which includes the right to "manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies" and the right to "the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information."[390]

On the other hand, the case law reveals that other non-Indigenous peoples are embracing allyship with Indigenous communities. In *Trans Mountain Pipeline ULC v Mivasair*, 2019 BCSC 1246, five individuals were arrested for disobeying an injunction, including Rita Wong who hung up red dresses in commemoration of missing and murdered Indigenous

women and girls on the site of the Trans Mountain Pipeline. Affidavit evidence from two experts in that case advocated for the necessity of these obstructive efforts to slowing climate change.

Ongoing Litigation

Indigenous women, girls, and 2SLGBTQQIA continue to experience the types of discrimination described in the case law.[391] However, there are several ongoing cases across the country that will greatly shape equality rights for this demographic. A human rights complaint by the Canadian Association of Elizabeth Fry Societies and Métis woman Renee Acoby is advancing that the Correctional Service of Canada discriminates against Indigenous women in various ways including by denying access to programming and culture and overclassifying them as dangerous.[392] A Manitoba woman is also suing the provincial and federal governments and Manitoba's child and family service agencies for putting Indigenous children at risk by unjustifiably apprehending them.[393] A Quebec Chief has brought a human rights complaint challenging underfunding of First Nations policing which she advances amounts to discrimination.[394] Meanwhile, a British Columbia *Charter* challenge is advocating for more legal aid funding for family law proceedings as the current regime disproportionately impacts Indigenous women.[395]

Unconstitutional and discriminatory practises may continue even after success in litigation. For example, despite positive court challenges on child welfare funding, the First Nations Child and Family Caring Society has brought a series of non-compliance orders against Canada for its inaction.[396] Governments have also recently been questioned on how long it will take to modify their conduct as it relates to solitary confinement. The stall in responding to court outcomes can lead to continued litigation.[397]

There are also a series of class actions being brought, including on the RCMP's failure to adequately investigate cases of missing and murdered Indigenous women and girls,[398] Canada's duty to provide clean drinking water to First Nations reserves,[399] underfunding of child and family services for Indigenous children,[400] and forced sterilization of Indigenous women.[401] In an annuities case, First Nations are arguing for an increase in annuities under the

Robinson Huron Treaty that are currently frozen at $4.00 per year in violation of the spirit of the treaty.[402]

Other cases to address the systemic challenges facing Indigenous women, girls, and 2SLGBTQQIA can be envisioned. For example, a future education-focused case might advance that education funding on First Nations reserves is less per child than in non-Indigenous communities.[403] A review of the caselaw also observed that there are few cases on violence against Indigenous women, girls, and 2LGBTQQIA people, or discrimination cases against two-spirit. This provides just a glimpse of the vast possibilities for future litigation.

Part III: Recommended Approaches

Recognizing and Offsetting Anticipated Challenges

Several challenges can be anticipated when working to advance the rights of Indigenous women, girls, and 2SLGBTQQIA people. The colonial-legal system often causes harm to the Indigenous peoples that it encounters. As is, the legal system in Canada often excludes Indigenous laws and methods of peacekeeping, imposing a system that is unrecognizable to many Indigenous peoples. The exclusion of Indigenous knowledge from the legal system frequently transfers to the legal profession, which can lack an understanding of who Indigenous peoples are, Canada's treatment of Indigenous peoples, and the strength of Indigenous peoples which continues today. This emphasizes the importance of adopting the approaches detailed in this section as minimum standards to practising law. This section recommends ways to prastice in a manner that is culturally competent, reduces harm, and trauma informed – all of which are interdependent.[404] These actions can go even further, as lawyers can actively participate in Indigenous struggles, working to decolonize and Indigenize (see "Part IV: Settler-Allyship").

Moreover, the range of remedies available in the colonial-legal system may not always capture the goals of Indigenous peoples pursuing litigation. Canada's legal system is a stark contrast from legal systems in many Indigenous societies – which emphasized healing and relationships.[405] This highlights the importance of embracing Indigenous laws and other measures, such as those beginning to gain traction in criminal law (for more on this, see "Criminal Law – Additional Considerations" and "Transforming Legal Spaces" in this section). Litigation is often an expensive and lengthy process. It is critical that lawyers help to secure the resources needed to finance any legal work that they take on.[406] If litigation is pursued, it should be sustained, unless directed otherwise by Indigenous peoples.

Harm Through Law

Many Indigenous peoples distrust Canada's legal system and the lawyers working within it, viewing the law as a mechanism "designed…to be enforced against Indigenous peoples, and never designed or meant to serve them."[407] This section explores the harm that can be caused by the legal system and lawyers.

The Legal System Can Harm – The Case of Cindy Gladue

R v Barton, 2019 SCC 33, illuminates the harms that can be caused by the legal system. This case concerned the death of Cindy Gladue, a Métis mother of three, who died from a large wound to her vaginal wall. The accused, Bradley Barton admitted to having violent sex with her the night before her death.[408] An Edmonton court allowed Cindy's vaginal tissue to be brought into the court, where her body was dismembered and displayed as evidence for the jury, and her family to see. Jean Teillet, a Métis lawyer, explains that such violent treatment only extends to Indigenous women:

> It seems unconceivable that this would happen to anyone other than an Indigenous woman…The courts will quite literally allow Indigenous women to be cut into pieces, by the state, and served up on a platter the state calls justice.[409]

Dr. Beverly Jacobs, a Mohawk law professor, powerfully observes that Cindy's "spirit was also victimized by the legal system."[410] Cindy died in 2011, and her case was heard by the Alberta Court of Queen's Bench, the Alberta Court of Appeal, and the Supreme Court of Canada. Canada's top court recognized the need for action to address the discrimination against Indigenous women ingrained in the justice system:

> …our criminal justice system and all participants within it should take reasonable steps to address systemic biases, prejudices, and stereotypes against Indigenous persons — and in particular Indigenous women and sex workers — head-on. Turning a blind eye to these biases, prejudices, and stereotypes is not an answer. Accordingly, as an additional safeguard going forward, in sexual assault cases where the complainant is an Indigenous woman or girl, trial judges would be well advised to provide an express instruction aimed at countering prejudice against Indigenous women and girls. This instruction would go beyond a more generic instruction to reason impartially and without sympathy or prejudice.[411]

Cindy's case has been sent back on manslaughter (not murder), and the Supreme Court of Canada was widely criticized for being silent on the dismemberment of her body.[412] The case continues, and a new trial is set for November 2020.[413]

Legal Services Can Harm – Lessons from the Residential Schools Settlement

The engagement of law and residential schools illuminates another basis for distrust of the legal system:

> Canada's laws and associated legal principles fostered an atmosphere of secrecy and concealment. When children were abused in residential schools, the law, and the ways in which it was enforced (or not), became a shield behind which churches, governments, and individuals could hide to avoid the consequence of horrific truths. Decisions not to charge or prosecute abusers allowed people to escape the harmful consequences of their actions. In addition, the right of Aboriginal communities and leaders to function in accordance with their own customs, traditions, laws and cultures was taken away by law. Those who continued to act in accordance with those cultures could be, and were, prosecuted. Aboriginal people came to see law as a tool of government oppression.[414]

The harms caused by the law continued through the legal services provided to survivors throughout the residential schools settlement. Many survivors characterized the Independent Assessment Process ("**IAP**") which determined individual claims, as "retraumatizing and dehumanizing."[415] One IAP adjudicator explained that she had to "bring people back to a time that they never wanted to go back to," demonstrating that "the legal system is not designed to be trauma-informed – it's designed to be the opposite."[416] The trauma triggered by this process included a survivor dying by suicide a day before their IAP.[417] This emphasizes the importance of practising law in a way that reduces re-traumatization as much as possible.[418]

During the settlement, there was no shortage of lawyers who were criticized in their representation of Indigenous clients for failing to act in their client's best interests and for causing them harm.[419] A recent report by the Law Society of Ontario reviewed a lawyer representing survivors in their IAP, and echoed the calls on the legal profession to become more culturally competent:[420]

> The healing journey has been part of their story… They wanted to share their LIFE STORIES without feeling like a loser or a criminal, feelings that brought to the forefront by foreign and often adversarial processes. Most Residential School Survivors felt that they were not heard and accepted…Unfortunately, for…Survivors who were unhappy with their lawyers, the hurt and regrets have been compounded. Where are the reports from the lawyer explaining what was done for their client? Where are the letters explaining the award granted and the breakdown for legal fees and costs? They want to know the answers.[421]

Many survivors did not understand the settlement process and felt betrayed by their legal representative.[422] This can be avoided,[423] but many reasons for distrust continue today.[424] Lawyers must appreciate this reality, recognize that it is not personal, and work through it to build trust and a relationship between the parties.[425] In doing so, lawyers must be aware of the unique histories and realities of Indigenous peoples, which can influence Indigenous perspectives, attitudes, and understanding of the justice system and the actors within it.[426] Often, a lawyer's role representing an Indigenous client will be new, causing it to be challenging and stressful.[427] Lawyers must appreciate that there may be mistrust, hesitancy, or defense by Indigenous peoples when encountering lawyers and legal systems.

Cultural Competency

"For lawyers from mainstream society, as members of the majority, and as products of Canadian society, they more or less have Cultural Competency to represent non-Indigenous clients but the same cannot be said concerning Indigenous Nations and people" – Ovide Mercredi, Former National Chief of AFN.[428]

All participants of the legal system should strive to become more culturally competent. Gaining cultural competency for working with Indigenous peoples is just as important as other legal competencies.[429] Acquiring the knowledge and tools required to practise as a culturally competent lawyer is a "never-ending process."[430]

Legal Profession Called to Practise Culturally Competently

Law is not culturally neutral, and its origins often differ from those it confronts, especially Indigenous peoples.[431] Lawyers help to determine the way that cultures shape the legal landscape.[432] Practising in a culturally competent manner is critical when working with

Indigenous peoples or on cases that impact Indigenous peoples. The urgent need for lawyers to become culturally competent has been widely recognized,[433] and is detailed as Call to Action #27 of the TRC:

> We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.[434]

Call to Justice #10.1 of the MMIWG2S Final Report also emphasized the need for heightened cultural competency training for all actors in the justice system:

> We call upon the federal, provincial, and territorial governments, and Canadian law societies and bar associations, for mandatory intensive and periodic training of Crown attorneys, defence lawyers, court staff, and all who participate in the criminal justice system, in the area of Indigenous cultures and histories, including distinctions-based training. This includes, but is not limited to, the following measures:
>
> i All courtroom officers, staff, judiciary, and employees in the judicial system must take cultural competency training that is designed and led in partnership with local Indigenous communities.
>
> ii Law societies working with Indigenous women, girls, and 2SLGBTQQIA people must establish and enforce cultural competency standards.
>
> iii All courts must have a staff position for an Indigenous courtroom liaison worker that is adequately funded and resourced to ensure Indigenous people in the court system know their rights and are connected to appropriate services.[435]

Evidently, it is critically important for lawyers to heighten their cultural competency.

Benefits of Practising Culturally Competently

Through cultural competency, the legal profession can avoid repeating past mistakes (including those described above), and "do better for this generation."[436] Heightened cultural competency will facilitate numerous benefits, including:

- Fewer harms caused by the legal system;

- Effective representation and engagement with Indigenous peoples;
- Greater understanding of Indigenous realities and avenues available for dispute resolution;
- Allow Indigenous peoples to have meaningful access to justice, fair treatment, and confidence in the justice system; and
- Foster the creation of better laws.[437]

Building Cultural Competency

Building cultural competency begins by learning. There are countless resources that are grounded in Indigenous knowledge.[438] The Guide for Lawyers Working with Indigenous Peoples identifies a number of steps that lawyers can take to build their cultural competency, including to:

> take advantage of a multitude of learning opportunities from different sources that are rooted in different Indigenous cultures. At a minimum, lawyers should read the TRC Report Executive Summary and Calls to Action, familiarize themselves with the United Nations Declaration on the Rights of Indigenous Peoples, take CPD courses, read books by Indigenous authors, attend Indigenous community events, and engage with and support Indigenous communities and grassroots initiatives. These examples may also become sources of information about appropriate protocol and caution against violations of these protocols.[439]

It is also about building and maintaining relationships. Some key pillars to doing so include:

> The first is continuity – ongoing involvement in the community to create relationships, understanding the community, working so that the members of the community understand each other and ensuring good communications within the community. The second is hearing and understanding – making sure people have an opportunity to be heard in the process but also ensuring that as part of being heard, they are being understood. The third is fairness – ensuring that whomever is mediating or deciding a dispute, fairness operates for both or all sides of the matter.[440]

Understanding Your Cultural Lens and Checking Bias

Lawyers can evaluate their own cultural lens and bias to determine how they view Indigenous peoples and cultures. The following questions can help to guide this reflection:

- What is your current knowledge on Indigenous peoples?
- Where did you gain this knowledge on Indigenous peoples?
- What, if anything, have you learned about Indigenous peoples directly from them?[441]

Cultural bias may be conscious or unconscious, and can influence assumptions made about Indigenous peoples based exclusively on their identity.[442] Lawyers must "objectively and honestly evaluate [their] own cultural biases and stereotypes" and recognize them as "potential barriers to effective communication with the client."[443] This recognition can assist the deconstruction barriers to engage in "non-judgmental and unbiased communication with the client."[444] Lawyers must recognize any value differences between them and their client, and critically, not come from a place of "superiority" or diminish cultural differences, but instead, engage with them in "a respectful, diplomatic and professional manner."[445]

Trading Pan-Indigenizing for a Distinctions-Based Approach

When working with Indigenous peoples, lawyers must be versatile and flexible in their approaches, as there is not a single Indigenous perspective, experience, or culture.[446] Pan-Indigenizing occurs when it is "assume[d] that Indigenous cultures are sufficiently alike that knowledge of one culture can readily be applied to another."[447] Lawyers must appreciate the diversity among Indigenous cultures and communities, as there is "no one solution to implementing measures to promote safety and justice."[448]

A distinctions-based approach should instead be adopted, where the uniqueness of First Nations, Inuit, and Métis identities, histories, culture, geography, and experiences are recognized as distinct forces that shape their experiences today.[449] There is also tremendous diversity of experiences among these groups. For example, an Inuk woman living in Inuit Nunangat will be impacted by climate change differently than an Inuk woman living in Ottawa. Different resources are available to First Nations, Inuit, and Métis, and to the groups within them.[450]

Indigenous clients may also "hold values and perspectives that are fundamentally different" as "the operational norms of the Canadian legal system often conflict with the values, worldviews and legal traditions of many Indigenous communities."[451] Understanding what these values and goals are – which will differ for every client and case – is critical.

Self-Identification

Facilitate a comfortable environment which allows Indigenous peoples to feel safe to self-identify as Indigenous, where it is relevant to the legal matter.[452] Lawyers should not assume identity based on appearance.[453] Lawyers must explain *why* they are asking a client to self-identify.[454] If a lawyer has established a relationship of trust, the client may wish to share cultural information about themselves.[455] Lawyers must listen to how the client identifies, which may be different from how a lawyer expects them to identify. The way that the client identifies should be respected, and it should be the term(s) used when referring to their identity. The Canadian Bar Association's programming notes that "if you use the same word that any particular individual uses for themselves – you will be right every time."[456]

Self-identifying may be feared because of the harms that come along with it. This fear may be particularly heightened in criminal matters, as Indigenous peoples may be scared that a more severe sentence will be imposed.[457] Hesitancy to identify may also stem from a disconnection to culture.[458] Self-identification is particularly important in criminal matters (see "Criminal Law – Additional Considerations" in this section), where alternative options may be available for Indigenous peoples.

Lawyers should also ask their client the name that they prefer, as it may be different than the one ascribed to their government-issued identification.[459] It should also be noted that a disproportionate number of Indigenous peoples do not have photo identification.[460]

Understanding Intersectionality

There are "numerous intersections to an Indigenous person's experience,"[461] which will vary among Indigenous peoples:

> Intersectionality recognizes that a person's experience will be different than another's based on their particular interplay of race, ethnicity, Indigeneity, gender, class, sexuality, geography, age, and ability, as well as how these intersections encourage systems of oppression and, ultimately, target Indigenous women, girls, and 2SLGBTQQIA people.[462]

Intersectionality also "requires understanding how a history of colonization has shaped their experiences today"[463] which contextualizes the importance of understanding the historical moments such as those detailed above (see "Overview of Historic Moments"). Appreciating this background will assist lawyers to better understand their client and guard against biases ingrained in the legal system.[464] As a result, intersectionality may create unique experiences for a client.[465] For more information on adopting and applying intersectionality in law, see the Legal Education and Action Fund, "Bringing Intersectional Arguments Before the Courts."[466]

Canadian System as Adversarial

There can be stark differences between Canadian and Indigenous laws, values, and systems:

> The value systems of most Aboriginal societies hold in high esteem the interrelated principles of individual autonomy and freedom, consistent with the preservation of relationships and community harmony, respect for other human (and non-human) beings, reluctance to criticize or interfere with others, and avoidance of confrontation and adversarial positions.[467]

Canada's adversarial justice system may not always be familiar nor desirable to Indigenous peoples. Lawyers must take time to explain the procedures and realities of the legal system, and ensure that they obtain instructions:

> The adversarial nature of the legal system, and by extension the conventional role of lawyers, is often at odds with the values and legal traditions of many Indigenous communities who often employ more conciliatory approaches to conflict resolution. Many Indigenous peoples cannot understand the adversarial system, nor do they see the benefit of it. Lawyers, therefore, must be mindful of Indigenous clients' cultural values, explain the purpose of adversarial approaches where they are necessary, and obtain clients' consent to adopt such strategies to protect their clients' legal interests while also respecting their

cultural values and ensuring they do not further undermine Indigenous clients' experience with the legal system.[468]

Preparatory Steps

An understanding of the principles detailed above is essential to building cultural competency. When beginning this work, lawyers should take several steps to prepare for meeting and working with Indigenous peoples, such as:

- Identify who the client is and who is providing instructions;[469]
- Research and become familiar with the community you are working with;
- Inform your approach to legal practise through the culture of the client you are working with;
- Work *for* the client by ensuring that the desire for legal action stems from the individual, community, and/or nation;
- Find "non-threatening settings" for legal services and programs to take place;
- Consult the client and community to determine the best manner to provide services;
- Recognize and respect Indigenous protocols, which may add procedures to follow and may facilitate improved outcomes;
- Strategize ways to keep the costs of services to a minimum;
- Provide services in "the first language of local people," or alternatively secure translators or prepare information to be shared in "plain, accessible English";
- Consider "Indigenous world views and experiences" when providing examples;[470]
- Utilize local resources and options when possible;[471]
- Invite and compensate Elders for participation in services and programs;
- Consider how the law has impacted the client and appreciate that their experiences are influenced by the "structural issues that have shaped and constrained the lives" of Indigenous peoples;[472] and
- Maintain a grounding in Indigenous strength,[473] by emphasizing strengths rather than weakness,[474] and build on those strengths to advance the vision of the client.[475]

Identifying Conflicts

When working with a community, organization, or nation, lawyers should consider the "interaction" and potential conflict between governance systems.[476] For example, the

objectives of a band council government, which exist pursuant to the *Indian Act*, may be at odds with traditional governance bodies.[477]

Providing Services

Communicating through language that a client can fully understand is essential. Non-verbal communication also matters, as "some lawyers do more harm than good and have no self-awareness and an heir of superiority. This can do a profound disservice, as clients may not understand what the lawyer is saying."[478] Thoughtful action must be taken to guard against this.

Language Barriers and Interpretation Services

Language is a primary source of culture, and it helps to capture "a person's way of seeing and understanding the world."[479] There are over 70 Indigenous languages.[480] Lawyers in Canada often communicate to Indigenous peoples in their own mother tongue (typically English or French), which "does not guarantee that a common understanding is being formed" as "[o]ne can use a common language and yet easily misinterpret the meaning."[481] The use of interpretation services should be canvassed and determined if needed.[482] Lawyers must ensure that their client understands their options, rights, and the risks or potential consequences of the legal matter. Lawyers should also be sure to use words that facilitate understanding – which may mean using "the plainest language possible" and communicating in a manner that "take[s] into account special needs" that may exist.[483] It is important to check in with clients to ask whether they understand.[484] As a guiding principle, lawyers are advised to "slow down, talk less, listen more, and take their time…[f]ollowing this advice will help you and your client build rapport by reducing some of the differences in your speaking styles."[485]

Means of Communication

Many Indigenous peoples, communities, and nations are located in northern, rural, and/or remote areas. Lawyers must consider different means of communication to best "ensure a meaningful relationship of trust with effective advice and instructions."[486]

Communications should be regular and timely.[487] Depending on the client's location, meeting face-to-face may not always be possible (and may be expensive or onerous on one or multiple parties). Not all Indigenous peoples will have reliable internet or technology access.[488] Lawyers must be aware of these realities, talk to their client about the best methods of communication, and adapt accordingly.

Active Listening and Facilitating Communication

Listening and being attention to a client will provide insight to their priorities:

> Lawyers should listen attentively to the client's answers as they may provide an indication of their expectations and priorities. Lawyers should also pay close attention to non-verbal communication cues like the client's demeanor, tone of voice and body language, as these may suggest the client's level of comfort with the question or interview process generally. Lawyers should be attuned to how cultural factors, like a reluctance to interfere with others or to criticize, may influence a client's behaviour and the type of information a client is comfortable disclosing at this stage. Where clients may be reluctant to provide information, lawyers should remind them of their role as the client's advocate and reassure them that they are acting to protect the client's legal interests.[489]

Behaviours will also carry different meanings in different cultures. For example, Indigenous clients may prefer not to make eye contact;[490] may follow certain protocols for how they speak about their family, community, and those who have passed;[491] and may use signals for understanding and agreement.[492]

Lawyers must be willing to adopt "flexible approaches to meet client needs."[493] The Guide for Lawyers Working with Indigenous Peoples provides the following guidance for facilitating effective communication:

- Frame questions in an open and encouraging way;
- Be careful not to "dominate the discussion";
- Refrain from interrupting, to avoid the client from becoming withdrawn from the discussion;
- Allow "Indigenous clients to speak and provide information at their own pace"; and

- Remember that silence is okay and does not always need to be filled, as silence "may encourage Indigenous clients to feel more at ease and may foster a more productive exchange."[494]

Taking the Time Needed, Detailing Legal Options, and Explaining Process

Lawyers are encouraged to "proceed with patience, empathy and regard to the unique needs and circumstances of clients."[495] This includes taking the time that is needed to meet with the client, detail legal options, and to develop an appropriate legal strategy.[496] It is also important to take time to explain your role as a lawyer and each stage of the legal proceeding,[497] as well as to follow up on the progress of the matter.[498] This will help to proactively avoid causing harm through the legal system.[499] It will also help to ensure that Indigenous clients are "fully informed and comfortable with the progress" of their case.[500] Lawyers should make clear the limitations of their role, including by explaining the matters that you are qualified to work on, and whether those reflect the goals that the client wants to pursue.[501]

Adopting "client-centered lawyering" will facilitate Indigenous clients making "well-informed and autonomous legal decisions."[502] Aim to provide "as much information to foster transparency and therefore trust" with the client.[503] This ranges from answering all of a client's questions to explaining why a lawyer is performing a task or why a stage of the legal process occurs.[504] When developing and navigating legal options with a client, lawyers "should support Indigenous clients' understanding of the litigation process and the challenges associated with litigation fatigue."[505] This helps to provide clients with control over the process, and can help avoid clients leaving "afraid, hopeless, or traumatized."[506]

Taking the time needed and learning about the client's community or nation are ways to help build relationships and trust.[507] This can be advanced by lawyers taking time and care to explain:

- The nature of the solicitor-client relationship;

- The client's rights, level of participation, control over information disclosed and emphasized in a legal proceeding, and expectations (which should be managed accordingly);
- Professional obligations to the client (such as confidentiality, privilege, and obtaining instructions), legal options available where the client decides how to proceed, the lawyer's role as an advocate for the client, each stage of the proceeding, and how other legal actors come into play; and
- Fees and payment information.[508]

Lawyers must adapt to each client, and explain the particulars in the depth that is required to ensure the client's understanding.[509] Aboriginal Legal Services of Toronto observes that the "vast majority of Indigenous clients are represented by provincially or territorially funded legal counsel which…means tight caps on the amount of compensated time spent in preparation for a case" which can translate to a client having only very brief or few meetings with their lawyer.[510] This reality emphasizes the importance of lawyers advocating for heightened legal aid funding to ensure that cases can be properly developed and clients sufficiently prepared.[511] Lawyers are ultimately advised "not to take on Indigenous clients if they cannot or will not provide extra resources needed," remembering that "[n]o one is obliged to take on a client they cannot fully and appropriately represent."[512]

Legal processes are inherently complex. It is crucial that lawyers explain the process and legal charges or action to ensure that clients understand the actions of their lawyer. This helps to "[clarify] some of the mystery that your client faces in a complicated process."[513] This means "translat[ing] the language of the court" and breaking down legal jargon into words that the client understands – and confirming that they do understand what is happening.[514]

Additional Practises to Embrace Cultural Competency

Embracing cultural competency requires lawyers to facilitate a comfortable environment for Indigenous clients. Indigenous peoples and their encounters with the legal system should not be viewed in a vacuum, as "we cannot just look at [people] as their legal issue…people show up as their whole selves."[515] Indigenous peoples may not always be comfortable discussing all matters with lawyers, even those representing them.[516] Lawyers

should ask their client if they are satisfied with the way that they are communicating and managing the case, making adjustments as needed.[517] It can be helpful for lawyers to encourage their client to raise any concerns or discomfort as it arises.[518] When providing legal services, these practises also assist in maintaining cultural competency:

- Refrain from "making assumptions, drawing generalizations or ascribing objectives to the client";
- Consider the individual, community, or nation's values when crafting legal strategies;
- Ask questions and slow down;
- Seek assistance from other lawyers or experts who have experience with Indigenous clients, which may be particularly helpful to appreciate "the cultural nuances at play";
- Respect the client and community, including by acknowledging when you are a guest in the territory and appreciate that your conduct may be watched by locals.[519] There will also be "times when the community need[s] to act alone" which must be respected;[520]
- Involve and embrace Indigenous peoples in the determination of how services will be delivered[521] and how strategy will be developed;
- Consider the harm that can occur to a witness or community from the legal action;[522]
- Engage in regular meetings with the client or community; and
- Participate in ongoing education.[523]

Lawyers are also encouraged to become immersed in the community that they are working with.[524]

Criminal Law – Additional Considerations

The criminal justice system's engagement with Indigenous peoples has been widely criticized. This includes the over-incarceration of Indigenous women, the "fail[ure] to pursue perpetrators of violence" against Indigenous women, girls, and 2SLGBTQQIA, and "extending tremendous leniency to those who are caught."[525] Moreover, "while Canada now imprisons fewer and fewer young people, more and more of those young people are Indigenous."[526] The history and discrimination incurred by Indigenous peoples has led to bias in all aspects of the criminal justice system.[527] For many, the realities signify "the low value of their lives within the

Canadian nation state."[528] Jonathan Rudin, the Program Director of Aboriginal Legal Services, observes that several commissions and inquiries have all concluded that "the criminal justice system in Canada is failing Indigenous peoples."[529] This emphasizes the importance of cultural competency and knowing about the tools available when working with Indigenous peoples on criminal matters. Lawyers can "understand or ask – what happened to them that brought them to this point?"[530] This can be thought about not as what is "wrong" with Indigenous peoples, but rather, what has happened to them.[531]

Communication

The over-representation of Indigenous peoples in the criminal justice system is a consequence of colonialism as well as the "cross-cultural miscommunication and misunderstanding between those working within the colonial legal system and the Indigenous peoples who move through it."[532] As a starting point, lawyers must remember that Indigenous peoples have the rights to:

- Effective representation that is respectful of their background;
- Have what they are conveying to be understood; and
- Comprehend the content being shared about them in their case.[533]

Aboriginal Legal Services of Toronto has performed a survey of Indigenous peoples at different stages of criminal proceedings.[534] While a diverse pool was captured,[535] a common theme was identified:

> Indigenous peoples feeling that 'their side of the story was not heard, and that the process was confusing, which added to their families' distress. Many were upset to have no active role in their case, despite the severity of outcomes they were facing…their stories were largely unheard.[536]

These concerns may stem from a distrust of lawyers (including their own) and the legal system, and a feeling that they "aren't going to be believed."[537] It may also emerge from a feeling that limited money and resources results in their case being "built from police information or the file(s) that the Crown has prepared" emphasizing the importance of Indigenous clients

knowing "that their case is built taking into account their information" which requires lawyers representing them to ask what happened.[538]

Moreover, Indigenous peoples not living in urban centres may sound "accented" when speaking English to non-Indigenous peoples in urban centres, which can cause prejudice towards them.[539] The differences in "discourse style" can result in the "misinterpret[ation] of the other person's communicative intent."[540] This highlights the importance of "the legal community…accomodat[ing] and appreciate[ing] linguistic differences stemming from cultural affiliation."[541] Lawyers may potentially inform the court that their client is "operating within a set of conversational behaviours typical of their speech community" in order to "avoid potentially devastating assumptions" on the part of the legal system.[542]

Sensitive Topics to Canvass

Aboriginal Legal Services advises lawyers to sensitively canvass health concerns with clients when the time is right. This may be done by asking if they have any health issues that may impact their case.[543] To discuss this topic in further detail, a lawyer may first inquire on "household history…before asking more directly about the client's own conditions."[544] Many medical conditions may inform a client's "behaviour and attention to their case and hence may have some bearing on it," and/or may need to be addressed while in custody.[545] For example, this may include pregnancy or nursing, diabetes, mental health issues, injury, alcohol or drug withdrawal, or Fetal Alcohol Spectrum Disorder.[546] Knowing about a client's medical condition can also allow a lawyer to amend their language and inform examining lawyers of the condition to ensure that their language is also amended to facilitate understanding.[547]

Lawyers should also be aware of custody programs, which may be a substantial factor in a client's release, assist with some of the challenges that they incur, and connect them with programs aimed at "education or employment purposes, or mental health or addiction counselling."[548] Knowing about these programs is part of lawyers being able to assist their clients effectively.[549]

Gladue Reports

Lawyers should explain to Indigenous clients the existence of Glaude reports, their potential role in the case, and engage with the client to ensure that they understand this framework.[550] Defence counsel should canvass Gladue report options, but Crowns should also ask in case it has been overlooked.[551] The role of Gladue reports should be detailed to an Indigenous offender as soon as possible, as these reports can take significant time to be prepared by Gladue writers.[552]

In all cases, lawyers must "be cautious of opening old wounds of intergenerational and systemic traumas and the need for closure after traumatic or intensive questioning."[553] Before giving Gladue submissions to court, lawyers should "ask your client what they do not want discussed in open court" and instead "refer the court to the relevant pages" of the Gladue report where one is obtained.[554] Where there is no Gladue report, it is advised to "raise the issue with the Crown before submissions to see what arrangements can be established," and if that does not work, "you may have to raise the issue with the judge."[555]

As noted in "Part II: Review of Litigation," *Gladue* and *Ipeelee* offer helpful guidance on the role of Gladue reports in criminal law matters for Indigenous peoples:

> *Gladue* and *Ipeelee* both concerned themselves with interpreting section 718.2(e) of the Criminal Code…The section states that judges should look for alternatives to incarceration for all offenders, but with particular attention to the circumstances of Indigenous people. The Supreme Court in *Gladue* said judges had a role in over-representation and they should ensure that they had the information necessary to allow them to meaningfully address this provision of the code. In *Ipeelee* the Court decried the failure of the system to answer the call of *Gladue* and renewed its call for changes in the way Indigenous offenders were sentenced by the courts.[556]

However, Gladue reports are underused, as many Indigenous peoples who have encountered the criminal justice system have not had these reports completed for them.[557] Some clients may have concerns about these reports, as they "[shed] light on past negative experiences," triggering fear that it may prejudice their case.[558] As such, it is critical to explain the role of these reports as part of translating the legal process. Gladue reports aim to remedy the realities of

Indigenous peoples by meaningfully giving attention to their circumstances when their sentence is being decided.[559] These reports can help offset the bias of the criminal justice system:

> For the most part, sentencing in Canada is done very quickly, and no one in the court is provided with much information about the offender. Systemic biases that favour nonjail sentences for those with homes and jobs work against Indigenous offenders, who are generally at the lowest rungs of the socio-economic ladder and are more likely to be homeless or marginally housed than other offenders. The intergenerational impact of things like residential school are invisible to judges unless someone raises those concerns — and it is usually the Gladue report that serves that function. Judges and lawyers are not always familiar with noncustodial options, particularly those offered by Indigenous organizations. Gladue reports provide that information as well and thus offer real options for sentencing.[560]

When Indigenous offenders are provided Gladue reports, they often feel more engaged in the process.[561] These reports can allow judges to consider the unique circumstances of Indigenous offenders, and craft meaningful sentences for them.[562] The legal profession can also learn from Gladue reports – recognizing the bias of the criminal justice system and using these reports as a means for reform.[563] Gladue reports often share a different narrative on Indigenous peoples than the mainstream dialogue – and educate all actors about the experiences of Indigenous peoples.[564]

Funding for Gladue reports varies across Canada. In some jurisdictions, caseworkers are provided through legal aid to prepare these reports,[565] whereas other provinces lack funding for these reports:

> The differences among provinces and territories in the way they have responded to Indigenous justice concerns are quite stark and revealing. For example, in Ontario, the province and Legal Aid Ontario fund the production of…Gladue reports…The work of the Gladue writers is supported by Gladue caseworkers or aftercare workers, who work with offenders after they are sentenced. Approximately 1,000 Gladue reports are written annually in Ontario. Alberta also has a robust Gladue report process, although it is administered very differently. Gladue reports are also available in Nova Scotia, Prince Edward Island, Quebec and British Columbia, and will soon be in Yukon. On the other hand, there is no

> funding for Gladue reports in Saskatchewan and Manitoba, provinces where one assumes the need is certainly as great as in Ontario.[566]

Despite the differences in funding for Gladue reports in Canada, the "unavailability of Gladue reports does not relieve the lawyer of providing information to the court."[567] A court "will expect Gladue information and submissions from counsel" except for circumstances where clients waive this.[568]

Indigenous Courts

Also known as Gladue Courts, these courts implement section 718.2(e) of the *Criminal Code* and *Gladue* through a specialized court that accounts for the unique circumstances of Indigenous accused and offenders. The workers at these courts have specific knowledge of programs available, and often have Elders or knowledge keepers involved to assist.[569] The availability of these courts vary across Canada, and exist in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, Yukon, the Northwest Territories, and Nunavut. None exist in Quebec or Manitoba.[570] Indigenous courts are available to self-identifying Indigenous peoples, though they are not mandatory.[571]

Indigenous courts "make a real difference in how Indigenous people feel they are treated by the legal system."[572] These courts are "seen by Indigenous people as a place where they will be listened to, where their concerns and those of their communities will be heard and where, perhaps, they might actually get a sense of justice being done."[573] This signifies the importance of exploring these courts as an option in criminal matters.

Sentencing Circles

Sentencing circles are a form of restorative justice, which are being used more often in Canada. These circles determine an "appropriate sentence" for Indigenous offenders and typically involve the victim, offender, their families, an Elder, and other community members. Sometimes, these circles will provide a recommendation to the judge, who ultimately decides whether to approve or deny the proposal. There are principles for their use in criminal proceedings, and "courts have accepted that their use should develop incrementally over

time."[574] These circles are a contrast from the colonial-legal system, as their goal is to provide a "process and outcome that rebalance the relationships damaged by the offence." Usually, participation in these circles must be consensual, and these circles may not be suitable for all offences.[575]

Sentencing circles demonstrate the operation of Indigenous law and Canadian law simultaneously, as the principles of a sentencing circle are greatly informed by Indigenous laws, while discussing matters which are "those of contemporary western society."[576] The use of restorative justice in other aspects of Canada's justice system should also be explored.[577]

Transforming Legal Spaces

Cultural Humility

Humility is a sacred teaching for many Indigenous peoples. It is about "positioning oneself in a way that does not favour one's own importance over another's" and is the "condition of being teachable."[578] Myrna McCallum, a Métis-Cree lawyer, describes the importance of cultural humility, which is "the recognition that we can never be the expert in someone else's culture – you will always be the student – and learning never ends."[579] This often requires "getting comfortable with being uncomfortable," maintaining self-awareness, and "being humble when you [go] into a room."[580]

McCallum details that understanding what has happened to Indigenous peoples is important in the practise of law, and that if legal actors, including judges "state the obvious events that led Indigenous peoples to the courtrooms they find themselves in today, the whole system would have to change itself."[581] To illustrate this, McCallum offers Justice Langston's judgement in *R v Holmes,* 2018 ABQB 916, as a striking example of cultural humility:

> This is an Aboriginal offender. She is in a system which is imposed upon Aboriginal people, and I use that word deliberately. Our history, in relation to Aboriginal people, is one of deliberate destruction. We have systematically destroyed their culture, their way of living. We have done everything we can to take from them their sense of spirituality and identity. I'm not saying anything new. You can look in the volumes of reports and studies that have been done on

> Aboriginal people for decades. Those reports sit, gathering dust, in libraries and Parliament buildings.
>
> Aboriginal people are entitled to a sense of dignity when they come into our courts. They are entitled to a recognition of their history and their culture, and you cannot talk about those two things without a notional recognition of the spirituality…There is a fundamental disconnect between the Aboriginal view of justice and the system that I am part of.[582]

Courtrooms

When lawyers become comfortable with Indigenous protocols, they may "arrange for these cultural protocols in the courtroom."[583] When doing so, lawyers must ensure that they care for sacred items and medicines, and understand teachings and traditions.[584] This is an example of how lawyers can facilitate court proceedings in a manner that accommodates Indigenous peoples.[585] The following are some examples of protocols which may be helpful to adopt for Indigenous clients:

- Eagle Feather: Indigenous peoples may prefer to take an oath or affirmation while holding an Eagle Feather, which "assists participants…in the court process with courage and truth."[586] These are available in some provinces,[587] and where they are not, an Elder or Indigenous organization can usually assist lawyers in obtaining one to use for the proceeding.
- Medicines: Some Indigenous peoples may desire to carry and hold medicines while giving their oath or affirmation or testimony, such as sweetgrass, tobacco, cedar, or sage.[588]
- Smudging: An Indigenous client may want to start a court proceeding by personally smudging, smudging the courtroom, or starting the proceeding with a ceremony or prayer. In some cases, this may be performed prior to the opening of court. Smudging during a proceeding may be very important for some Indigenous clients.[589]
- Elders: Some Indigenous clients may want to have an Elder present throughout the proceedings. Moreover, if an Elder is testifying, they may need to have another person present pursuant to the customs of their nation.[590]
- Recognize different forms of evidence: In cases involving Indigenous peoples and issues, different forms of evidence such as "songs, stories, maps, Wampum Belts and other cultural artefacts" may be helpful.[591]

Inspiring Change of the Legal Profession

Lawyers can also take steps to transform the legal profession to become more culturally competent. Some ways that lawyers can do this include:

- Identify and develop "goals, policies and practises for cultural competence" for your workplace;
- Increase recognition and understanding of prejudice, racism, discrimination, and oppression;
- Engage with others and share knowledge;
- Create and sustain partnerships with Indigenous peoples;
- Engage in ongoing reflection on Indigenous issues and realities;[592] and
- Undertake a self-assessment for cultural competency, training on unconscious bias, and encourage others to do the same.[593]

Harm Reduction

In addition to maintaining cultural competency, lawyers should focus on "reducing the harms of colonization."[594] This is often about decolonizing – where work is "grounded in local Indigenous knowledges"[595] and involves building relationships based on "mutual respect and relationality."[596] It also includes adopting trauma-informed practises, which support "healing in a way that does no further harm."[597] All cases involving Indigenous peoples and issues must be addressed within the broader structural context.[598]

The Implications of Legal Action and Knowing When Not to Act

Harm reduction includes acknowledging that legal action may not always be the best option. Recognizing instances where this is the case is necessary to avoid harm, even if unintentional:

> Lawyers also need to know when not to act, and instead to know the referral resources, programs, and services that can assist. Lawyers and the law are not a complete answer to every situation or client, and we need to understand the concept of intersectionality (and the concerns of over-extending).[599]

This emphasizes the importance of explicitly asking and understanding what a client wants (as discussed above) which will not always be possible through legal processes.[600] It is critical that these conversations occur at the outset, and lawyers may share other resources and supports that are available.[601]

The review of the jurisprudence (see "Part II: Review of Litigation") highlights the tremendous opportunity to bring litigation in this area. It is important to be mindful of the implications that bringing a case may have on other Indigenous peoples, and the risk of creating a bad precedent, which may cause harm. Lawyers are encouraged to "exercise due care in handling these claims" as "the outcome of these matters can have broader implications for rights holders beyond the narrow interests of the lawyer's own clients."[602]

Four Fire Model for Harm Reduction

The Native Youth Sexual Health Network has developed a "four-fire model" for harm-reduction, which encompasses principles that are emphasized by various service agencies working with Indigenous peoples. This includes promoting cultural safety, sovereignty, reclamation, and self-determination.

Cultural Safety

Cultural safety is the progression of cultural competence and cultural humility, and it is about allowing all Indigenous peoples who interact with the legal system to feel safe and respected.[603] This means that engagements are "free of racism and discrimination" and they are "supported to draw strengths from their identity, culture and community."[604]

This involves recognizing the differences between the institution that a lawyer represents and an Indigenous client, and respecting these differences.[605] It is about nurturing safe spaces where all Indigenous peoples and gender identities are "accept[ed] and affirm[ed]," ensuring that the "diversity of Indigenous peoples to feel physically, mentally, emotionally, spiritually and culturally safe."[606] It requires genuinely working to end the continuation of trauma and violence towards Indigenous peoples, and it may also necessitate

the inclusion of Elders and knowledge keepers.[607] There is no "one size fits all" standard, and services must cater to the unique background, goals, and cultures of each client.[608] Lawyers are encouraged to respect and embrace local cultural knowledge and practises.

Practising cultural safety is about allowing Indigenous peoples to be their "whole selves" when accessing services.[609] This requires lawyers to understand trauma, ensure that clients are able to have supports available during sensitive discussions (such as by being accompanied by a relative), and that breaks are taken regularly during these discussions.[610]

Sovereignty

Sovereignty is promoted when lawyers work on a basis of non-interreference and respect that the client knows what is best for them at the time.[611] This is about "meeting people where they are at."[612] Lawyers must appreciate the case within the larger systemic context.[613]

Reclamation

Recognizing how colonialism sought to "distort[] many structures and ways of life within [Indigenous] communities" is part of promoting reclamation.[614] Lawyers must listen and reflect on Indigenous stories and experiences, as well as acknowledge "how you may be complicit in a system that supports colonial structures and practises."[615] When working with Indigenous peoples, it may also mean hearing the perspectives of a range of demographics, including youth and Elders.[616]

Self-Determination

Self-determination is about respecting the client's decision on how to move forward.[617] This involves "shift[ing] the balance of power and control to Indigenous communities in ways that support First Nations, Métis and Inuit self-determination,"[618] to restore it to "places where it's been systemically removed."[619] The actualization of self-determination will differ for each person and community.[620] It requires "honouring the agency" of the individual or community you are working with, and respecting their decisions on how to move forward. It also necessitates that "Indigenous communities, organizations, and people with lived or living

experience must be leading or involved at every step of the way and this involvement must be local."[621] This goes to the principle "nothing about us, without us." Any barriers or obstacles to service must be addressed and deconstructed – such as access to services, privacy in small communities, or use of services impacting another aspect of the client's life.[622] For more information, see "Part IV: Settler-Allyship – Self-Determination."

Trauma-Informed Lawyering

There are tremendous benefits to adopting trauma-informed approaches to lawyering.[623] It is essential that lawyers have the knowledge and tools required to serve Indigenous clients who have experienced trauma. This is particularly important in the context of Indigenous women, girls, and 2SLGBTQQIA, as gender identity can create targets for violence,[624] and may inform "individual and systemic responses to trauma."[625] Trauma informed lawyering requires thoughtful reflection and a "committ[ment] to remain open to learning new knowledge you didn't know you needed."[626] It is also about adopting "strategies to become sensitive, compassionate, and effective as a communicator *and* listener."[627] By understanding trauma and its generational impacts, lawyers become more "compassionate and collaborative," and provide improved services to Indigenous clients.[628]

Recognizing Trauma

Adopting trauma-informed practises requires lawyers to be able to recognize trauma. This can be challenging, as trauma may be invisible. It is critical that lawyers understand that trauma is not the fault of an individual, community, or nation. Under no circumstances should a party be blamed for the trauma they have endured, nor be made to believe that it is their own fault.[629] Lawyers should not make any assumptions about an Indigenous person or community's experiences, as trauma looks and feels different for everyone.[630]

Indigenous peoples often have an added layer of historical trauma as a result of colonization and its impacts.[631] There are numerous instances of historical trauma in Canada (for a list of some of them, see "Part I: Overview of Historic Moments"). Residential schools are a striking example of this type of trauma, which can be intergenerational:

> The effects of trauma tend to ripple outward from those affected by trauma to those who surround them…Because the impacts of residential schools are intergenerational, many Aboriginal people were born into families and communities that had been struggling with the effects of trauma for many years. The impact of intergenerational trauma is reinforced by racist attitudes that continue to permeate Canadian society.[632]

The children, families, and communities impacted by residential schools were "essentially denied access to resources that would have provided them with significant assistance" so that "[e]ach generation of returning children had fewer and fewer resources upon which to draw."[633] Intergenerational trauma carries profound effects for families, communities, and the generations that follow.[634] In addition to this, it is important for lawyers to recognize that Indigenous peoples carry tremendous strength and resilience, and that "[t]he cycle of trauma is being broken as the stories of trauma are being told and as the many strengths of Aboriginal cultures are being used to heal."[635]

Adopting Trauma-Informed Practises

Lawyers working with Indigenous peoples have the responsibility to not cause trauma or re-traumatize Indigenous peoples in the process of legal work. The risks of causing trauma through legal services can be alleviated by having "basic knowledge and by considering trauma-informed language and practises."[636] Lawyers must make a commitment to provide services in a way that accommodate the unique needs of those who have experienced trauma.[637] It is vital that lawyers understand how trauma impacts individuals, communities, and nations, and that its impacts can be widespread.[638]

Trauma-informed lawyering is about ensuring that everyone receives services that are sensitive to the experiences and impacts of trauma.[639] This necessitates practising in ways that promote safety, build trust, provide clients with choice and control, and facilitate collaboration.[640] The following practises promote trauma-informed lawyering:

Being Mindful of Space

- Foster a safe environment through body language, words spoken, and tone, and making adjustments to demonstrate openness and desire to build relationships;

- Be cognizant of the space you are occupying – which includes everything from projecting "importan[ce] and authority" to physically taking up space by spreading out personal possessions;
- Consider whether dress may project affluence and wealth (which may be interpreted as superiority) that could create a barrier with the client;
- Consider the control that you have over your schedule and avoid scheduling consecutive meetings to "build in flexibility so that people can show up on their own time";
- Recognize that difficult conversations will take time, and allow for silence. Hesitations during a discussion may be caused by "a traumatic moment, feel[ing] overwhelmed,…humiliation or shame" – as such, it is appropriate to wait for a response (which is preferred over coming back to the topic later); and
- Avoid re-directing the conversation to divert from emotional or traumatic expressions, as doing so can "amount to betrayal." Instead, adopt a human-centered approach by "show[ing] [the client] you are here for them and not leaving, that [they] can trust you, and that this is a safe space."[641]

Client-Centred Practises

- Put the client before others, including those who typically command power;[642]
- Ensure those whose needs are to be served are those *actually* being served;
- Provide services that are doing something *with* a person or group, rather than doing it *to* them;
- Ensure not to downplay experiences of trauma, and convey belief and validation in response to information shared;
- Conduct a practise that is non-judgmental, embracing compassion and respect;
- Craft questions and issues though language of empathy, instead of language of judgment;
- Offer flexible service delivery to promote client comfort and safety;
- Provide explanations of what is occurring, why, and how; and
- Follow up with client to provide updates and developments on the process. [643]

Intaking Information

- Foster a discussion that is focused and supportive when asking a client about their history;

- Ensure that the client is comfortable with the dialogue;
- Respond to the client in informed ways;
- Regularly check in throughout these discussions to ensure that they feel comfortable and safe;
- Give space for the client to inquire on any questions or concerns;
- Adapt service delivery in a meaningful way to respond to any concerns raised by the client;
- Actively listen when they are speaking to encourage the client to share information;
- Host meetings in a confidential and private space;
- Provide true options for the client; and
- Assist clients to "regulate difficult emotions" before jumping to next steps.[644]

Maintaining Self-Awareness Fosters Quality Services

- Extend understanding rather than pity in interactions;
- Recognize that any personal discomfort may signal to the client to withhold information;
- Acknowledge how you see trauma through your own beliefs and biases;
- Be attentive to triggers and responses of trauma, and adapt service delivery accordingly;
- Be careful not to mirror power dynamics that may have existed in the experiences of trauma; and
- Treat clients as equals and emphasize their strengths.[645]

Continuing Education on Trauma

Lawyers should obtain training on providing trauma-informed services and engage in continuing education on this topic. This includes recognizing how trauma may be incorporated in the organizational structure and culture of your employer, and working to correct this.[646]

Self-Care of Lawyers

Vicarious trauma can occur to service providers who are exposed to the trauma of others.[647] It is important for lawyers to recognize the signs of trauma in themselves, their

clients, and their staff.[648] Maintaining self-care is essential for the well-being of lawyers and service providers in this area, and to providing quality services. Recognizing the realities and signs of burnout, compassion fatigue, and vicarious trauma that can occur in this work will help to proactively prevent them.[649]

Part IV: Settler-Allyship

"Using what you have learned and some of the resources suggested, become a strong ally. Being a strong ally involves more than just tolerance; it means actively working to break down barriers and to support others in every relationship and encounter in which you participate"

– MMIWG2S Inquiry Call For Justice #15.4.

Allyship goes beyond practising as a culturally competent lawyer, and requires deeper knowledge and actions that take an active role confronting and transforming Indigenous realities.[650] This section reviews information and tools for working in meaningful partnerships with Indigenous peoples by detailing the foundational principles that can be embraced in allyship.

Becoming an Ally

Allyship is a life-long commitment that involves "disrupting oppressive spaces."[651] Every person will have their own journey to allyship, and Indigenous peoples and communities will also have different notions of allyship.[652] Allyship goes beyond neutrality towards Indigenous peoples, as it is about identifying "one's role within a collective struggle."[653] It requires building meaningful relationships with Indigenous peoples, where allies are invested and accountable.[654] It is also about actively decolonizing, such as by promoting the rights of Indigenous peoples and working to eradicate social and systemic inequalities that disadvantage Indigenous peoples.[655] Allyship is not a "self-appointed identity," as it requires individuals to "show…understanding through actions, relations, and recognition by the community."[656]

Intentions Matter

Dr. Lynn Gehl, an Algonquin Anishinaabe-kwe, shares the importance of intentions: "[d]o not act out of guilt, but rather a genuine interest in challenging the larger oppressive power structures."[657] This sincerity is needed to effectively learn about, and support Indigenous peoples and struggles.[658] Individuals and organizations should also reflect on their motivation to become an ally.[659] The motivation to work with Indigenous peoples should go beyond

keeping up with the trend of the day,[660] as allyship requires sustained commitment and actions. Work in this area is more than just good intentions and has to be grounded in an understanding of history and current realities. To do otherwise may "instead…perpetuate and deepen paternalistic colonial relationships, often causing more harm than good."[661] Amnesty details the importance of allyship for everyone:

> Being a genuine ally is our own responsibility as an individual. It is something only we have the power to find within ourselves. We do this not for praise, to tick boxes or in a token way, but to actually dismantle unjust systems. We're also not only doing it for the sake of those affected… These systems hinder our own ability to live in a free and equal society. It benefits us all to see those power imbalances gone.[662]

Learning

"Develop knowledge and read the Final Report. Listen to the truths shared, and acknowledge the burden of these human and Indigenous rights violations, and how they impact Indigenous women, girls, and 2SLGBTQQIA people today" – MMIWG2S Inquiry Call For Justice #15.3.

Learning is foundational to allyship,[663] as it is an integral aspect of building relationships and working with Indigenous peoples.[664] In addition to the practises discussed in "Part III: Recommended Approaches," learn about the beauty of Indigenous peoples, languages, cultures, and worldviews. Learn about the systems of oppression and assimilation, and the realities that continue to challenge Indigenous peoples.[665] Learning should also include the resiliency of Indigenous peoples, and the ways that Indigenous peoples continue to survive and thrive across the country and around the world.[666] This means understanding the history and recognizing that despite attempts to "take down" Indigenous peoples, they are rising.[667]

Allies should take initiative and responsibility for their learning, rather than expect Indigenous peoples to teach them.[668] While allies may require some guidance throughout their allyship journey, there are an enormous amount of resources that are readily available for prospective allies to learn from.[669] If community members "[offer] to educate others without being asked, be sure to take them up on that and listen to their stories."[670] It is important to remember that Indigenous peoples are the experts of their own experiences,[671] and to believe,

respect, and validate feelings and lived experiences that are shared.[672] Experiences should not be minimized or justified.[673] Moreover, just as other experts are paid for sharing their expertise, when Indigenous peoples are asked for their knowledge, it is critical that they be compensated appropriately.

Lawyers should be mindful that an Indigenous person does not speak nor represent all Indigenous peoples,[674] as great diversity exists among Indigenous peoples, communities, and nations. It is important to "resist the urge to assume or judge based on a single story" as "there is no single experience."[675] At times, allyship will necessitate unlearning what has been taught or understood.[676] It is often easier to maintain status quo than to unlearn and re-learn the truths of Canada's history and Indigenous realities, which can be an uncomfortable process.[677] It is important for allies to try their best and to not be scared to make mistakes, which are all part of the learning process.[678]

Listening

A starting point is provided in "Part III: Active Listening and Facilitating Communication," but beyond those techniques for fostering a better lawyer-client relationship, allies have a responsibility to listen constantly.[679] This includes listening to Indigenous voices and reflecting on the knowledge and the teachings shared all around you. This means creating space for Indigenous peoples, as well as appreciating the wisdom of Indigenous voices. It's about "listen[ing] to Indigenous people's stories, needs, and wants."[680] Allies should "observe and listen with an open mind and an open heart."[681] This means refraining from judgment and knowing that listening is part of the learning journey.[682]

Listening must continue "even when the things one hears and learns provokes unsettling realizations" about the history and treatment of Indigenous peoples in Canada, and "how the Canadian system purposely disadvantages" Indigenous peoples.[683] This can mean "taking a step back to create space for others, to understand different perspectives."[684] Allies can ask questions, but should listen before doing so.[685] Productive legal partnerships will require allies to embrace empathy, compassion, and sincerity.[686]

Understand the History

Learning about the history of colonialism, and the ways that colonialism continues to manifest today, is an integral step to becoming an ally. Canada's history is often told from a perspective that excludes Indigenous voices, realities, and accounts. Indigenous and non-Indigenous peoples regularly have "very different and conflicting views of history, which has affected our relationship in very negative ways."[687] This includes:

> Canadians adopted an official version of history that featured "discoverers" and "explorers" of a land already well known to the productive, cultured, spiritual, intelligent civilizations whose lands and waters were being "discovered." It is as though nothing happened in North America until Europeans arrived. Accepting Canada's [I]ndigenous reality means acknowledging that [I]ndigenous peoples had strong networks of trade, knowledge of the land and waters, and that as peoples they were free and self-sustaining. We all must realize that today's dependency is the result of a hundred years of near total government control.[688]

Allies should strive to learn about Canada's history, including as it is told by Indigenous voices. Allies must learn about "the entanglement of Canadians in colonial violence, the removal of Indigenous peoples from ancestral homelands and the perpetuation of cultural genocide."[689] Colonialism facilitated the "loss of family and community ties and cohesion, and a sense of cultural identity among many Indigenous Peoples as a result of physical, cultural, social and political displacement."[690]

Through learning about history in this way, allies can "[c]reate knowledge systems that centre the true, often untold, history that we all share."[691] Allies can then mobilize the use of this information, by "embed[ding] this knowledge within [their] circle of family, friends and workplaces"[692] to help educate others.

Understand the Importance of Land

Indigenous peoples, communities, and nations often have a sacred relationship with land. This varies greatly from Canadian viewpoints:

> Whereas the Western/Canadian relationship with land is hierarchical, with humans dominating and controlling the land and exploiting it for their benefit,

> Aboriginal peoples and cultures' relationship with land is horizontal, in which respect and reciprocity are emphasized.[693]

Knowing the Land You Are On

Land is an important aspect of allyship, as it is "at the root of our conflicts."[694] Allies should know the history of the land that they live, work, and visit.[695] Some basic information includes knowing if the land you are on is treaty territory (and whether it is a numbered treaty, a peace and friendship treaty, or a modern treaty); Indigenous homelands (and whether it is Métis homeland, Inuit Nunangat, or the homeland of another nation); unceded territory; or other territory. Learn about the origins of the names of the city or town that you live and work, as many originate from Indigenous languages.[696] Allies can also learn about the residential school and day school that are closest to their home.[697]

Acknowledging the Land

Land acknowledgements are a way to recognize and show gratitude to the land you are on, and doing so is part of "combat[ing] the continued erasure…of Indigenous Peoples from their lands."[698] These acknowledgements must go beyond reading a pre-prepared script detailing the history of the land – which often lose their significance.[699] Instead, these acknowledgements should come "from a personal place."[700] Offering a thoughtful land acknowledgement may include the following:

- Learn about and appreciate the history, people, languages, and land of the territory;[701]
- Recognize those who have cared for the land;[702]
- Offer gratitude to the land;[703]
- Personalize the acknowledgement by recognizing how you and your ancestors fit into the history of the territory;[704] and
- Bring awareness to the deeper meaning and importance of these acknowledgements.[705]

Learning about the history of the land of the peoples, communities, and nations that you are working with will also help to inform a better understanding of their perspectives and challenges.

Awareness of Experiences of Trauma

Allies should be "sensitive to the lived experiences and intergenerational trauma" of Indigenous peoples, especially those they are working with.[706] Take initiative to learn about intergenerational trauma:

> It is not the responsibility of the community to educate people on the effects of intergenerational trauma, instead, allies must ask questions and know that without understanding the history, we cannot be effective advocates.[707]

The MMIWG2S Inquiry details the realities of individual and collective trauma often experienced by Indigenous peoples:

> Many Indigenous people hold a collective trauma because of the many losses inflicted through colonization. In addition, individual trauma carried from generations past and into generations of the future, was a catalyst for violence in many experiences shared. In describing their encounters with violence, almost all of the witnesses describe a surrounding context marked by multigenerational and intergenerational trauma from multiple forms of colonial violence."[708]

Recognizing

Indigenous Realities

Allyship begins with recognizing that the challenging realities confronting Indigenous peoples are not the fault of Indigenous peoples. Rather, these realities have been shaped by colonialism, racism, and sexism, which continue in Canada, and influence the experiences of Indigenous peoples. The continuation of these realities are Canadian issues – not Indigenous ones. Allies must also become "fully grounded in their own ancestral history and culture."[709] Non-Indigenous peoples are called to the difficult task of "excavating the deep conditioning…wherein Indigenous peoples may be rendered invisible."[710] By doing so through

acts of allyship, non-Indigenous peoples can play an integral role in creating an equitable society, where all people can live freely and fully.

Ignorance and Oppression

Stereotypes about Indigenous peoples prevail in Canada and can inform policies that exclude Indigenous peoples, values, and laws.[711] An individual or group must be aware of their ignorance, otherwise they risk furthering harm and oppression.[712] Oppression manifests in several ways, and is "ingrained in the fabric of the Canadian systems and institutions," including as "inequitable systems that disadvantage Aboriginal people while privileging the settler population."[713] Allyship is about understanding these "larger oppressive power structures that serve to hold certain groups and people down."[714] It may be helpful for allies to reflect on their personal experiences with power structures "to ensure that non-Indigenous allies are not perpetuating the oppression."[715]

Privilege

Understanding privilege is about recognizing that experiences and successes are "not determined solely by one's hard work and dedication" but rather, are "largely dependent upon [one's] positionality within the systems."[716] Privilege often derives from components of our identity that are out of our control, such as race, gender identity and expression, sexual orientation, physical ability, and socio-economic positions.[717] Identities may intersect privilege or oppression.[718] Privilege is about a person and group "benefit[ing] from unearned advantages that increase their power relative to others, at the expense of others."[719]

Allies must be conscious of their privilege, as such recognition will "also serve to challenge larger oppressive power structures." [720] Allies are able to "transfer the benefits of [their] privilege to those who have less" privilege, which can be used to "provide support and build capacity," and has the ability of dismantling systems that reinforce oppression. [721]

Indigenous Cultures and Spirituality

Allyship calls non-Indigenous peoples to "appreciate, value, and participate in Indigenous culture."[722] This is about "being in relationship with Indigenous peoples, entering Indigenous spaces, and participating in…teachings and on-land activities."[723] There are numerous resources and public events which offer these opportunities to non-Indigenous peoples and allies.[724]

Allies may also be invited to participate in community ceremonies. Whether the event is private or open to the public, allies should recognize these events as sacred.[725] Be mindful of the protocol of the community engaged with, and be respectful.[726] If you are unsure of your role, it is appropriate to ask permission or seek further guidance, without being disruptive.[727] It is important to extend gratitude for teachings offered and for welcoming you to the space.

Allies may be gifted medicines, sacred items, or teachings by Indigenous Elders and knowledge keepers. If you want to share your experiences or teachings with others, it is appropriate to ask for permission and the protocol for doing so.

Indigenous Laws

Learn about Indigenous laws, and the ways that these laws have influenced the development of Canadian laws.[728] Allies should also recognize the value of Indigenous laws:

> Despite centuries of dispossession, Indigenous legal traditions are vibrant sources of knowledge. They pragmatically assist in finding answers to complex and pressing legal questions and contain significant sources of authority. They are precedential, that is, standard setting, and generate criteria for making sound judgments. Indigenous law helps produce binding measurements through persuasion and compulsion, is attentive to ethical redress and remedial actions when harm has occurred, and facilitates genuine gift giving and bequests. Indigenous laws can be constitutional. They can support the creation of internally binding obligations. Indigenous peoples' own legal systems also undergird the creation of intersocietal commitments with external bodies. Evidence of Indigenous laws' force is found in various agreements related to consultation, accommodation, contractual matters, and treaties. Indigenous

> laws are also a key ingredient in protecting group and individual privileges and freedoms.[729]

Indigenous oral traditions also continue, which can be another source of rights and laws.[730] More details on embracing Indigenous laws can be found under the "Revitalizing and Recognizing Indigenous Laws" section below.

The Importance of Decolonizing

"Decolonize by learning the true history of Canada and Indigenous history in your local area. Learn about and celebrate Indigenous Peoples' history, cultures, pride, and diversity, acknowledging the land you live on and its importance to local Indigenous communities, both historically and today"

– MMIWG2S Inquiry Call For Justice #15.2.

While colonialism is often constructed as an experience of the past, the colonial period is not over.[731] Colonialism "continues to disrupt Indigenous relationships with their homelands, cultures and communities."[732] In Canada, settler colonialism continues as a "structure in which all contemporary institutions are based, as opposed to an event beginning and ending in the past."[733] Mainstream messaging often facilitates colonial narratives,[734] including in education curriculums, where these narratives are "rigorously cultivated."[735] The need to respond to this reality reflects Call to Action #28 from the TRC, which called upon law schools to mandate a course on Indigenous peoples, laws, and history.[736] Actions to decolonize can take shape in many ways:

> [D]ecolonization begins at the level of the individual, in which people gain an awareness of how their actions and lives benefit or (directly or indirectly) contribute to the perpetuation of colonial relations and the disenfranchisement of Indigenous Peoples. Decolonization is about gaining such awareness and shifting one's behaviour to challenge such relations."[737]

Decolonizing actions also include centring Indigenous "ways of being, knowing, and doing."[738]

Transforming

In addition to understanding the concepts discussed above, allies ultimately carry responsibility to act.[739] This facilitates accountability to Indigenous peoples, communities, and nations by supporting Indigenous liberation and sovereignty.[740]

Building Meaningful Relationships

"Create time and space for relationships based on respect as human beings, supporting and embracing differences with kindness, love, and respect. Learn about Indigenous principles of relationship specific to those nations or communities in your local area and work, and put them into practice in all of your relationships with Indigenous Peoples" – MMIWG2S Inquiry Call For Justice #15.7.

Relationships are central for many Indigenous peoples.[741] As the MMIWG2S Inquiry explains, "[c]entring relationships is consistent with First Nations, Métis, and Inuit ways of knowing and being. In this world view, we are each our own person, but we are also defined by our relationships to others."[742] Relationships consistently provide "opportunities for learning, understanding, and transformation."[743] The dynamics of relationships may vary,[744] but all relationships must be genuine.[745] As such, relationships are the key to allyship, with no "particular formula."[746] Allies must build relationships with Indigenous peoples "based on mutual consent and trust."[747] Building relationships is "work of the heart"[748] and spirit.[749] Relationships will reveal the "uniqueness and respectfully acknowledge true identities" of the Indigenous peoples being partnered with.[750] Engaging with Indigenous stakeholders is about building these long-term relationships, rather than being a one-off.[751] This requires allies to act in solidarity with Indigenous peoples and nations, as "allies walk beside, not in front" of Indigenous peoples.[752] Relationships foster "accountability and responsibility" which are "fundamental to meaningful coexistence."[753]

Allies must respect the individuals, communities, and nations that they work with, and adopt the appropriate protocol, which vary by community. Indigenous peoples and nations often value relationships of reciprocity, meaning that if you take something, you should be sure

to give something in return. It is important that allies are "aware of the resources [they are] taking away from communities through [their] presence" and to "[e]nsure [they have] given back to the community more than [they have] taken away."[754]

The MMIWG2S Inquiry explains that there are "crucial disconnections between Indigenous people and justice systems meant to protect them,"[755] where changes "can only hope to restore justice for Indigenous women, girls, 2SLGBTQQIA people, and their families, if those changes are accompanied by building better relationships."[756]

Education

"Confront and speak out against racism, sexism, ignorance, homophobia, and transphobia, and teach or encourage others to do the same, wherever it occurs: in your home, in your workplace, or in social settings" – MMIWG2S Inquiry Call For Justice #15.5.

Education is a continuous process.[757] Allies carry a responsibility to learn and share their knowledge with others, which is part of "disrupting oppressive spaces by educating others on the realities and histories" of Indigenous peoples.[758] Embracing education can include the following actions:

- Keep up to date with new information and realities as they unfold;
- Plant "seeds of truth in conversations with others";[759]
- Teach non-Indigenous peoples about what you have learned, including the realities of oppression, privilege, and racism in Canada;[760]
- Share your journey of allyship with others;[761] and
- Share your knowledge with youth.[762]

Actions

"Denounce and speak out against violence against Indigenous women, girls, and 2SLGBTQQIA people". – MMIWG2S Inquiry Call For Justice #15.1.

Allies should not be silent when ignorance unfolds around them, and instead are called to speak up to confront it,[763] even when it is uncomfortable to do so.[764] This includes

confronting ignorance and micro-aggressions as they unfold.[765] Allies are also "advocate[s] within their own group/s to tackle ignorance and getting more to become allies."[766] Allyship requires solidarity, which is "only meaningful if it is substantive, and not merely performative."[767]

Again, allies should be aware of the time, space, and resources that they are taking in the movement – being careful to not take away from Indigenous peoples.[768] Allies must understand the existence of lateral violence in oppressed groups, and "ensure that their actions do not encourage it."[769]

Creating Productive Partnerships

As noted, allies work collaboratively with Indigenous peoples, communities, organizations, and nations, or under their leadership.[770] Working together is at the core of allyship:

> The role of an ally is to listen to those stories, to actively support the process of decolonization. In order for this process to be effective, it must be done in conjunction with the Indigenous communities who have lived the experience firsthand. Part of being an ally means working with communities, being responsive to what they express their needs are, the type of process they are comfortable with and being willing to take a step back when it is more appropriate to do so.[771]

It is important for lawyers to "explore opportunities to partner and build mutually respectful relationships with individuals, organizations and institutions."[772]

Examples of Partnerships for Indigenous Rights Through Colonial Legal Structures

Partnerships with Indigenous peoples that advocate for rights through colonial legal structures are developing. The Peter A. Allard School of Law at the University of British Columbia hosts an Indigenous Community Legal Clinic, which provides legal services free of charge to Indigenous peoples by students at the law school.[773] Similarly, a partnership to advance the rights of Indigenous peoples has recently formed between Pro Bono Students' Canada, the Ontario Federation of Indigenous Friendship Centres, and McCarthy Tétrault LLP

for a pilot Indigenous Human Rights Clinic to provide a forum for Indigenous peoples to launch complaints under human rights codes.

There are also partnerships to heighten understanding in the legal profession of Indigenous peoples and realities. In Manitoba, a new program has launched for lawyers and judges on how Indigenous history and culture affect the criminal justice system. The program aims to fill the knowledge gaps concerning the 75% Indigenous incarceration rate in Manitoba provincial jails.[774]

Moreover, West Coast Environmental Law is supported by the Indigenous Law Research Unit at the Faculty of Law of the University of Victoria and Indigenous nations, to maintain a program entitled RELAW: Revitalizing Indigenous Law for Land, Air and Water. The partnership develops written law grounded in Indigenous laws and community, and crafts plans for implementing Indigenous laws.[775]

Principles for Partnerships

The transformative potential of partnership is endless. Creating productive partnerships with Indigenous peoples, communities, and nations will require allies to undertake at least the following actions:

- Embrace the steps detailed in this discussion brief before entering into partnership;
- Maintain the "spirit of partnership and mutual respect";[776]
- Obtain "a mutual understanding of individual resources, roles, and responsibilities" among all participants;[777]
- Identify "resources people bring to the table," [778] using the gifts of all those involved; and
- Recognize the value of Indigenous knowledge, and embrace it in the work.

When creating partnerships, it is important to recognize that transforming Indigenous realities are investments in a better future for everyone:

> The Canadian "mainstream" needs to see these changes not as acts of charity, but rather as acts in their own self-interest. A respectful, mutually beneficial

> relationship that involves a balanced sharing of resources will make it possible for Canada to benefit from [I]ndigenous knowledge about environmental stewardship, traditional healing and conflict resolution. Canada will be able to more fully realize its own potential when others around us find it in their interest to create such a space.[779]

Advocacy

"Help hold all governments accountable to act on the Calls for Justice, and to implement them according to the important principles we set out" – MMIWG2S Inquiry Call For Justice #15.8.

Allies play an important role in advocating to their communities, legal systems, and governments. Allies have the ability to encourage and facilitate Indigenous representation, illuminate Indigenous voices,[780] and to work with Indigenous peoples in advocacy efforts. Advocates should canvass the work currently being performed and identify ways to provide support.[781] When engaging in advocacy work, allies may consider:

- Who is not in the room?
- Whose voices are not represented?
- How will those missing voices be illuminated?[782]

Allies must ensure that the needs of the "most oppressed…are served in the effort or movement that they are supporting."[783] This includes women, children and youth, elderly, persons with disabilities,[784] gender diverse, and two-spirit. Where any of these groups are ignored, caution should be exercised, as it may signal a "process that is inadequate and thus merely serving to fortify the larger power structures of oppression. Alternatively, their good intentions may not serve those who need the effort most. Rather, they may be making the oppression worse."[785] As such, allies should strive to be inclusive in their work by fostering an environment where everyone is respected and embraced.[786]

Illuminating Indigenous Voices and Solutions

Being an ally is "about risking your own voice to elevate others."[787] This includes challenging ignorance, stereotypes, and racism around you, and correcting misinformation.[788] Allies should not speak in place of Indigenous peoples, but instead amplify Indigenous voices,

"shar[ing]…their words without alteration."[789] The MMIWG2S Final Report details the importance of respecting the "agency and expertise held by Indigenous women, girls, and 2SLGBRQQIA people."[790] This is critical, as they "have the solutions to ending violence in their lives, at both an individual and in many cases, at a community level."[791] Despite this tremendous knowledge, this demographic has often been denied the ability to act on their expertise and solutions, emphasizing the importance of partnerships where "agencies, institutions, and governments must be willing to work with those who hold the most expertise – those impacted by violence – and to recognize the solutions they bring to the table."[792]

Framing Issues

When working to address issues confronting Indigenous peoples, allies may consider:

- How identities are constructed, and how non-Indigenous and Indigenous peoples are positioned;
- How histories are portrayed and used;
- Whether "settler colonial positionalities [are] challenged," and if so, how?
- The dialogue used to craft arguments and to identify and shape issues.[793]

Allies may also consider whether the narrative that is being advanced truly challenges settler positions.[794]

Solidarity

It is essential for allies to work in solidarity with Indigenous peoples.[795] Allies must understand their role in the context of those they are working with, and are encouraged to identify the scope of their role with Indigenous partners. The boundaries of an ally's role can be achieved through "community consensus, or understanding."[796] Otherwise, an ally's work "will be undermined due to a lack of consultation and agreement,"[797] will carry less legitimacy, and may cause harm. The involvement of allies should never leave an Indigenous person or community worse off.[798]

Advocacy on behalf of Indigenous peoples may be effective where one's privilege and platforms can be used to gain greater traction to advance Indigenous issues.[799] It may be

appropriate for allies to take leadership roles in some contexts,[800] through the determination and consent of the group that they are working with or representing.[801] When this is the case, the work should still be performed in solidarity and partnership with Indigenous peoples, and under Indigenous guidance and leadership, where such work reflects what they are seeking.[802]

Allies should embrace and follow the leadership of Indigenous peoples, organizations, communities, and nations – including what Indigenous peoples have determined as the path forward.[803] This avoids adopting a "saviour complex," where an outsider believes they are helping Indigenous peoples by thinking they know what is best for them, and then acting on it.[804] Such actions must be avoided, as they undermine the self-determination of Indigenous peoples. Indigenous-led approaches are critical in work focused on Indigenous issues, which embraces Indigenous agency.[805]

When joining a movement, it is recommended that allies confirm that the work that they are supporting is found to be effective by those it aims to serve:

> Ensure that they are supporting a leader's, group of leaders', or a movement's efforts that serve the needs of the people. For example, do the community people find this leader's efforts useful, interesting, engaging, and thus empowering? If not, allies should consider whether the efforts are moving in a questionable or possibly an inadequate direction, or worse yet that their efforts are being manipulated and thus undermined, possibly for economic and political reasons.[806]

This means working with Indigenous leaders who are embraced by those they represent. In recent years, there has been an influx of Indigenous groups who are not accepted by the nations that they identify with.[807] For any conflict within a community, allies should be cautious not to intrude unless they are specifically invited to assist.[808] When this happens, allies must remember their role, and be cautious not to take over.[809]

Self-Determination

"Protect, support, and promote the safety of women, girls, and 2SLGBTQQIA people by acknowledging and respecting the value of every person and every community, as well as the right of Indigenous women, girls, and 2SLGBTQQIA people to generate their own, self-determined solutions" – MMIWG2S Inquiry Call For Justice #15.6.

Colonialism undermined Indigenous peoples' right to self-determination.[810] Self-determination is about recognizing that Indigenous women, girls, and 2SLGBTQQIA people should:

> be able to actively construct solutions that work for them, according to their own experiences. Self-determination also means fundamentally reconsidering how to frame relationships that embrace the full enjoyment of rights across all aspects of community and individual life, and within First Nations, Métis, and Inuit and settler governments.[811]

Self-determination requires re-defining realities that constrain Indigenous peoples and envisioning the future possibilities.[812] This is linked to reconciliation, which goes beyond simply "integrating Indigenous peoples to mainstream" but is about "enhancing a harmonious and cooperative relationship."[813] Embracing Indigenous peoples, representation, knowledge, and laws will help to advance self-determination, where Indigenous peoples "regain control of and determine their own futures."[814] Achieving self-determination may also require an examination of Canadian's legal and political framework,[815] where "Indigenous peoples are entitled to determine their relationship with the state and be involved in setting up the state's governing structure."[816] Self-determination is connected to decolonization, whereby "colonial control and power over Indigenous peoples is removed and Indigenous peoples' sovereignty is acknowledged."[817] Self-determination has not yet been attained in Canada, but is a collective right of Indigenous peoples. [818] This right is captured by the UNDRIP, which provides a critical framework for actualization reconciliation, as it "clarifie[s] the application of existing human rights law to Indigenous peoples."[819] The following section explores some of the ways that self-determination can be advanced.

Revitalizing and Recognizing Indigenous Laws

"Indigenous legal traditions were the first laws of the land in the area that is now known as Canada, and they continue to form part of the legal fabric of Canada"

– Guide for Lawyers Working With Indigenous Peoples.

Self-determination includes "recognition and revitalization of Indigenous peoples' own political and legal institutions."[820] This is about Indigenous peoples maintaining their own institutions, as well as Canadian institutions "mak[ing] space for Indigenous institutions."[821] Understanding issues impacting Indigenous peoples means that non-Indigenous legal actors must acquire "knowledge of Indigenous ways of knowing, Indigenous Legal Orders, values and interests."[822] Relationships are the foundation of Indigenous law:

> Indigenous laws include principles that come from Indigenous ways of understanding the world. Relationships are the foundation of Indigenous law, which includes rights and responsibilities among people and between people and the world around us. Indigenous laws are linked to inherent rights, in that they are not Western-based or state-centric. This means they can't lawfully be taken away by provinces and territories, by the government of Canada, or by the United Nations – inherent Indigenous law belongs to all Indigenous communities and Nations, and should be respected by all governments including settler and Indigenous governments…Indigenous rights are most often relational and reciprocal. This means that they tell us what people should be able to expect from others. Indigenous rights are also rooted in certain underlying values or principles within Indigenous laws, mainly respect, reciprocity, and interconnectedness.[823]

At the MMIWG2S Inquiry, Dawnis Kennedy flagged the importance of All Our Relations:

> It is those who consider themselves the most powerful in modern society that also need our law, our Onaakonigewin, our knowledge about life and how to live a good life in harmony with each other and with all of our relations, not just humanity, with all our relatives: the plants, the animals, the stars, the birds, the fish, the winds, the spirit; our mother, the earth; our grandmother, the moon; our grandfather, the sun; all of our relatives in the universe. <u>That is what our law teaches us, how to live life in relationship and how to ensure the continuation of life into the future seven generations ahead</u>.[824]

Indigenous laws exist in conjunction with civil law and common law in Canada.[825] The body of Indigenous laws is tremendous – as each community and nation often adheres to their own legal traditions. Many of these laws originate from "the political, economic, spiritual and social values expressed through the teachings and behaviour of knowledgeable and respected individuals and Elders," and contain valuable stories and traditions.[826] Indigenous laws also "guide interactions, provide rights and obligations, and mediate relationships."[827] Allies must recognize Indigenous legal traditions as legal systems that are legitimate, which are revitalized as determined by Indigenous peoples.[828] The recognition of Indigenous laws and legal institutions is an integral part of actualizing self-determination:

> Indigenous legal traditions and the corresponding institutions… have not been fully recognized as authoritative and relevant sources of law in Canada. The government and the courts must acknowledge explicitly the role of Indigenous legal traditions within Canada to fulfill Indigenous peoples' right to self-determination and complete Canada's legal system. Indigenous legal traditions are the basis for Indigenous peoples' jurisdiction. Indigenous peoples must maintain authority to define and apply their own legal traditions as part of the broader Canadian legal system. Allowing Indigenous legal traditions to continue developing is important for realizing self-determination as it supports and acknowledges Indigenous peoples' continued existence as distinct people within Canada.[829]

There have been widespread calls to explore and recognize Indigenous laws, legal orders, and systems, and the guidance that they offer.[830] John Borrows, Canada's Research Chair in Indigenous Law, explains that the judiciary plays an important role in using Indigenous laws "often and more explicitly."[831] Indigenous and non-Indigenous legal sources can be used simultaneously.[832] It is also important for judges to have access to these legal institutions and texts.[833] Indigenous laws are full of wisdom, and drawing on them will make Canadian law more equitable.[834]

The recognition of Indigenous laws can be advanced through submissions to court that include Indigenous legal principles, heightening the representation of Indigenous judges, and the formation of Indigenous courts and other methods of dispute resolution to resolve

conflicts. The operation of Indigenous law and Canadian law simultaneously is exemplified in criminal law – see "Sentencing Circles" in that section.

Inclusion in Body Politic

Self-determination includes "a right to be included within the Canadian body politic."[835] This is about Indigenous peoples "determining their relationship with the state, and their representation" within it.[836] Indigenous peoples are under-represented in Canadian governments and courts across the country, where the recognition of Indigenous laws has also been limited.[837] Indigenous representation is needed in all aspects of the legal system to transform the culture and norms within it.[838] When Indigenous peoples enter into legal spaces, they often incur prejudice, racism, and exclusion.[839] Allies can help to confront this and build bridges to improve this reality.

There are widespread calls for an appointment of an Indigenous judge to the Supreme Court of Canada, with Senator Murray Sinclair, the Chief Commissioner of the TRC noting that this would be the "greatest act of reconciliation" in Canada.[840] An appointment of an Indigenous judge to the country's top court will help "to recognize Indigenous legal traditions as a founding legal system in Canada."[841] The lack of Indigenous judges and their absence from the country's highest court "undermine[s]" Indigenous peoples' right to self-determination.[842]

Everyone has a role to play in heightening the representation of Indigenous peoples in the legal system, and creating a culture where the legal profession and legal institutions respect and embrace Indigenous peoples and knowledge. These actions can "ensure Indigenous peoples can effectively participate in decisions that affect their lives, including at the local, national and international levels."[843] At the individual level, workplaces often reflect an under-representation of Indigenous peoples, which "risks a limited range of ideas and views" meaning that the "full picture of society" is not recognized.[844] Mainstreaming diversity and inclusion helps to promote equity.[845] Moreover, changes to "the Canadian electoral system to ensure equitable participation of Indigenous peoples in federal and provincial politics, where they wish to be part of the body politic of Canada" should also be considered.[846] Beyond

this, the "unilateral imposition of the Canadian constitutional and government structures violates Indigenous peoples' right to self-determination," highlighting the opportunities to reform Canada's legal landscape.[847]

Inclusion in Decision-Making and Respecting Free, Prior, and Informed Consent

"[T]he right to Free, Prior, and Informed Consent, is the right of Indigenous peoples to take part in decision-making process that may impact their lands, rights and interests…UNDRIP raised the bar"
– The Aboriginal Law Handbook.

Self-determination includes the "right to participate in decision-making, which is a procedural right of Indigenous peoples to 'take part in decisions affecting their future.'"[848] Brenda Gunn, a Métis scholar, explains that "[a]ll Indigenous peoples' rights flow from the right to self-determination, including the rights to land, culture, and free prior and informed consent."[849] At its core, self-determination is about ensuring that Indigenous peoples "can make choices on their way of life."[850] Participation in decision-making on areas that impact their lives is based on a standard of free, prior, and informed consent,[851] which means:

> The element of "free" implies no coercion, intimidation or manipulation; "prior" implies that consent is obtained in advance of the activity associated with the decision being made, and includes the time necessary to allow indigenous peoples to undertake their own decision making processes; "informed" implies that indigenous peoples have been provided all information relating to the activity and that that information is objective, accurate and presented in a manner and form understandable to indigenous peoples; "consent" implies that [I]ndigenous peoples have agreed to the activity that is the subject of the relevant decision, which may also be subject to conditions.[852]

Consent is "a continuous process, not a one-time request."[853] This is an essential part of the "exercise of their right to self-determination, as defined in international human rights law" and this standard should be used at all levels.[854] The UNDRIP emphasizes that the rights contained in the Declaration "constitute the minimum standard for the survival, dignity and well-being of Indigenous peoples of the world."[855]

Legitimizing Self-Determination Through the Inclusion of Women

Self-determination should include women, address their issues and needs, and allow for their full participation in the process.[856] Without the inclusion of women, this "process will be insufficient to fully address the impacts of colonization" and "it will not be a full expression of the will of the people."[857] Self-determination should also encompass economic, social, and cultural rights which are "interconnected to the right to be free from violence and discrimination."[858] The legitimacy of self-determination and its promise require the inclusion of women.

Reconciliation

"[T]o move beyond the mere rhetoric of reconciliation, the underlying issue that led to the residential school system must be addressed: the unilateral imposition of colonial law which asserted control over Indigenous peoples against their will" – Scholar Brenda Gunn.

Ending violence against Indigenous women, girls, and 2SLGBTQQIA and achieving reconciliation "cannot occur until the underlying causes of colonial domination are addressed."[859] This requires that the self-determination of Indigenous peoples and nations be restored through "the spirit of partnership and mutual respect, not through unilateral state action."[860] Through implementing the right to self-determination and the UNDRIP, Indigenous and non-Indigenous peoples can "live together differently in a peaceful coexistence where the fundamental human rights of all peoples are respected."[861] This is a way to "achieve true reconciliation."[862]

Reflection

Allies should reflect often on their intentions and motivations in pursuing this work, their experiences of privilege,[863] and ensure that they are following Indigenous leadership. [864] The history and ongoing impacts of colonialism affect everyone, and it is up to each of us to do our part to create a more equitable country where the roles, relationships, and laws of Indigenous peoples are restored and embraced. Allies have an ongoing responsibility to

continue learning about their role as an ally.[865] Allies must also be careful to not appropriate Indigenous cultures as they become more familiar with them.[866]

Some questions for ongoing reflection include:

- "How can I use this new information in my everyday life?
- What steps can I personally take to amplify marginalized voices that are too often silenced?
- What do I have and how can that be leveraged?
- How can I use my position and privileges to listen, shift power dynamics and take step towards reconciliation?"[867]

Action must follow reflection to move forward in a good way.

Endnotes

[1] National Inquiry into Missing and Murdered Indigenous Women and Girls, "Reclaiming Power and Place – Executive Summary of the Final Report", 2019, online at pp. 5, 23 ["**MMIWG2S Executive Summary** "].
[2] The Advocates' Society, The Indigenous Bar Association, and The Law Society of Ontario, "Guide for Lawyers Working with Indigenous Peoples", 8 May 2018, online at 26, citing the Royal Commission on Aboriginal Peoples, Vol 4 ["**Guide for Lawyers Working with Indigenous Peoples** "]; Brenda Gunn, "Will Gendered Aspects of Canada's Colonial Project Be Addressed" CIGI Online: 2017, online ["**Gunn on Canada's Colonial Project** "].
[3] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 27.
[4] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 27.
[5] MMIWG2S Executive Summary, *supra* at p. 13.
[6] Some examples include: "Anishinabe women's responsibilities as keepers of the water, Métis women's responsibility for developing and maintaining kinship networks that are the basis of the Métis nation, and Haudenosaunee women's responsibilities to select leaders" see Gunn on Canada's Colonial Project, *supra*.
[7] Gunn on Canada's Colonial Project; MMIWG2S Executive Summary, *supra* at p. 13.
[8] See Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 27.
[9] Gunn on Canada's Colonial Project.
[10] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 27, 31 citing TRC Executive Summary at p. 271; see also Myrna McCallum, "Indigenous Intergenerational Trauma: What You Need to Know About Advocating, Adjudicating and Policing in Indigenous Communities", Partnership with Canadian Bar Association, 28 June 2020, Podcast ["**Advocacy and Indigenous Intergenerational Trauma** "].
[11] Brenda Gunn, "Self-Determination and Indigenous Women: Increasing Legitimacy through Inclusion", Canadian Journal of Women and the Law 26:2 (2014) at 253 ["**Gunn on Self-Determination and Indigenous Women** "].
[12] MMIWG2S Executive Summary, *supra* at pp. 5, 23.
[13] MMIWG2S Executive Summary, *supra* at pp. 5, 23.
[14] MMIWG2S Executive Summary, *supra* at p. 30.
[15] Gunn on Canada's Colonial Project, *supra*.
[16] Jeff Corntassel, "Re-envisioning resurgence: Indigenous pathways to decolonization and sustainable self-determination", Decolonization: Indigeneity, Education & Society, Vol 1:1 (2012) at p. 88 ["**Corntassel**"]; Canadian Aboriginal Aids Network & Interagency Coalition on AIDS Development, Policy Brief: Indigenous Harm Reduction = Reducing the Harms of Colonialism (March 2019) at p. 14 ["**Policy Brief: Indigenous Harm Reduction = Reducing Harms of Colonialism** "].
[17] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 27.
[18] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 27.
[19] Roberta Jamieson, "Realizing Canada's promise in partnerships with Indigenous peoples" Policy Options (2012), online ["**Jamieson**"].
[20] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 10, 32.
[21] When describing Indigenous identities, some good practises include: always capitalize the term being used (e.g. Indigenous, Aboriginal, First Nations, Inuit, and Métis) and refrain from applying possessive words when describing these terms and peoples (e.g. avoid saying 'Canada's Indigenous peoples' or 'our Indigenous peoples). See Indigenous Corporate Training Inc., "Indigenous Peoples: A Guide to Terminology Usage Tips and Definitions", 2020, online at p. 16 ["**Indigenous Peoples: A Guide to Terminology** "].
[22] *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295, adopted by the General Assembly on 13 September 2007 ["**UNDRIP**"].
[23] Celeste McKay Consulting, "Briefing Note on Terminology", University of Manitoba Indigenous Students' Centre, 2015, online ["**Celeste McKay** "]; United Nations Permanent Forum on Indigenous Issues, Factsheet: "Who are indigenous peoples", online.
[24] Indigenous Peoples: A Guide to Terminology at p. 3.
[25] Canada, *Constitution Acts, 1867 to 1982*, online
[26] Blake Lough, "Why the term 'aboriginal' has fallen out of favour in Saskatchewan", 7 July 2016, Global News, online.
[27] Truth and Reconciliation Commission, "The Final Report of the Truth and Reconciliation Commission of Canada", Vol 6, McGill-Queens University Press, at p. 3, online. To learn more about the Truth and Reconciliation Commission and its reports and findings, see Truth and Reconciliation Commission of Canada, "National Centre for Truth and Reconciliation", online.
[28] Estella White (Charleson) – Hee Naih Cha Chist, "Making Space for Indigenous Law", JFK Law Corporation, 12 January 2016, online ["**Making Space for Indigenous Law** "].

[29] Making Space for Indigenous Law, *supra*.
[30] *Ibid*.; see generally, Pivot Legal, "Indigenous law and Aboriginal law: It's past time we all knew the difference", online; MMIWG2S Executive Summary, *supra* at p. 13.
[31] Klinic Community Health Centre, "The Trauma Toolkit", 2nd Ed, 2013, online at p. 12 ["**The Trauma Toolkit**"].
[32] Lenard Monkman, "New We Matter campaign asks youth to submit their definition of two-spirit", 3 July 2020, CBC News, online.
[33] See The Canadian Encyclopedia, "Turtle Island", online; The Path: Journey Through Indigenous Canada, *supra* at Module 1.
[34] Montreal Urban Aboriginal Community Strategy Network, "Indigenous Ally Toolkit", online at p. 5 ["**Indigenous Allyship Toolkit**"]
[35] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 11, citing Nora Rock, "Providing high-quality service to Indigenous clients", LawPRO Magazine, Vol 15, Issue 1, at p. 6.
[36] Calgary Foundation, "Treaty 7 Indigenous Ally Toolkit", online, at p. 4 ["**Treaty 7 Allyship Toolkit** "].
[37] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 11.
[38] Dr. Nicole Bell, "Elders", University of Toronto – Ontario Institute for Studies in Education, online; see also Northern Ontario School of Medicine, "Indigenous Elders and Knowledge Keepers", online.
[39] MMIWG2S Executive Summary, *supra* at p. 17.
[40] This list is not exhaustive, and merely provides a brief overview of historical events that have shaped Indigenous experiences and realities that continue to be felt today. When learning about Canada's history with Indigenous peoples, Indigenous sources should also be identified and consulted. For example, see Kateri Akiwenzie-Damm, Sonny Assu, Brandon Mitchel et. al., *This Place: 150 Years Retold*, Highwater Press (2019). For additional resources, see "Resources for Getting Started" at note 438.
[41] MMIWG2S Executive Summary, *supra* at p. 17.
[42] MMIWG2S Executive Summary, *supra* at p. 17.
[43] MMIWG2S Executive Summary, *supra* at p. 23.
[44] *Constitution Act, 1982* at s. 35(1).
[45] *Constitution Act, 1982* at s. 35(1).
[46] See *Constitution Act, 1982*, online; Krista Nerland, "Supreme Court says federal government has legislative power over the Métis and non-status Indians", Olthuis Kleer Townshend LLP, online; *Reference as to whether "Indians" includes in s. 91(24) of the B.N.A. Act includes Eskimo in habitants of the Province of Quebec* [1939] SCR 104, online; *Daniels v Canada (Indian Affairs and Northern Development)*, [2016] 1 SCR 99, online.
[47] Canadian Geographic, *Indigenous Peoples Atlas of Canada: First Nations*, Canadian Geographic Society, Ottawa (2018), 1st Ed at p. 7 [**"Indigenous Peoples Atlas of Canada: First Nations"**].
[48] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 11—12; Indigenous Peoples Atlas of Canada: First Nations, *supra* at p. 66.
[49] The Path: Journey Through Indigenous Canada, *supra* at Module 1; About AFN, *supra*.
[50] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 11—12; see also, The Canadian Bar Association, "The Path: Your Journey Through Indigenous Canada", Professional Development, online ["**The Path: Journey Through Indigenous Canada**"] at Module 1.
[51] Indigenous Peoples Atlas of Canada: First Nations, *supra* at p. 66.
[52] The benefits of Status are "difficult to list completely" as "some of the benefits are dependent on government policy, and others are dependent on band membership, residence, or *Indian Act* registration." The benefits will also vary depending on membership and residence. An overview of the benefits is as follows: (1) for registered Indians who are members of a band and live on reserve: voting and running in band elections, Aboriginal and treaty rights, tax exemptions, residence as granted by the band, eligibility for health, education and economic benefits as provided by the Government of Canada; (2) for registered Indians who are members of a band and live off reserve: voting and running in band elections, Aboriginal and treaty rights, partial tax exemptions (and may not be excused from provincial sale taxes), possibly able to exercise the rights granted by the band, eligible for some health, educational, and economic benefits from provincial or federal agencies; (3) for registered Indians who live on reserve but are not members of that band: inability to participate in political work of the band, possibly unable to practise Aboriginal and treaty rights without permission from the First Nation, entitled to tax exemptions, may have some membership benefits as determined by the band, eligible for some health, educational, and economic benefits from provincial or federal agencies; and (4) Individuals without Indian registration who are members of a First Nation with its own Citizenship Code: ability to participate in politics of the First Nation, may have partial Aboriginal or treaty rights, not tax exempt, extended rights granted by the First Nation, and eligible for some health, educational and economic development benefits from provincial and federal agencies, see Olthuis Kleer Townshend LLP, *Aboriginal Law Handbook*, Thomson Reuters (5th Ed), Edited by Lorraine Land and Matt McPherson (2018) at p. 280—281 ["**Aboriginal Law Handbook** "].
[53] Indigenous Peoples: A Guide to Terminology at pp. 10—11; see also see also "Definition and Registration of Indians" pursuant to sections 5—7 of the *Indian Act*, R.S.C., 1985, c. I-5 ["***Indian Act***"].

[54] For more information on the various treaties that exist in Canada, see Government of Canada, "Treaties and agreements", online ["**Treaties and Agreements** "].
[55] Assembly of First Nations, "About AFN", online ["**About AFN**"].
[56] About AFN, *supra*. For a map of First Nations across the country, see About AFN, *supra*.
[57] Indigenous Peoples Atlas of Canada: First Nations, *supra* at p. 67.
[58] The Path: Journey Through Indigenous Canada, *supra* at Module 1; Indigenous Peoples Atlas of Canada: First Nations, *supra* at pp. 16, 20—21.
[59] Indigenous Peoples Atlas of Canada: First Nations, *supra* at pp. 16, 20—21.
[60] The Path: Journey Through Indigenous Canada, *supra* at Module 1.
[61] Indigenous Peoples Atlas of Canada: First Nations, *supra* at p. 66; For a map of all First Nations reserves in Canada, see About AFN, *supra*.
[62] See Assembly of First Nations, "About AFN", online.
[63] Canadian Geographic, *Indigenous Peoples Atlas of Canada: Inuit*, Canadian Geographic Society, Ottawa (2018), 1st Ed at p. 7 ["**Indigenous Peoples Atlas of Canada: Inuit** "].
[64] For a map of the Inuit homeland, see Inuit Tapiriit Kanatami, "About Canadian Inuit", online; see also Aboriginal Law Handbook at p. 131. See generally, The Path: Journey Through Indigenous Canada, *supra* at Module 1; Indigenous Peoples Atlas of Canada: Inuit, *supra* at pp. 8—9.
[65] Indigenous Peoples Atlas of Canada: Inuit, *supra* at pp. 8—9.
[66] Indigenous Peoples Atlas of Canada: Inuit, *supra* at p. 9.
[67] The Path: Journey Through Indigenous Canada, *supra* at Module 1.
[68] The Path: Journey Through Indigenous Canada, *supra* at Module 1.
[69] See Inuit Tapiriit Kanatami, "Canadian Inuit Prospering Through Unity and Self-Determination", online.
[70] Canadian Geographic, *Indigenous Peoples Atlas of Canada: Métis*, Canadian Geographic Society, Ottawa (2018), 1st Ed, at p. 7 ["**Indigenous Peoples Atlas of Canada: Métis** "].
[71] The Path: Journey Through Indigenous Canada, *supra* at Module 1.
[72] The Métis are defined in *R v. Powley*, 2003 SCC 43, which focuses on the "distinctive customs, practices and traditions which existed at the time of 'effective European control.'" Case law on Métis rights has recognized harvesting rights and the right to be consulted and accommodated by government on decisions that could impact these rights, see Aboriginal Law Handbook, *supra* at p. 111; Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 8.
[73] Métis Nation, "Citizenship", online. The Métis National Council has detailed the Métis homeland as the map found here. See also Jean Teillet, *The Northwest Is Our Mother*, 1st Ed, 2019, HarperCollins Publisher ["**The Northwest Is Our Mother** "]. It should be noted that Non-Status Indians and Métis often worked together to gain recognition of their rights, e.g. see *Daniels v Canada*, 2016 SCC 12; Chelsea Vowel, "What a landmark ruling means – and doesn't – for Métis and non-status Indians", CBC, 16 April 2016, online; Congress of Aboriginal Peoples, "About Us", online.
[74] E.g. see Manitoba Metis Federation, "Who are the Metis?", online; Métis National Council, "Métis Nation Citizenship", online; Rhiannon Johnson, "Exploring Identity: Who are the Métis and what are their rights?" CBC, 28 April 2019, online; see generally, The Northwest Is Our Mother, *supra*; Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 8.
[75] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 12, citing Métis National Council, "Métis Nation Citizenship", online.
[76] The Métis are defined by *R v. Powley*, 2003 SCC 43, which focuses on the "distinctive customs, practices and traditions which existed at the time of 'effective European control.'" Métis harvesting rights and the right to be consulted and accommodated by government on decisions that could impact these rights have been recognized, see Aboriginal Law Handbook, *supra* at p. 111.
[77] See Métis National Council, "About", online.
[78] For a brief overview of the distinct experiences of First Nations, Inuit, and Métis women, see MMIWG2S Executive Summary, *supra* at pp. 17—19.
[79] Statistics Canada, "National Indigenous Peoples Day…by the numbers", 2018, online [**"Statistics Canada"**].
[80] Statistics Canada, *supra*.
[81] The growing Indigenous population in Canada is linked to heightening fertility rates and life expectancy, as well as greater self-identification, see Kristy Kirkup, "Canada's Indigenous population growing 4 times faster than rest of country", Global News, 25 October 2017, online.
[82] Statistics Canada, *supra*.
[83] Statistics Canada, *supra*.
[84] Statistics Canada, *supra*.
[85] Statistics Canada, *supra*.
[86] Statistics Canada, *supra*.

[87] Congress of Aboriginal Peoples, "Urban Indigenous People: Not Just Passing Through", Research Report, 2019, online at pp. 10, 19—20, 31; Indigenous Peoples Atlas of Canada: First Nations, *supra* at pp. 50—51; Indigenous Peoples Atlas of Canada: Inuit, *supra* at pp. 26—27.
[88] The Path: Journey Through Indigenous Canada, *supra* at Module 2; Indigenous Peoples Atlas of Canada: First Nations, *supra* at p. 8.
[89] The Path: Journey Through Indigenous Canada, *supra* at Module 2; Indigenous Peoples Atlas of Canada: First Nations, *supra* at p. 8.
[90] The Path: Journey Through Indigenous Canada, *supra* at Module 2; Aboriginal Law Handbook, *supra* at p. 1.
[91] The Path: Journey Through Indigenous Canada, *supra* at Module 2; Aboriginal Law Handbook, *supra* at p. 1.
[92] The Path: Journey Through Indigenous Canada, *supra* at Module 2.
[93] Aboriginal Law Handbook, *supra* at p. 1.
[94] Aboriginal Law Handbook, *supra* at p. 1 [footnote omitted]; see also MMIWG2S Executive Summary*, supra* at p. 17.
[95] The Path: Journey Through Indigenous Canada, *supra* at Module 2.
[96] The Path: Journey Through Indigenous Canada, *supra* at Module 2.
[97] Aboriginal Law Handbook, *supra* at p. 2.
[98] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[99] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[100] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Cornelius J. Jaenen and Andrew McIntosh, "Great Peace of Montreal, 1701", Canadian Encyclopedia, 13 November 2019, online.
[101] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[102] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Aboriginal Law Handbook, *supra* at p. 2. For more information, see Government of Canada, "Peace and Friendship Treaties (1725—1779), online.
[103] The Path: Journey Through Indigenous Canada, *supra* at Module 4; see also Cornelius J. Jaenen, "Treaty of Paris 1763", Canadian Encyclopedia, 6 August 2013, online.
[104] The Path: Journey Through Indigenous Canada, *supra* at Module 4; See also, Treaties and Agreements, *supra*.
[105] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[106] Aboriginal Law Handbook, *supra* at p. 2.
[107] The Path: Journey Through Indigenous Canada, *supra* at Module 4. Among them includes: "the Haudenosaunee, Seneca, Wyandot of Detroit, Menominee, Algonquin, Nipissing, Ojibwa, Mississaugas, and others, see Aboriginal Law Handbook, *supra* at p. 1.
[108] Aboriginal Law Handbook, *supra* at p. 2
[109] Aboriginal Law Handbook, *supra* at p. 2.
[110] Aboriginal Law Handbook, *supra* at p. 3
[111] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[112] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[113] For more information, see Government of Canada, "Robinson Treaties and Douglas Treaties (1850—1854), online; The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[114] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[115] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Aboriginal Law Handbook, *supra* at p. 3.
Fore more information, see Government of Canada, "The Numbered Treaties (1871—1921), online.
[116] Aboriginal Law Handbook, *supra* at pp. 3—4.
[117] Aboriginal Law Handbook, *supra* at p. 4.
[118] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[119] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[120] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[121] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[122] The Path: Journey Through Indigenous Canada, *supra* at Module 4; see generally, Government of Canada, "Treaty annuity payments", Indigenous Services Canada, online.
[123] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[124] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[125] See Government of Canada, "Upper Canada Land Surrenders and the Williams Treaties (1764-1862/1923)", Crown-Indigenous Relations and Northern Affairs Canada, online ["**Upper Canada Land Surrenders and the Williams Treaty** "]; Sarah Isabel Wallace, "Williams Treaties", Canadian Encyclopedia, 24 June 2020, online.
[126] Government of Canada, "Williams Treaties First Nations Settlement Agreement", online; Government of Canada, "Canada and Ontario advance reconciliation with historic apologies to the seven Williams Treaties First Nations communities", 17 November 2018, online.

[127] The Path: Journey Through Indigenous Canada, *supra* at Module 4; see also See Upper Canada Land Surrenders and the Williams Treaty, *supra*.
[128] Aboriginal Law Handbook, *supra* at p. 85; See Treaties and Agreements, *supra*; *Calder et al. v Attorney-General of British Columbia*, [1973] SCR 313.
[129] Aboriginal Law Handbook, *supra* at p. 88.
[130] Aboriginal Law Handbook, *supra* at pp. 88—89.
[131] Aboriginal Law Handbook, *supra* at pp. 91, 104; The Path: Journey Through Indigenous Canada, *supra* at Module 4; Government of Canada, "Comprehensive Land Claims", online; Treaties and Agreements, *supra*.
[132] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Indigenous Peoples Atlas of Canada: First Nations, *supra* at p. 54.
[133] Aboriginal Law Handbook, *supra* at p. 89.
[134] Aboriginal Law Handbook, *supra* at p. 89.
[135] Aboriginal Law Handbook, *supra* at p. 91; Treaties and Agreements, *supra*. For a map of modern treaties and self-government agreements, see Government of Canada, "Modern Treaties and Self-Government Agreements* (effective date)", Crown-Indigenous Relations and Northern Affairs Canada, online; The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[136] "Modern Treaties and Self-Government Agreements* (effective date)", Crown-Indigenous Relations and Northern Affairs Canada, online; The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[137] Treaties and Agreements, *supra*.
[138] See "Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada", online; Peter Kikkert, "Nunavut", The Canadian Encyclopedia, 29 May 2020, online; The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[139] Aboriginal Law Handbook, *supra* at p. 131.
[140] Aboriginal Law Handbook, *supra* at p. 131.
[141] This includes the Inuvialuit agreement was the first land claim agreement in the north, and there are numerous advisory boards that provide Inuvialuit participation, and negotiations occur on a self-government Final Agreement. Moreover, the Nunavit Inuit in Québec have rights over three categories of land, with corporations and municipal structures connected to Québec legislation. See also, Aboriginal Law Handbook, *supra* at p. 131.
[142] Aboriginal Law Handbook, *supra* at p. 131. See also, The Path: Journey Through Indigenous Canada, *supra* at Module 4; see Nunatsiavut Government, "The Path to Self-Government", online.
[143] Canada on Self-Government, *supra*; The Path: Journey Through Indigenous Canada, *supra* at Module 4; Aboriginal Law Handbook, *supra* at pp. 6, 8—9.
[144] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Aboriginal Law Handbook, *supra* at p. 9; Government of Canada, "Self-government", online ["**Canada on Self-Government** "].
[145] Government of Canada, "Historic self-government agreements signed with Métis Nation of Alberta, the Métis Nation of Ontario, and the Métis Nation of Saskatchewan", Crown-Indigenous Relations and Northern Affairs Canada, 27 June 2019, online. In 2016, the Manitoba Métis Federation and Canada entered into a "Memorandum of Understanding on Advancing Reconciliation" which is a "significant and necessary step" for reaching a modern day treaty between the Manitoba Métis community and Canada, see generally, Manitoba Métis Federation, "Understanding the Manitoba Métis Federation Land Claims", online.
[146] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[147] Marsii to Dr. Lynn Gehl for thoughtful insight on this reality.
[148] E.g. see The Path: Journey Through Indigenous Canada, *supra* at Module 3; CBC Radio, "The 'trial' of Sir John A. Macdonald: Would he be guilty of war crimes today?", 21 December 2018, online; CBC Radio, "The verdict on Sir John A. Macdonald: Guilty or innocent?", 28 December 2018, online.
[149] See *Indian Act*, *supra.* Various amendments have been made to this legislation, see Canada, *Indian Act,* R.S.C., 1985, c. I-5, "Previous Versions", online.
[150] The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[151] The Path: Journey Through Indigenous Canada, *supra* at Module 1; Robert Irwin, "Indian Agents in Canada", The Canadian Encyclopedia, 25 October 2018, online ["**Indian Agents in Canada** "].
[152] Stephanie Cram, "Dark history of Canada's First Nations pass system uncovered in documentary", CBC News, 19 February 2016, online.
[153] For example, the potlatch was made illegal in 1884. Indian Agents were also "instructed to use whatever means necessary to discourage dancing like that seen at powwows or Sun Dances", and an "amendment in 1914 outlawed dancing off-reserve and in 1925 dancing was outlawed entirely." See Canadian Encyclopedia on the *Indian Act*, *supra*.

[154] The Canadian Encyclopedia, "Indian Act", last updated 23 October 2018, online ["Canadian Encyclopedia on the *Indian Act*"]; Advocacy and Indigenous Intergenerational Trauma, *supra*; The Path: Journey Through Indigenous Canada, *supra* at Module 4; B.C. Campus, "Pulling Together: Foundations Guide - Appendix B: The Indian Act Timeline", online.
[155] The Canadian Encyclopedia, "Timeline: Indigenous Suffrage", online.
[156] Canadian Encyclopedia on the *Indian Act*, *supra*.
For an overview of the *Indian Act*, see Canadian Encyclopedia on the *Indian Act*, *supra*.
[157] Aboriginal Law Handbook, *supra* at p. 3.
[158] Aboriginal Law Handbook, *supra* at p. 3.
[159] Truth and Reconciliation Commission of Canada, "Honouring Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada, 2015, online ["**TRC Executive Summary**"] at p. v; The Truth and Reconciliation Commission of Canada, "Canada, Aboriginal Peoples, and Residential Schools: They Came for the Children", 2012, online at p. 6.
[160] The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[161] Daniel Schwartz, "Truth and Reconciliation Commission: By the numbers", CBC News, 2 July 2015, online ["**TRC By The Numbers**"]; See also Canadian Geographic, "History of Residential Schools", Indigenous Peoples Atlas of Canada, online; The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[162] The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[163] See TRC Executive Summary, *supra*.
[164] Canadian Geographic, "Fight for Truth: Horrors of St. Anne's Residential School", Indigenous Peoples Atlas of Canada, online.
[165] TRC Executive Summary, *supra* at p. 3; Union of Ontario Indians, "An Overview of the Indian Residential School System" 2013, online at p. 2.
[166] TRC By The Numbers, *supra*; TRC Executive Summary, *supra* at p. 90; see generally, Truth and Reconciliation Commission of Canada, "Missing Children and Unmarked Burials", The Final Report of the Truth and Reconciliation Commission of Canada, Vol 4, online.
[167] For more data on the deaths at residential schools, see TRC Executive Summary, *supra* at pp. 90—94. It should be noted that "[t]he death rates for Aboriginal children in the residential schools were far higher than those experienced by members of the general Canadian population."
[168] TRC Executive Summary, *supra* at p. v; The Path: Journey Through Indigenous Canada, *supra* at Module 3. For the settlement agreement and data on its implementation, see Government of Canada, "Indian and Residential Schools, Crown-Indigenous Relations and Northern Affairs Canada, online.
[169] The Truth and Reconciliation Commission has specific reports on Inuit and northern experiences as well as Métis, see Truth and Reconciliation Commission, "Canada's Residential Schools: The Inuit and Northern Experience", The Final Report of the Truth and Reconciliation Commission of Canada, Vol 2, online; Truth and Reconciliation Commission of Canada, "The Métis Experience", The Final Report of the Truth and Reconciliation Commission of Canada, Vol 3, online. For more on the experiences of Métis and Inuit women in residential schools, see MMIWG2S Executive Summary, *supra* at pp. 18—19.
[170] The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[171] TRC Executive Summary, *supra* at pp. 1, 3; Truth and Reconciliation Commission of Canada, Final Report, 2015, online ["**TRC Final Report**"];
[172] TRC Final Report, *supra*; Truth and Reconciliation Commission of Canada, "Calls to Action", online ["**TRC Calls to Action**"].
[173] Government of Canada, "Federal Indian Day School settlement claim process now open", online ["**Federal Indian Day School Information**"]; Indian Day Schools Class Action, "Schedule K – List of Federal Indian Day Schools", online; Jessica Deer, "What you need to know about filing an Indian day schools settlement claim", CBC News, 13 January 2020, online.
[174] Federal Indian Day School Information, *supra*.
[175] Federal Indian Day School Information, *supra*.
[176] Larry Chartrand, "Metis Treaties in Canada: Past Realities and Present Promise", online at pp. 1—2; see also, The Path: Journey Through Indigenous Canada, *supra* at Module 4; Lawrence Barkwell, "Metis Adhesion to Treaty Three", Louis Riel Institute, online. For more about the history of Métis as written by Métis, see generally, The Northwest Is Our Mother, *supra*.
[177] CBC History, "Canada Buys Rupert's Land", online; The Path: Journey Through Indigenous Canada, *supra* at Module 4; Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 28.
[178] Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 28.
[179] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Adam Gaudry, "Métis", The Canadian Encyclopedia, 11 September 2019, online ["**Métis**"].
[180] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Métis, *supra*.
[181] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Métis, *supra*.
[182] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Métis, *supra*.

[183] The Path: Journey Through Indigenous Canada, *supra* at Module 4; David Chartrand, "Chartrand: MMF celebrating role in creation of Manitoba", Winnipeg Sun, 11 May 2020, online ["**Chartrand on Manitoba** "]; Métis, *supra*; Indigenous Peoples Atlas of Canada: Métis, *supra* at pp. 28, 32.
[184] Gerhard Ens, "Manitoba History: Métis Lands in Manitoba", Manitoba Historical Society, No. 5 (1983), online; The Path: Journey Through Indigenous Canada, *supra* at Module 4; Métis, *supra*.
[185] Chartrand on Manitoba, *supra*.
[186] Indigenous Peoples Atlas of Canada, *supra* at pp. 32—33.
[187] Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 32.
[188] Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 33.
[189] Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 30.
[190] Indigenous Peoples Atlas of Canada: Métis, *supra* at pp. 30, 33.
[191] Canadian Geographic, "Red River Resistance", Indigenous Peoples Atlas of Canada, online ["**Red River Resistance** "]; Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 30.
[192] Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 33.
[193] Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 34.
[194] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Laura Neilson Bonikowsky, "The Battle of Batoche and the North-West Rebellion", 4 March 2015, online.
[195] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Métis, *supra*; Indigenous Peoples Atlas of Canada: Métis, *supra* at pp. 36—37.
[196] Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 28; Amanda Robinson, "Métis Scrip in Canada", The Canadian Encyclopedia, 2 October 2019, online; The Path: Journey Through Indigenous Canada, *supra* at Module 4. For more information, see Gabriel Dumont Institute of Native Studies and Applied Research, "Scrip and Land Claims", Virtual Museum of Métis History and Culture, online; Canada, "Métis Scrip Records", Library and Archives Canada, online; Camie Augustus, "Métis Scrip", Our Legacy, online.
[197] The Path: Journey Through Indigenous Canada, *supra* at Module 4.; Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 28.
[198] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[199] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[200] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Kyle Muzyka, "What's Métis scrip? North America's 'largest land swindle', says Indigenous lawyer", 25 April 2019, CBC, online.
[201] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[202] Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 28.
[203] Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 28.
[204] *Manitoba Métis Federation Inc. v Canada (Attorney General)*, [2013] 1 SCR 623; The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[205] Chartrand on Manitoba, *supra*.
[206] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Indigenous Peoples Atlas of Canada: Métis, *supra* at p. 38.
[207] MMIWG2S Executive Summary, *supra* at pp. 18, 35—36.
[208] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Métis Settlements of Alberta, "Leading Together", online.
[209] The Path: Journey Through Indigenous Canada, *supra* at Module 2.
[210] The Path: Journey Through Indigenous Canada, *supra* at Module 2.
[211] See Qikiqtani Truth Commission, QTC Final Report: Achieving Saimaqatigiingniq, 2013, online at p. 7 [**"QTC Final Report"**].
[212] The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[213] The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[214] Jane Sponagle, "'We called it 'Prison Island'': Inuk man remembers forced relocation to Gris Fiord", CBC News, 30 June 2017, online ["**Forced Relocation to Gris Fiord** "]; Qikiqtani Truth Commission, "Grise Fiord", 2013, online; The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[215] Forced Relocation to Gris Fiord, *supra*; The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[216] Forced Relocation to Gris Fiord, *supra*; The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[217] Forced Relocation to Gris Fiord, *supra*; The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[218] The Path: Journey Through Indigenous Canada, *supra* at Module 3; Government of Canada, "Apology for the Inuit High Arctic relocation", Crown-Indigenous Relations and Northern Affairs Canada, 18 August 2010, online.
[219] The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[220] The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[221] QTC, *supra* at p. 38; The Path: Journey Through Indigenous Canada, *supra* at Module 2.
[222] QTC, *supra* at p. 43.

[223] QTC, *supra* at pp. 15, 38—39.
[224] QTC, *supra* at p. 44.
[225] QTC, *supra* at p. 45.
[226] The Path: Journey Through Indigenous Canada, *supra* at Module 2; See Canadian Geographic, Indigenous Peoples Atlas of Canada – Inuit, The Royal Canadian Geographical Society (2018) at p. 17; Natasha MacDonald-Dupuis, "The Little-Known History of How the Canadian Government Made Inuit Wear 'Eskimo Tags', Vice, 16 December 2015, online ["**Canada's Identification System** "]; CBC, "Beyond a number: Inuit photo exhibit brings controversial 'Eskimo' I.D. system to light", 28 July 2017, online.
[227] The Canadian Encyclopedia, "Indigenous Suffrage", 7 April 2016, online.
[228] The Path: Journey Through Indigenous Canada, *supra* at Module 3; see generally, Kelly Bennett, "Telling the story of hundreds of Inuit, sick with TB, who were shipped to Hamilton", CBC News, 9 November 2016, online.
[229] M. Patterson, S. Finn, K. Barker, "Addressing tuberculosis among Inuit in Canada", CCDR Vol 44-3/4, 1 March 2018, p. 82, online ["**Addressing tuberculosis** "]. More broadly, it should also be noted that "Inuit…experience health issues at much higher rates than non-Inuit, particularly in terms of chronic conditions, but who are also perpetually underserviced in terms of health resources within their own communities", see MMIWG2S Executive Summary, *supra* at p. 31.
[230] The Path: Journey Through Indigenous Canada, *supra* at Module 3; Addressing tuberculosis, *supra*.
[231] E.g. see The Path: Journey Through Indigenous Canada, *supra* at Module 2.
[232] Katie Pederson, Greg Sadler, David Common, "Why millions of dollars in federal grocery subsidies haven't lessened food insecurity in the North", CBC News, 29 March 2019, online.
[233] Indigenous Peoples Atlas of Canada: Inuit, *supra* at pp. 36—37.
[234] The Path: Journey Through Indigenous Canada, *supra* at Module 2.
[235] Truth and Reconciliation Commission of Canada, "Canada's Residential Schools: The Legacy", Vol 5, online at p. 14 [**"TRC: Vol 5"**]; Niigaanwewiidam James Sinclair and Sharon Dainard, "Sixties Scoop", 22 October 2019, online; The path mod 3.
[236] TRC Vol 5, *supra* at pp. 14—15; The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[237] Aboriginal Law Handbook, *supra* at p. 5.
[238] Aboriginal Law Handbook, *supra* at p. 5.
[239] Aboriginal Law Handbook, *supra* at p. 5.
[240] Aboriginal Law Handbook, *supra* at p. 5; The Path: Journey Through Indigenous Canada, *supra* at Module 4; See Canada, "Statement of the Government of Canada on Indian Policy", 1969, online
[241] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[242] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[243] The Path: Journey Through Indigenous Canada, *supra* at Module 4; Aboriginal Law Handbook, *supra* at p. 5.
[244] Tabitha Marshall, "Oka Crisis", The Canadian Encyclopedia, 9 July 2020, online; The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[245] The Path: Journey Through Indigenous Canada, *supra* at Module 3; see also, Jessica Deer, "How the Oka Crisis has shaped 4 generations in Kanesatake and Kahnawake", CBC News, 11 July 2018, online.
[246] Indigenous Peoples Atlas of Canada: First Nations, *supra* at p. 51; Gerald L. Gall, "Meech Lake Accord", The Canadian Encyclopedia, 27 April 2020, online; CBC News, "25 years since Elijah Harper said 'no' to the Meech Lake Accord", 11 June 2015, online; Gloria Galloway, "Elijah Harper, First Nations leader who brought down Meech Lake, dies at 64", The Globe and Mail, online; Aboriginal Law Handbook, *supra* at p. 8.
[247] Aboriginal Law Handbook, *supra* at p. 8; Gerald L. Gall, "Charlottetown Accord", The Canadian Encyclopedia, 7 May 2020, online; Indigenous Peoples Atlas of Canada: First Nations, *supra* at p. 51.
[248] Aboriginal Law Handbook, *supra* at p. 8.
[249] See Royal Commission on Aboriginal Peoples, 1996, online. For the report's details on women's perspectives, see Royal Commission on Aboriginal Peoples, "Perspectives and Realities", Vol 4, online; The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[250] The Path: Journey Through Indigenous Canada, *supra* at Module 3; Minister of Supply and Services Canada, "Highlights from the Report of the Royal Commission on Aboriginal Peoples", 1996, online, at p. 2.
[251] Aboriginal Law Handbook, *supra* at p. 8; Rosemary Barton, "Over 20 years ago, we had a plan to repair the Crown-Indigenous relationship. What happened?", CBC News, 28 February 2020, online; e.g. see also, The Path: Journey Through Indigenous Canada, *supra* at Module 3.
[252] See Canada, "Indian Self-Government", House of Commons Issue No. 40, 12 October 1983, Chairman Keith Penner, online; see also William B. Henderson, "Indigenous Self-Government in Canada", The Canadian Encyclopedia, 17 January 2018, online.
[253] See Report of the Aboriginal Justice Inquiry of Manitoba, 1999, online; Indigenous Peoples Atlas of Canada: First Nations, *supra* at p. 50.
[254] See Ontario, "The Ipperwash Inquiry Report", online; see generally, Kate Dubinski, "25 years after his death, Dudley George's fight for the land continues", CBC News, 6 September 2020, online.

[255] Missing Women Commission of Inquiry, "Download Report", online; CBC News, "Pickton inquiry slams 'blatant failures' by police", 17 December 2012, online.
[256] See Attorney General of Ontario, "First Nations Representation on Ontario Juries", Report of the Independent Review Conducted by The Honourable Frank Iacobucci, February 2013, online. The calls for changes to jury selection have continued, including "after an all-white jury delivered a not-guilty verdict in the shooting death of Colten Boushie", as Indigenous peoples are "'significantly underrepresented' in jury pools", see APTN National News, "Justice minister to examine jury selection after Saskatchewan verdict", 12 February 2018, online.
[257] Government of Canada, "Reducing the number of Indigenous children in care", online; CBC Radio, "The Millennium Scoop: Indigenous youth say care system repeats horrors of the past", 25 January 2018, online.
[258] E.g. see Jane George, "Reports slam youth protection services for Inuit children in Montreal", 20 December 2019, online.
[259] Kenneth Jackson, "11 Indigenous children died in last four months connected to Ontario's child welfare system", APTN National News, 22 July 2020, online.
[260] Maya Hamovitch, "Alone at 19: What happens to youth who are aged out of Canada's foster care system", CTV News, 6 March 2020, online, see also BC Coroners Service Death Review Panel, "Review of MCFD-Involved Youth Transitioning to Independence January 1, 2011 – December 31, 2016, Report to the Chief Coroner of British Columbia, 28 May 2018, online.
[261] MMIWG2S Inquiry Volume 1A, *supra* at pp. 553—554. Moreover, it should be noted that Indigenous women are targeted by traffickers – and comprise 50% of human trafficking victims in Canada, see Arina Roudometkina and Kim Wakeford, "Trafficking of Indigenous Women and Girls in Canada", Submissions to the Standing Committee on Justice and Human Rights, Native Women's Association of Canada, 15 June 2018, online; see also MMIWG2S Inquiry Volume 1A, *supra* and MMIWG2S Calls For Justice, *supra.*
[262] Jillian Taylor, "'Tina Fontaine is that direct link' between MMIWG, child welfare system, advocate says at inquiry hearing", CBC News, 3 October 2018, online; see also National Inquiry into Missing and Murdered Indigenous Women and Girls, "Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls", Volume 1A, online at p. 560 ["**MMIWG2S Inquiry Volume 1A** "]; Manitoba Advocate, "A Place Where it Feels Like Home: The Story of Tina Fontaine", March 2019, online.
[263] Jillian Taylor, "'Tina Fontaine is that direct link' between MMIWG, child welfare system, advocate says at inquiry hearing", CBC News, 3 October 2018, online.
[264] MMIWG2S Executive Summary, *supra* at p. 1.
[265] MMIWG2S Executive Summary at pp. 1—3. Some advocates have estimated that there are approximately 4000 MMIWG2S, see John Paul Tasker, "Confusion reigns over the number of missing, murdered indigenous women", CBC News, 17 February 2016, online; Jorge Barrera, "National inquiry calls murders and disappearances of Indigenous women a 'Canadian genocide'", CBC News, 31 May 2019, online.
[266] MMIWG2S Inquiry Volume 1A, *supra*.
[267] MMIWG2S Executive Summary, *supra* at p. 4.
[268] MMIWG2S Executive Summary, *supra* at pp. 1—2, 4. For more information on how the MMIWG2S Inquiry came to this finding of genocide, see National Inquiry into Missing and Murdered Indigenous Women and Girls, "A Legal Analysis of Genocide" Supplementary Report, online.
[269] MMIWG2S Executive Summary, *supra* at p. 21.
[270] MMIWG2S Executive Summary, *supra* at p. 11. For a greater discussion of these four pathways, see also pp. 21—22.
[271] MMIWG2S Executive Summary, *supra* at p. 11.
[272] MMIWG2S Executive Summary, *supra* at p. 11.
[273] MMIWG2S Executive Summary, *supra* at p. 12.
[274] MMIWG2S Executive Summary, *supra* at p. 27.
[275] MMIWG2S Executive Summary, *supra* at p. 27. Of note, since 2015 the CBC has removed the comments sections on stories about Indigenous peoples, noting that these stories generate "a disproportionate number of comments that cross the line and violate [CBC's] guidelines", see Brodie Fenlon, Office of the GM and Editor in Chief, "Uncivil dialogue: Commenting and stories about indigenous people", CBC News, 30 November 2015, online.
[276] MMIWG2S Executive Summary, *supra* at p. 4.
[277] MMIWG2S Calls For Justice, *supra*; Jamie Pashagumskum, "1,500 academics prod feds to move on MMIWG action plan", APTN National News, 3 September 2020, online.
[278] MMIWG2S Executive Summary, *supra* at p. 36.
[279] See MMIWG2S Executive Summary, *supra* at pp. 37—38; see also, Pauktuutit Inuit Women of Canada, Addressing Gendered Violence against Inuit Women: A review of police policies and practices in Inuit Nunangat", 31 January 2020, online ["**Addressing Gendered Violence against Inuit Women** "].
[280] MMIWG2S Executive Summary, *supra* at p. 38; e.g. see also, National Inquiry into Missing and Murdered Indigenous Women and Girls, "A statement on the Civilian Review and Complaints Commission for the RCMP's report into the public complaint by Amber Tuccaro's family", 28 June 2019, online.

[281] The MMIWG2S Inquiry explains that these instruments, "whether technically binding or not, can help Indigenous Peoples hold governments to account by identifying both specific measures and broader obligations the state has to ensure safety and security of Indigenous women, girls, and 2SLGBTQQIA people." For an overview of these international human rights instruments and their relevance for work in this area, see MMIWG2S Executive Summary, *supra* at p. 16.
[282] Aboriginal Law Handbook, *supra* at p. 11.
[283] See UNDRIP, *supra*; See Indigenous and Northern Affairs Canada, "United Nations Declaration on the Rights of Indigenous Peoples, online.
[284] Simon Little, "British Columbia becomes 1st Canadian province to pass UN Indigenous rights declaration", Global News, 26 November 2019, online; see also British Columbia, "B.C. Declaration on the Rights of Indigenous Peoples Act", online.
[285] Teresa Wright, "UNDRIP a top priority, says Miller, but won't rule out delay due to COVID-19", National Post, 12 August 2020, online.
[286] The Path: Journey Through Indigenous Canada, *supra* at Module 4.
[287] For an overview and summary of Aboriginal law litigation, see Guide for Working with Indigenous Peoples, *supra* at pp. 76—88 and Shin Imai, *Annotated Aboriginal Law: The Constitution, Legislation, Treaties and Supreme Court of Canada Case Summaries*, 2019 Ed.
[288] MMIWG2S Executive Summary, *supra* at p. 20.
[289] MMIWG2S Executive Summary, *supra* at pp. 32—33.
[290] TRC Executive Summary, *supra* at p. 8.
[291] TRC Executive Summary, *supra* at p. 8.
[292] "The Canadian Criminal Justice System: Overall Trends and Key Pressure Points", Government of Canada, 23 November 2017, online.
[293] MMIWG2S Inquiry Volume 1A, *supra* at 55.
[294] John Paul Tasker, "'We cannot let these children down': Ottawa unveils Indigenous child welfare overhaul", CBC News, 28 February 2019, online.
[295] Omayra Issa, "A place in the circle: 2-spirit people seek visibility and supports", CBC News, 16 July 2019, online.
[296] MMIWG2S Inquiry Volume 1A, *supra* at 442.
[297] MMIWG2S Inquiry Volume 1A, *supra* at 443.
[298] MMIWG2S Inquiry Volume 1A, *supra* at 55.
[299] MMIWG2S Inquiry Volume 1A, *supra* at 425.
[300] MMIWG2S Inquiry Volume 1A, *supra* at 508.
[301] The Native Women's Association of Canada has conducted a review of the passing of Indian status in Canada, see Native Women's Association of Canada, "Aboriginal Women's Rights Are Human Rights: Canadian Human Rights Act Review" (2015) online; see also Ontario Human Rights Commission, "Under suspicion: Research and consultation report on racial profiling in Ontario" (2017), online; see also Naiomi Metallic, "The Relationship between Canada and Indigenous Peoples: Where Are We?", Law Society of Upper Canada Special Lectures 2017 – Canada At 150: The Charter and The Constitution, Irwin Law: Toronto (2017); see also Ontario Human Rights Commission, "To dream together: Indigenous peoples and human rights dialogue report" (2018), online.
[302] See *Gehl v Canada*, 2017 ONCA 319 at para 41.
[303] MMIWG2S Executive Summary, *supra* at p. 24.
[304] Note that in *Perron v Canada*, 2003 CanLII 44366 (Ont SC), a First Nations woman brought a claim that the *Indian Act* contravenes the *Charter* and the fiduciary duty owed to Aboriginal peoples, seeking damages for various loses as a result of these breaches. This is based on her inability to pass on her status to her grandchildren. The claim detailed that from 1869—1985, Indian women who married non-Indian men and their children were denied Indian Status under the *Indian Act* (and the benefits of having Status). However, when Indian men married non-Indian women, these women and their children would gain status. The decision notes that the *Indian Act* was amended by Bill C-31, "purportedly to make it *Charter* compliant", see para 10. Canada sought to strike out portions of the claim concerning the breach of Aboriginal rights and fiduciary duties, remedies and *Charter* damages. The court had mixed results on Canada's motion to strike, and their motion for certification of a class action was dismissed for the time being. No further judicial decisions on this case are reported.
[305] Leave to appeal to SCC denied.
[306] For more information on *Descheneaux c Canada*, 2015 QCCS 3555, its promises, and its implications, see Aboriginal Law Handbook, *supra* at p. 272.
[307] See *Gehl v Canada*, 2017 ONCA 319 at paras 45—53.
[308] See First Nations Child & Family Caring Society, "Indigenous Knowledge Portal", online. See also First Nations Child and Family Caring Society, "Spirit Bear Plan", online.
[309] *First Nations Child & Family Caring Society v Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2019 CHRT 39.
[310] E.g. see MMIWG2S Executive Summary, *supra* at p. 25.

[311] *Native Child and Family Services of Toronto v C.R.*, 2017 ONCJ 440 at para 41.
[312] Leave to the Supreme Court of Canada was refused.
[313] *Kawartha-Haliburton Children's Aid Society v M.W.*, 2019 ONCA 316 at paras 65, 71, 76.
[314] *Dakota Ojibway Child and Family Services v KRF et al*, 2018 MBCA 104 at para 43.
[315] For more information on this case, see here.
[316] MMIWG2S Executive Summary, *supra* at p. 33.
[317] *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 at para 69.
[318] *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 at para 74.
[319] *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 at para 77.
[320] See generally Brenda Gunn, "Ignored to Death: Systemic Racism in the Canadian Healthcare System", Submission to EMRIP the Study on Health, online. For details on the factors contributing to poor health outcomes for Indigenous peoples, the exclusion of Indigenous ways of healing from service delivery, and the racism at an individual and structural level in this sector, see MMIWG2S Executive Summary, *supra* at pp. 28—29.
[321] Native Women's Association of Canada, "Accessibility and Disability for Indigenous Women, Girls, and Gender Diverse People: Informing the new Federal Accessibility Legislation", April 2018, online at p. 5.
[322] Marsii to Dr. Lynn Gehl for thoughtful insight on this reality.
[323] MMIWG2S Executive Summary, *supra* at p. 27.
[324] MMIWG2S Executive Summary, *supra* at pp. 28, 30.
[325] See *Grant v Winnipeg Regional Health Authority*, 2015 MBCA 44 allowing the family to sue hospital officials for *Charter* violations and disclosing private health information; the lawsuit appears to be ongoing.
[326] *R v Doering*, 2019 ONSC 6360 at para 129.
[327] Amanda Carling and Insiya Mankani, "Systemic Inequities Increase Covid-19 Risk for Indigenous People in Canada", Human Rights Watch, 9 June 2020, online.
[328] Chantelle Richmond, Heather Castleden and Chelsea Gabel, "'With so much at risk, we couldn't just wait for help': Indigenous communities and COVID-19" Globe and Mail, 17 June 2020, online.
[329] *Ibid*.
[330] National Indigenous Justice Summit, Niigaan Sinclair on "Community-Based Calls for Action, 8 July 2020, online [**"National Indigenous Justice Symposium"**] – note that this link also provides critical "Immediate Action Points" for transforming the justice in Canada; Wendy Stueck, "Indigenous overdose deaths jumped drastically from January to May as COVID-19 crisis hit", The Globe and Mail, 6 July 2020, online; First Nations Health Authority, "COVID-19 Pandemic Sparks Surge in Overdose Deaths", online; Teresa Wright, "Violence against Indigenous women during COVID-19 sparks calls for MMIWG plan", CBC News, 10 May 2020, online ["**Violence Sparks During COVID-19** "].
[331] Niigan Sinclair, "Epidemic of domestic abuse during COVID-19 pandemic", Winnipeg Free Press, 24 April 2020, online.
[332] Toronto Foundation's Better Toronto Coalition Hub, "Impacts of COVID on Women and Safety", Weekly Webinar, 9 April 2020.
[333] Alberta Native News, "NWAC President Says COVID-19 Is Increasing Violence Against Indigenous Women", 11 May 2020, online; Violence Sparks During COVID-19, *supra*.
[334] Later, the applicant's separate human rights complaints were dismissed.
[335] Socio-economic rights which were not recognized in *Gosselin v Quebec (Attorney General)*, [2002] SCC 84, but are recognized in international law, are critical to preventing violence against Indigenous women and girls, see Brenda Gunn, "Engaging A Human Rights Based Approach to the Murdered and Missing Indigenous Women and Girls Inquiry" *Lakehead Law Journal*, 2:2 (2017).
[336] This decision was upheld in 1997 CanLII 6370 (FCTD) and 2000 CanLII 15308 (FCA).
[337] *Beattie v Aboriginal Affairs and Northern Development Canada*, 2016 CHRT 5 at para 56.
[338] See also 2003 FC 1361 and 2004 FCA 416 which dismissed this action as there was no genuine issue left for trial.
[339] *R v Ipeelee*, 2012 SCC 13 at para 77.
[340] *R v Ipeelee*, 2012 SCC 13 at para 2.
[341] E.g. see "Trudeau 'deeply alarmed' by brutality claims during arrest of Alberta Indigenous chief", CBC News, 8 June 2020, online; CBC News, "Watchdog investigating RCMP after Nunavut man hit by patrol truck door", 18 August 2020, online; CBC News, "Complaints filed against Edmundston police over fatal shooting of Chantel Moore", 12 August 2020, online; Austin Grabish, "Police watchdog says full transparent probe into 3 fatal shootings will happen", CBC News, 20 April 2020, online.
[342] *Re Thunder Bay Police Services Board*, 2018 ONCPC 19 (CanLII); see also Justin Brake, "Thunder Bay police board replaced by administrator", APTN News, 14 December 2018, online.
[343] MMIWG2S Executive Summary, *supra* at p. 37; Addressing Gendered Violence against Inuit Women, *supra*.
[344] MMIWG2S Executive Summary, *surpa* at p. 37. It should also be noted that First Nations police services do exist, though these services have detailed "insufficient equipment and resources as impeding their efforts to engage in proper investigation, as well as in crime prevention, in First Nations communities", see MMIWG2S Executive Summary, *supra* at p. 38.

[345] See *Campbell* at paras 49, 68, 89–90, 116, and 124.
[346] *Ibid* at paras 119, 124, and 176–177.
[347] At para 377 the Court noted the existing disadvantages of the group including being disproportionately Indigenous informed both the section 7 and section 15 *Charter* analysis. See also paras 554–553, 558–562, and 597.
[348] *R v Balfour and Young*, 2019 MBQB 167 at para 90.
[349] *R v Ewert*, 2018 SCC 30 at paras 63–66.
[350] *British Columbia Civil Liberties Association v Canada (Attorney General)*, 2019 BCCA 228 at paras 22 and 81.
[351] *Ibid* at paras 120 and 210.
[352] Amanda Jerome, "Rights groups end litigation at SCC on solitary confinement", Lawyer's Daily, 27 May 2020, online.
[353] RSC 1985, c c-46.
[354] Johnathan Rudin, Director of Aboriginal Legal Services Toronto calls the federal government to amend the *Criminal Code* to eliminate mandatory minimum sentences, noting that they are "being struck down one by one by courts across the country but many remain, preventing judges from looking to meaningful alternatives to imprisonment for Indigenous and non-Indigenous offenders" see Rudin, *supra*.
[355] In *R v Nur*, 2015 SCC 15 at para 114, the majority of the Supreme Court of Canada accepted that "empirical evidence suggests that mandatory minimum sentences do not, in fact, deter crimes."
[356] These include *R v Sharma*, 2018 ONSC 1141 at para 221 striking down the MMP for importing cocaine into Canada; "Aboriginal overincarceration [was] a contextual backdrop" (para 120). This striking down of the MMP was not appealed in the subsequent decision, which found that the sentencing judge erred in their conclusion that provisions of the *Criminal Code* relating to conditional sentences did not violate the *Charter*. A further exploration of the appellate court decision can be found under the "Discrimination in the Criminal Justice System - Sentencing" section. See also, *R v Sharma*, 2020 ONCA 478 at paras 21 and 67. See also *R v Luke*, 2019 ONCJ 514 [*Luke*] for first-time impaired driving offences. As noted in *Luke* at para 57, provincial courts cannot make formal declarations that the MMP is of no force or effect and it is instead limited to the particular case. The case law is inconsistent: a "very similar" challenge by a First Nations woman for an impaired driving charge did not succeed in *R v Sabattis*, 2020 ONCJ 242, which distinguished the impact of the criminal record from the circumstances in *Luke* including the "extreme emotional turmoil" at play in that case as well as the employment opportunities that the accused was pursuing.
[357] *Luke*, cited above, at para 40.
[358] See also *R v Ipeelee*, 2012 SCC 13 reaffirming *Gladue* and criticizing lower courts for being "hesitant to take judicial notice of the systemic and background factors affecting Aboriginal people in Canadian society."
[359] See Larry N. Chartrand, "Aboriginal Peoples and Mandatory Sentencing" (2001) 39:2 Osgoode Hall Law Journal 449 at 467, online; Patricia Barkaskas and Emma Cunliffe, "Too many Indigenous women are in prison – but sentencing flexibility will help", Maclean's, 7 June 2018, online; see also Asad G. Kiyani, "*R v Lloyd* and the Unpredictable Stability of Mandatory Minimum Litigation" (2019) 81 Osgoode Hall Law Journal 117 at 131–132, criticizing *R v Sheppard*, 2011 CanLII 41607 (NL Prov Ct) and *R v McIvor*, 2017 MBPC 11, aff'd 2018 MBCA 29.
[360] *R v Sharma*, 2020 ONCA 478 at paras 5—10.
[361] *R v Sharma*, 2020 ONCA 478 at paras 1—4.
[362] *R v Sharma*, 2020 ONCA 478 at paras 67 and 174.
[363] *R v Sharma*, 2020 ONCA 478 at paras 179—180 and 187.
[364] *R v T.L.C.*, 2019 BCPC 314 at para 72.
[365] Section 718.04 of the *Criminal Code* reads "When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances – including because the person is Aboriginal and female – the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence."
[366] *R v RC*, 2019 SKPC 51 at para 34.
[367] *R v Berg*, 2019 ABQB 541 at para 64.
[368] *R v Doucette*, 2020 BCSC 907 at paras 60–64.
[369] *R v P.M.M.*, 2019 BCPC 276 at paras 37–40.
[370] Note that the finding of discrimination was upheld in 2017 FC 159 except two of the remedies were overturned.
[371] MMIWG2S Inquiry Volume 1A, *supra* at 133; for more on two-eyed seeing, see generally, Institute for Integrative Science & Health, "Two-Eyed Seeing", online.
[372] For more information see Celeste Cuthbertson, "Statutory Recognition of Indigenous Custom Adoption: Its Role in Strengthening Self-Governance Over Child Welfare" (2019) 28 Dalhousie Journal of Legal Studies 29, online.
[373] *Wasauksing First Nation v Wasausink Lands Inc.*, 2004 CanLII 15484 (Ont CA) at paras 95 – 98.
[374] *Pastion v Dene Tha' First Nation*, 2018 FC 648 at paras 8–10.
[375] E.g., see also Justice Berger's reasons in *R v Ippak*, 2018 NUCA 3, which grapples with the application of Inuit law in Canada's legal system.

[376] *R v Itturiligaq*, 2020 NUCA 6 at paras 2—3, 25—26.
[377] *R v Itturiligaq*, 2020 NUCA 6 at paras 30—31.
[378] *R v Itturiligaq*, 2020 NUCA 6 at para 75.
[379] *R v Itturiligaq*, 2020 NUCA 6 at paras 76—77.
[380] The landlord's application to re-open the matter was dismissed in 2010 BCHRT 303.
[381] Aya Al-Hakim, "Anishinaabe two-spirit judge Diane Rowe sworn in as N.S. Supreme Court's newest justice", Global News, 10 June 2020, online.
[382] See *Tabor v Millbrook First Nation*, 2015 CHRT 9 at paras 53 and 144.
[383] *Nielsen v Nee Tahi Buhn Indian Band*, 2019 CHRT 50 at paras 76–77 and 110 [*Nielsen*].
[384] Human rights complaints by Indigenous women based on family status were substantiated in *O'Bomsawin v Abenakis of Odanak Council*, 2017 CHRT 4, upheld in 2018 FC 112 (discrimination based on the complainant's parent); *Tanner v Gambler First Nation*, 2015 CHRT 19 at para 39 (discrimination based on the complainant's spouse); *Rivers v Squamish Indian Band Council*, 1994 CanLII 1217 (CHRT) (discrimination against a married-in band member in employment hiring) and *Tabor*, cited above, at para 63 (discriminatory custom election code).
[385] *Bignell-Malcolm v Ebb and Flow Indian Band*, 2008 CHRT 3 at paras 57–60 [*Bignell-Malcolm*]; see also *Polhill v Keeseekoowenin First Nation*, 2019 CHRT 42 at paras 64–67 and 145 for a complaint about discrimination on ethnicity that was unsubstantiated.
[386] See for e.g. *Nielsen* at para 195; *Tanner* at paras 163–179, *Deschambeault* at para 91 and *Bignell-Malcolm* at paras 68–82.
[387] For example, the Federal Court noted "the applicants did not present any evidence as to the composition of the [Métis National Council] or the participation of women in that organization." Leave to appeal denied in *Métis National Council of Women v Canada (Attorney General)*, 2006 CarswellNat 2477 (SCC). Note that this case was cited to indicate the importance of bringing clear evidence of gendered impacts to achieve intervener status or otherwise support gender discrimination in *Canada (Attorney General) v Canadian Doctors for Refugee Care*, 2015 FCA 35 at para 24.
[388] As noted in *Rodriguez v Canada*, 2018 FC 1125 at paras 32-–35, courts have carved out a narrow exception to the usual rule that freedoms do not impose positive obligations, with three strict criteria set out in *Baier v Alberta*, 2007 SCC 31 at para 30 that must be satisfied to show that the underinclusive legislation violates the *Charter*.
[389] Reconsideration application dismissed in *Kersman v Ontario (Energy, Northern Development and Mines)*, 2020 HRTO 280.
[390] *Servatius v Alberni School District No. 70*, 2020 BCSC 15 at para 37 citing Articles 12(1) and 15(1) of UNDRIP.
[391] See e.g., Holly Caruk, "'You're not welcome here': Winnipeg couple told they 'look like' thieves, asked to leave Winnipeg craft store", CBC News, 20 December 2019, online; Angela Sterritt, "Indigenous grandfather and 12-year-old handcuffed in front of Vancouver bank after trying to open an account", CBC News, 9 January 9 2020, online.
[392] See *Canadian Association of Elizabeth Fry Societies v Correctional Service of Canada*, 2019 CHRT 30 for a preliminary ruling; see also *Rights Violations Associated with Canada's Treatment of Federally-Sentenced Indigenous Women*, Submission to the United Nations Special Rapporteur on the Rights of Indigenous Peoples (2013), online.
[393] Vera-Lynn Kubinec, "First Nations woman who took to social media to get her kids back from CFS now suing agencies, government", CBC News, 22 June 2020, online.
[394] See *Dominique v Public Safety Canada*, 2019 CHRT 9 and *Dominique v Public Safety Canada*, 2019 CHRT 21 for two preliminary rulings; see also 2019 QCCS 5699 dismissing a related application.
[395] The province's motion to strike was dismissed in *Single Mothers' Alliance of BC Society v British Columbia*, 2019 BCSC 1427.
[396] First Nations Child & Family Caring Society, "I am a Witness: Tribunal Timeline and Documents", online.
[397] Sean Fine and Colin Freeze, "Federal, Ontario governments under fire for handling of solitary confinement", The Globe and Mail, 25 August 2020, online.
[398] David Baxter, "$500M class action lawsuit filed against federal government for MMIW investigations", Global News, 5 July 2018, online.
[399] Kristin Annable, "'Inertia and incompetence': Manitoba First Nation launches proposed class action over water advisories", CBC News, 2 December 2019, online; Krisin Annable, "'Chance to seek justice' after First Nations' water advisories lawsuit certified as class action: lawyer", CBC News, 17 July 2020, online.
[400] "AFN files $10B class action against federal government over treatment of Indigenous children", CBC News, 12 February 2020, online; Olivia Stefanovich, "Ottawa agrees to certify 2 class action lawsuits over the treatment of First Nation children", CBC News, 3 September 2020, online.
[401] Dennis Ward, "Forced sterilization a symptom of 'colonial hangover' says lawyer", APTN News, 7 April 2020, online.
[402] "Robinson Huron Treaty leaders and beneficiaries receive favourable judgment in annuities case", Anishinabek News, 28 June 2020, online.
[403] The "#EndTheGap" campaign seeks equitable funding for First Nations schools.
[404] The Trauma Toolkit, *supra* at pp. 24, 51. This guide is included as a recommended resource found on The Canadian Bar Association's Truth and Reconciliation "Take Action" webpage, online.
[405] National Indigenous Justice Summit, Beverly Jacobs on "Community-Based Calls for Action, 8 July 2020.

[406] There is an increase of third-party litigation financing, which may be appropriate to explore in this work. The costs of litigation is well documented, e.g. see Lenard Monkman, "Proposed Indian day school settlement to leave out lawyer who filed lawsuit", CBC News, 15 May 2019, online.
[407] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 22, 42.
It should be noted that the *Indian Act* stipulated severe restrictions forbidding "Indians" from hiring lawyers, and requiring them to lose their status if they became lawyers, see Native Women's Association of Canada, "The *Indian Act* Said What?", online; see also Advocacy and Indigenous Intergenerational Trauma; Lorna Fadden, "Communicating Effectively with Indigenous Clients", An Aboriginal Legal Services Publication, online at p. 8 ["**Communicating Effectively with Indigenous Clients**"].
[408] The Northwest Is Our Mother, *supra* at p. 468.
[409] The Northwest Is Our Mother, *supra* at pp. 468—469.
[410] Kim Anderson, Maria Campbell, and Christi Belcourt, *Keetsahnak: Our Missing and Murdered Indigenous Sisters*, The University of Alberta Press: 2018, at p. 15.
[411] *R v Barton*, 2019 SCC 33 at para 200.
[412] The Northwest Is Our Mother, *supra* at p. 472.
[413] APTN National News, "Pretrial hearing for trucker in Cindy Gladue manslaughter case underway in Edmonton", APTN, 3 February 2020, online.
[414] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 8—9, citing TRC Final Report, *supra*.
[415] Krista Maxwell, "Settler-Humanitarianism: Healing the Indigenous Child-Victim", Comparative Studies in Society and History 2017(4) at 1000 [**"Maxwell**"].
[416] Lessons Absent from Legal Education, *supra*. Families of MMIWG2S also found court processes "inadequate, unjust, and retraumatizing", see MMIWG2S Executive Summary, *supra* at p. 38.
[417] Maxwell, *supra* at p. 1000 citing A. Molema, "Errors of Commission: Canada's Legacy of Indian Residential Schools", PhD diss., University of Toronto 2016, at p. 141: "Residential school survivor and former chief Jillian Harris reported that "a family member had hung himself the day before his IAP adjudication, and that over the course of the IAP, it was 'like the spirit of suicide roared through our community.'" It should be noted that Canada has recently announced mental wellness supports for individuals impacted by the Indian Day Schools Settlement Agreement and MMIWG2S, see Government of Canada, "Update on Mental Wellness Supports for those impacted by MMIWG and the Federal Indian Day Schools Settlement Agreement", 7 July 2020, News Release, online.
[418] Lessons Absent from Legal Education, *supra*. It should be noted that some individual residential schools cases continue, as disputes over the release and use of records are ongoing – which may impact compensation that survivors are entitled to, see Jorge Barrera, "Ottawa again trying to stop St. Anne's residential school compensation cases from being reopened", CBC, 7 July 2020, online.
[419] Numerous lawyers representing residential school survivors in the IAP process were highly criticized, and few incurred disciplinary action or disbarment, see Kathleen Martens, "APTN Investigates – Truth? Or Reconciliation?" APTN, 23 June 2017, online. In October 2019, a class action lawsuit was certified on behalf of 5,600 residential school students against David Blott – a former lawyer in Calgary who took $21 million from the IAP settlement fund, see *Bird v Blott*, 2019 ABQB 674 (CanLII) and Amy German, "Class action suit to go ahead for thousands of swindled residential school victims" Nation News, 25 October 2019, online. See also Gloria Galloway, "Lawyers who overcharged in residential-school cases have fees reduced", The Globe and Mail, 15 February 2017, online; Gloria Galloway, "Lawyers accused of 'greed' in taking fees from residential-school survivors", The Globe and Mail, 23 October 2017, online.
[420] Law Society of Ontario, "Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples", Report to Convocation, 24 May 2018, online at p. 20 ["**LSO Report on Processes Affecting Indigenous Peoples** "]. APTN has extensively reported on lawyer Doug Keshen's actions, see here for more information.
[421] LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 32.
See also Carole Blackburn, "Cultural Loss and Crumbling Skulls: The Problematic of Injury in Residential Schools Litigation", Polar: Political and Legal Anthropology Review, Vol 35:2 (2012) at p. 294 ["**Blackburn**"] citing Jane Collier et al., "Sanctioned Identities: Legal Constructions of Modern Personhood Identities", 2(1—2): 1—27 and Sally Engle Merry, "Resistance and the Cultural Power of the Law", Law and Society Review 29(1): 11—26.
[422] LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 33.
[423] The report provides details on the threshold for staff persons at the Law Society of Ontario who are working with Indigenous peoples. This guidance is also helpful for all lawyers and personnel working with Indigenous peoples to embrace. See generally, LSO Report on Processes Affecting Indigenous Peoples, *supra.*
[424] There are numerous other reasons for the distrust of legal systems and processes. This includes the reality that 37.6% of the federally-sentenced women in penitentiaries are Indigenous women, despite Indigenous women comprising about 3% of the female population in Canada. Indigenous women are also more likely to be classified as maximum security than non-Indigenous women. Indigenous women are disproportionately the victims of violent crimes and are over-represented as

offenders. Indigenous women also comprise 70% of incidents of self-injury for female inmates. Services specialised for Indigenous women in these prisons are typically limited and regularly under-resourced. See Senate of Canada, "Interim Report – Study on the Rights of Federally-Sentenced Persons: The Most Basic Human Right is to be Treated as a Human Being (1 February 2017- 26 March 2018), published February 2019, at pp. 32, 36, 42, 51, 60. The Native Women's Association of Canada also reports that Indigenous women comprise 50% of the federal administrative segregation placements, see Native Women's Association of Canada, "Indigenous Women in Solitary Confinement: Policy Backgrounder, August 2017, online. Canada reports that "[c]ompared to all other categories of accused persons, Indigenous people continue to be jailed younger, denied bail more frequently, granted parole less often and hence released later in their sentence, over-represented in segregation, over-represented in remand custody, and more likely to be classified as high risk offenders, see Canada, "Spotlight on *Gladue*: Challenges, Experiences, and Possibilities in Canada's Criminal Justice System, Department of Justice, 12 April 2019, online. The representation of Indigenous youth in the correctional institutions is even worse: Almost half of youth in custody are Indigenous, and 92% and 82% of girls in custody in Saskatchewan and Manitoba respectively, are Indigenous, see Kelly Geraldine Malone, "Nearly half of youth incarcerated across Canada are Indigenous: Statistics Canada", The Globe and Mail, 24 June 2018, online; Austin Grabish and Lenard Monkman, "More than 80% of incarcerated Manitoba minors are Indigenous. These 3 say that can be changed", CBC, 26 June 2018, online. See also Sean Fine, "Canada 'over-criminalizing' poor, Indigenous and substance users who violate bail conditions, Supreme Court says", The Globe and Mail, 18 June 2020, online.

[425] The Trauma Toolkit, *supra* at p. 21 citing M. Brokenleg, *Culture and Helping,* Presented in Winnipeg, Canada (2008); Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 42, citing Nora Rock, "Providing high-quality service to Indigenous clients", LawPRO Magazine, Vol 15, Issue 1, at p. 12.

[426] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 42.

[427] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 42.

[428] LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 34. This report also details that the Law Society of Ontario's decision to assess the way that they and their tribunal respond to regulatory issues was triggered by *Law Society of Upper Canada v Kenshen*, which revealed concerns about its regulatory process for Indigenous peoples, issues, and complaints. There were numerous complaints about Mr. Keshen, who represented numerous clients in their Independent Assessment Process ("IAP") applications to the Indian Residential Adjudication Secretariat, see 19—20. For further recommendations, see Law Society of Ontario, "Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples Supplementary Report", 28 June 2018, online.

[429] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 23.

[430] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 11.

[431] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 10.

[432] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 22.

[433] Similar recommendations for heightened cultural competency were detailed by the Aboriginal Justice Inquiry in Manitoba (1991) and the Royal Commission on Aboriginal Peoples (1996), see Goldblatt Partners, "Law Group welcome MMIWG report" 5 June 2019, online.

[434] TRC Calls to Action, *supra* at p. 3.

[435] National Inquiry into Missing and Murdered Indigenous Women and Girls, "Calls for Justice", 2019, online at 27 [**"MMIWG2S Calls for Justice** "].

[436] Guide for Lawyers Working with Indigenous Peoples, *supra* at 23.

[437] Guide for Lawyers Working with Indigenous Peoples, *supra* at 22—23.

[438] **Resources for getting started** *:* For a historical overview and review of realities challenging Indigenous peoples, see University of Alberta's free online course entitled "Indigenous Canada", online; The Path: Journey Through Indigenous Canada, *supra;* Canadian Geographic, *Indigenous Peoples Atlas of Canada*, Canadian Geographic Society, Ottawa (2018), 1st Ed. For a range of general resources ranging from Indigenous laws and legal traditions to international law, see Queen's University Library, "Aboriginal Law and Indigenous Laws", online. For a detailed account of Aboriginal law and rights, see Aboriginal Law Handbook, *supra* and Shin Imai, *Annotated Aboriginal Law: The Constitution, Legislation, Treaties and Supreme Court of Canada Case Summaries*, 2019 Ed ["**Imai's Annotated Aboriginal Law** "]. For a summary of leading cases concerning Indigenous peoples, resources, and other information, see IBA Guide pp. 75—115. For more information on residential schools and your role in reconciliation, see TRC Final Report, *supra*. For information on violence against Indigenous girls, see e.g., MMIWG2S Executive Summary, *supra*; Manitoba Advocate, "A Place Where it Feels Like Home: The Story of Tina Fontaine", March 2019, online; Representative for Children and Youth, "Paige's Story: Abuse, Indifference, and a Young Life Discarded", May 2015, online; Pauktuutit Inuit Women of Canada, Addressing Gendered Violence against Inuit Women: A review of police policies and practices in Inuit Nunangat", 31 January 2020, online; Women of the Métis Nation, Métis Perspectives of Missing and Murdered Indigenous Women, Girls and LGBTQ2S+ People", 30 June 2019, online. For cultural resources, see e.g., Winnipeg Art Gallery, "Virtual Powwow Celebration of National Indigenous Day", 24 June 2020, online. Indigenous women's centres exist across the country, and many host public events, feasts, and vigils for MMIWG2S. For information on Indigenous laws, see John Borrows, *Freedom & Indigenous Constitutionalism*, University of Toronto Press

(2016). The Canadian Bar Association also maintains a list of resources, see The Canadian Bar Association, "Truth and Reconciliation", online. For a list of immediate action points from the Indigenous Bar Association and other Indigenous organizations on reforming justice in Canada, see National Indigenous Justice Symposium, *supra*; see generally, UNDRIP, *supra*.

[439] Guide for Lawyers Working with Indigenous Peoples, *supra* at 23.

[440] LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 48 citing Justice Mandamin. Justice Mandamin described these points as "the touchstones that guide his approach to his First Nations legal work."

[441] Guide for Lawyers Working with Indigenous Peoples, *supra* at 24.

[442] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 25.

[443] Guide for Lawyers Working with Indigenous Peoples, *supra* at 24.

[444] Guide for Lawyers Working with Indigenous Peoples, *supra* at 24.

[445] Guide for Lawyers Working with Indigenous Peoples, *supra* at 24.

[446] Guide for Lawyers Working with Indigenous Peoples, *supra* at 11 citing Nora Rock, "Providing high-quality service to Indigenous clients", LawPRO Magazine, Vol 15, Issue 1, at p. 6.

[447] Guide for Lawyers Working with Indigenous Peoples, *supra* at 11 citing Nora Rock, "Providing high-quality service to Indigenous clients", LawPRO Magazine, Vol 15, Issue 1, at p. 6.

[448] MMIWG2S Executive Summary, *supra* at p. 13.

[449] E.g. see MMIWG2S Executive Summary, *supra* at p. 13.

[450] Native Women's Association of Canada, "Webinar: Taking Action for Justice" 7 July 2020.

[451] Guide for Lawyers Working with Indigenous Peoples, *supra* at 43.

[452] Guide for Lawyers Working with Indigenous Peoples, *supra* at 45, 47; Communicating Effectively With Indigenous Clients, *supra* at p. 30.

[453] Josie McKinney, "Identifying, Understanding and Responding to Relevant Racial/First Nations Issues in our Cases", Nova Scotia Public Prosecution Service (2016), online ["**McKinney**"].

[454] Guide for Lawyers Working with Indigenous Peoples, *supra* at 46—47 citing Nora Rock, "Providing high-quality service to Indigenous clients", LawPRO Magazine, Vol 15, Issue 1, at p. 12.

[455] Guide for Lawyers Working with Indigenous Peoples, *supra* at 49.

[456] The Path: Journey Through Indigenous Canada, *supra* at Module 1.

[457] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 46—47.

[458] McKinney, *supra*.

[459] Guide for Lawyers Working with Indigenous Peoples, *supra* at 48.

[460] Guide for Lawyers Working with Indigenous Peoples, *supra* at 49.

[461] Guide for Lawyers Working with Indigenous Peoples, *supra* at 31—32; MMIWG2S Executive Summary, *supra* at p. 11.

[462] MMIWG2S Executive Summary, *supra* at p. 11.

[463] MMIWG2S Executive Summary, *supra* at p. 11.

[464] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 32.

[465] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 25.

[466] See generally, Joyce Green, "Making Space for Indigenous Feminism", Fernwood Publishing, 2nd Ed (2017).

[467] Guide for Lawyers Working with Indigenous Peoples, *supra* at 49 citing *Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People,* Vol 1, Chapter 2 (Winnipeg: Public Inquiry into the Administration of Justice and Aboriginal People, 1991), Final Report.

[468] Guide for Lawyers Working with Indigenous Peoples, *supra* at 43 citing Nora Rock, "Providing high-quality service to Indigenous clients", LawPRO Magazine, Vol 15, Issue 1, at pp. 12—13.

[469] E.g. if the band retains the lawyer, a band council resolution may be needed.

[470] Guide for Lawyers Working with Indigenous Peoples, *supra* at 73, citing Rhys Price-Robertson and Myfanwy McDonald, *Working with Indigenous children, families, and communities: Lessons from practice.* For example, a consideration that may flow from this is recognizing that for many Indigenous peoples, they are "individuals are inextricably connected to all other elements of creation, including family, community, land and Spirit", see Policy Brief: Indigenous Harm Reduction = Reducing Harms of Colonialism, *supra* at p. 9.

[471] It can be productive to refer or partner with local counsel, who may be more familiar with the community and/or have an existing relationship. Moreover, in criminal matters, "[…] in fly-in courts, there may be "advance days" in the community (sometimes the day before the court day) which provide a good opportunity for education and investigation. Court interpreters are often a good source of cultural information and guidance as well as language interpretation" see Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 45—46. Moreover, local Indigenous knowledge keepers, services, and businesses should be supported where possible in the delivery of legal services. Access to justice can also be furthered by retaining counsel from a nation to provide culturally competent services, and providing funding to that counsel, see LSO

Report on Processes Affecting Indigenous Peoples, *supra* at p. 43; Communicating Effectively with Indigenous Clients, *supra* at p. 8.
[472] Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra*, at p. 10.
[473] Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra*, at p. 13; The Trauma Toolkit, *supra* at p. 106.
[474] The Trauma Toolkit, *supra* at p. 17.
[475] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 45—46, 73—74 citing Rhys Price-Robertson and Myfanwy McDonald, *Working with Indigenous children, families, and communities: Lessons from practice;* Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra*, at pp. 9, 13.
[476] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 45—46.
[477] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 45—46
[478] Advocacy and Indigenous Intergenerational Trauma, *supra*.
[479] Guide for Lawyers Working with Indigenous Peoples, *supra* at 33—34.
[480] These languages are part of 12 language families: Algonquin, Inuit, Athabaskan, Siouan, Salish, Tsimshian, Wakashan, Iroquoian, Michif, Tlingit, Kutenai, and Haida languages, see Statistics Canada, *supra*.
[481] Guide for Lawyers Working with Indigenous Peoples, *supra* at 34.
[482] Guide for Lawyers Working with Indigenous Peoples, *supra* at 34—35, 44—45.
[483] Communicating Effectively With Indigenous Clients, *supra* at p. 8; LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 22; The Trauma Toolkit, *supra* at p. 108.
[484] Communicating Effectively With Indigenous Clients, *supra* at p. 8.
[485] Communicating Effectively With Indigenous Clients, *supra* at p. 23.
[486] Guide for Lawyers Working with Indigenous Peoples, *supra* at 44.
[487] LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 43.
[488] E.g. Guide for Lawyers Working with Indigenous Peoples, *supra* at 44.
[489] Guide for Lawyers Working with Indigenous Peoples, *supra* at 50.
[490] Guide for Lawyers Working with Indigenous Peoples, *supra* at 50: "Many Indigenous peoples may be reluctant to make or maintain eye contact during an interview or interaction. This may be interpreted in any number of ways from a non-Indigenous perspective, including, for example, as a lack of respect or engagement. However, in many Indigenous traditions, sustained eye contact may be considered disrespectful, and therefore avoiding eye contact may be a non-verbal way of conveying respect."
[491] Guide for Lawyers Working with Indigenous Peoples, *supra* at 50.
[492] Guide for Lawyers Working with Indigenous Peoples, *supra* at 25—26.
[493] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 45 and 73 citing Rhys Price-Robertson and Myfanwy McDonald, *Working with Indigenous children, families, and communities: Lessons from practice*; The Trauma Toolkit, *supra* at pp. 20 and 98, citing E.E. Elliot, P. Bjelajac, R. Fallot, L.S. Markoff & Glover Reed, "Trauma-informed or trauma-denied: Principles and implementation of trauma-informed services for women", Journal of Community Psychology, 33 (2005), 462—477.
[494] Guide for Lawyers Working with Indigenous Peoples, *supra* at 51; see also The Trauma Toolkit, *supra* at p. 100.
[495] Guide for Lawyers Working with Indigenous Peoples, *supra* at 45.
[496] Guide for Lawyers Working with Indigenous Peoples, *supra* at 45.
[497] Guide for Lawyers Working with Indigenous Peoples, *supra* at 44.
[498] LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 42.
[499] Guide for Lawyers Working with Indigenous Peoples, *supra* at 44.
[500] Guide for Lawyers Working with Indigenous Peoples, *supra* at 44.
[501] Becoming Trauma-Informed Begins With You, *supra*.
[502] Guide for Lawyers Working with Indigenous Peoples, *supra* at 44.
[503] Becoming Trauma-Informed Begins With You, *supra*.
[504] Becoming Trauma-Informed Begins With You, *supra*.
[505] Guide for Lawyers Working with Indigenous Peoples, *supra* at 50.
[506] Becoming Trauma-Informed Begins With You, *supra*.
[507] Guide for Lawyers Working with Indigenous Peoples, *supra* at 45.
[508] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 44, 73 citing Rhys Price-Robertson and Myfanwy McDonald, *Working with Indigenous children, families, and communities: Lessons from practice*; The Trauma Toolkit, *supra* at pp. 20, 26, 27.
[509] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 44.
[510] Communicating With Indigenous Clients, *supra* at p. 14.
[511] Communicating With Indigenous Clients, *supra* at p. 15.
[512] Communicating Effectively With Indigenous Clients, *supra* at p. 15.
[513] Communicating Effectively With Indigenous Clients, *supra* at p. 10.

[514] Communicating Effectively with Indigenous Clients, *supra* at p. 11.
[515] Lessons Absent from Legal Education, *supra.*
[516] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 50.
[517] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 50.
[518] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 50.
[519] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 45--46
[520] Amnesty Australia, "10 Ways To Be A Genuine Ally to Indigenous Communities", 23 May 2018, online ["**Amnesty's 10 Ways** "].
[521] Guide for Lawyers Working with Indigenous Peoples, *supra* at 73 citing Rhys Price-Robertson and Myfanwy McDonald, *Working with Indigenous children, families, and communities: Lessons from practice.*
[522] LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 25.
[523] LSO Report on Processes Affecting Indigenous Peoples, *supra* at pp. 24, 27, 38; The Trauma Toolkit, *supra* at pp. 16—21.
[524] The Trauma Toolkit, *supra* at p. 21.
[525] Robyn Bourgeois, "Colonial Exploitation: The Canadian State and the Trafficking of Indigenous Women and Girls" 62 UCLA L. Rev. 1426 (2015) at p. 1448 ["**Bourgeois**"]; for more information on Indigenous peoples' engagement with the criminal justice system, see Guide for Lawyers Working with Indigenous Peoples, *supra*.
[526] Jonathan Rudin, "The (in)justice system and Indigenous people", Policy Options (2018), online ["**Rudin**"].
[527] McKinney, *supra*.
[528] Bourgeois, *supra* at p. 1448.
[529] Rudin, *supra*.
[530] Advocacy and Indigenous Intergenerational Trauma, *supra*.
[531] Advocacy and Indigenous Intergenerational Trauma, *supra*.
[532] Communicating Effectively with Indigenous Clients, *supra* at p. 5.
[533] Communicating Effectively with Indigenous Clients, *supra* at p. 5.
[534] Communicating Effectively with Indigenous Clients, *supra*.
[535] The survey gathered the stories of men and women, rural and urban, young and old, and those involved from minor to serious crimes.
[536] Communicating Effectively With Indigenous Clients, *supra* at p. 8.
[537] Communicating Effectively with Indigenous Clients, *supra* at p. 8.
[538] Communicating Effectively with Indigenous Clients, *supra* at p. 9.
[539] Aboriginal Legal Services of Toronto reports that "all too often Indigenous people report being locked up for being drunk because of police mistaking pronunciation differences for slurred speech; Elders have been denied medical care because emergency room triage staff assume intoxication rather than stroke or seizure", see Communicating Effectively With Indigenous Clients, *supra* at pp. 18—19.
[540] Aboriginal Legal Services of Toronto explains that "slower speech, less eye contact, longer pauses and privity or topic avoidances" – which may be features of some Indigenous peoples' speaking styles – "are all associated with speakers who are being uncooperative and/or deceptive." This, along with "hearing an accent can result in linguistic prejudice" and an "Aboriginal English accent and discourse style" can be "interpreted unfavourably by the uninformed listener, and in the legal context, this can have disastrous consequences." See Communicating Effectively With Indigenous Clients, *supra* at pp. 23—26. For additional steps to take where linguistic features of an Indigenous client's speech are identified, see Communicating Effectively With Indigenous Clients, *supra* at p. 31.
[541] Communicating Effectively With Indigenous Clients, *supra* at p. 26.
[542] Communicating Effectively With Indigenous Clients, *supra* at pp. 26—27, 31.
[543] Communicating Effectively with Indigenous Clients, *supra* at p. 10.
[544] Communicating Effectively with Indigenous Clients, *supra* at p. 10.
[545] Communicating Effectively with Indigenous Clients, *supra* at p. 10.
[546] Communicating Effectively with Indigenous Clients, *supra* at p. 10.
[547] For more information on adjusting communication and ensuring understanding, see Communicating Effectively With Indigenous Clients, *supra* at pp. 28—30.
[548] Communicating With Indigenous Clients, *supra* at p. 13.
[549] Communicating With Indigenous Clients, *supra* at p. 13. For additional program considerations and selection, and a discussion of cultural programming which should not be a one-size-fits all approach, see Communicating With Indigenous Clients, *supra* at p. 14.
[550] Guide for Lawyers Working with Indigenous Peoples, *supra* at 45. *Gladue* principles are to be considered, where "judges…consider the systemic background factors that played a role in bringing the offender before the courts, the full range of possible sentences that may be appropriate given the offender's particular aboriginal heritage and connection." In some jurisdictions, these principles are advanced through *Gladue* reports, which are written before the sentencing hearing, and can

serve as a "sentencing aid for the court in considering the principles" of *Glaude*. These reports exist in addition to pre-sentencing reports. See Aboriginal Law Handbook, *supra* at p. 564.
[551] McKinney, *supra*.
[552] Communicating Effectively With Indigenous Peoples, *supra* at p. 12.
[553] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 45.
[554] Communicating With Indigenous Clients, *supra* at p. 13.
[555] Communicating With Indigenous Clients, *supra* at p. 13.
[556] Rudin, *supra*; see also Communicating Effectively With Indigenous Clients, *supra* at p. 12; McKinney, *supra.*
[557] Communicating With Indigenous Clients, *supra* at p. 12; McKinney reports that over the past three years, 130 *Gladue* reports were ordered in Nova Scotia, yet over 700 Indigenous persons were sentenced, see McKinney, *supra*.
[558] Communicating With Indigenous Clients, *supra* at p. 12.
[559] McKinney, *supra*; Rudin, *supra.*
[560] Rudin, *supra.*
[561] McKinney, *supra.*
[562] McKinney, *supra.*
[563] McKinney, *supra.*
[564] McKinney, *supra.*
[565] See Aboriginal Law Handbook, *supra* at p. 564.
[566] Rudin, *supra.* In Nunavut, Gladue reports have not been used, see Sara Frizzell, "Nunavut court hears first-ever request for written Gladue report for Inuit offenders", CBC, 9 January 2020, online.
[567] Communicating Effectively With Indigenous Clients, *supra* at p. 13.
[568] Communicating Effectively With Indigenous Clients, *supra* at p. 13.
[569] Rudin; *supra* see also Aboriginal Law Handbook, *supra* at p. 565.
[570] Other specialized courts exist in Canada, such as Manitoba's new Sentencing Court for offenders with fetal alcohol spectrum disorder and Drug Treatment Court which aims to re-direct offenders with drug addictions "into programs of treatment and supervision, instead of keeping them in jail." See generally, Aiden Geary, "As demand explodes, Manitoba's new FASD court expands to meet need", CBC News, 13 January 2020, online; Winnipeg Drug Treatment Court, "Brochure", online.
[571] See Aboriginal Law Handbook, *supra* at p. 565; Rudin, *supra*.
[572] Rudin, *supra*.
[573] Rudin, *supra*.
[574] Aboriginal Law Handbook at p. 565, citing *R v L (B.)* 2002 ABCA 44.
[575] Aboriginal Law Handbook at pp. 565—566.
[576] John Borrows, "With or Without You: First Nations Law (in Canada)", online at p. 656 ["**Borrows on First Nations Law** "].
[577] For more information on restorative justice, see e.g. Larry Chartrand and Kanatase Horn, "Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada", Prepared for the Department of Justice Canada, October 2016, online; Wenona Victor, "Alternative Dispute Resolution (ADR) in Aboriginal Contexts: A critical Review, Prepared for the Canadian Human Rights Commission, April 2007, available online.
[578] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 10 citing Lindsay Borrows, "*Dabaadendiziwin:* Practices of Humility in a Multi-Juridical Legal Landscape", 33 Windsor Y B Access Just (2016), online.
[579] Advocacy and Indigenous Intergenerational Trauma, *supra*.
[580] Advocacy and Indigenous Intergenerational Trauma, *supra*.
[581] Advocacy and Indigenous Intergenerational Trauma, *supra*.
[582] Advocacy and Indigenous Intergenerational Trauma, *supra* citing *R v Holmes,* 2018 ABQB 916, online at paras 2—4; See also, The Canadian Press, "'Deliberate destruction:' Alberta judge concerned about Indigenous justice", The Globe and Mail, 8 November 2018, online.
[583] Guide for Lawyers Working with Indigenous Peoples, *supra* at 57.
[584] Guide for Lawyers Working with Indigenous Peoples, *supra* at 58.
[585] Guide for Lawyers Working with Indigenous Peoples, *supra* at 58.
[586] Guide for Lawyers Working with Indigenous Peoples, *supra* at 57.
[587] This includes Alberta, Manitoba, Nova Scotia and some courts in Ontario, see CBC News, "Introduction of sacred eagle feathers into Manitoba courts called a historic moment", 26 September 2019, online; Dylan Short, "'Tremendous act of reconciliation': Indigenous court witnesses can now swear on eagle feather", Edmonton Journal, 9 November 2019, online; The Canadian Press, "Eagle feathers now an option for legal affirmations in N.S. courts", 8 November 2018, online; Jesse Ferreras, "Court Oaths on Eagle Feathers Now Permitted for Aboriginals in Ottawa", HuffPost, 2 February 2016, online.
[588] Guide for Lawyers Working with Indigenous Peoples, *supra* at 57—58; Anishnawbe Health Toronto, "The Four Sacred Medicines", 2000, online.
[589] Guide for Lawyers Working with Indigenous Peoples, *supra* at 58.

[590] Guide for Lawyers Working with Indigenous Peoples, *supra* at 60.
[591] For more information and details on admitting different forms of evidence, see Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 62—64, citing *Tsilhqot'in Nation v British Columbia*, 2007 BCSC 1700 at para 435.
[592] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 25—26.
[593] LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 58.
[594] This resource is targeted at substance abuse, but provides helpful information for our purposes. See Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra* at pp. 14.
[595] Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra* at p. 4.
[596] Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra* at p. 20.
[597] MMIWG2S Inquiry Executive Summary, *supra* at p. 5.
[598] Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra* at p. 8.
[599] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 5. Law is not always the answer, or the only answer to experiences of injustice. Provide referrals to other services where they may be of assistance to the client. This might include counselling, traditional healers, Elders, etc. Remember that healing may have different meanings among cultures. See The Trauma Toolkit, *supra* at p. 20.
[600] Becoming Trauma-Informed Begins With You, *supra*.
[601] Becoming Trauma-Informed Begins With You, *supra*.
[602] Guide for Lawyers Working with Indigenous Peoples, *supra* at 45—46.
[603] Northern Health Indigenous Health, "Cultural Safety", online [**"Cultural Safety"**].
[604] Cultural Safety, *supra*.
[605] LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 21 citing Terry Swan.
[606] Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra* at p. 11.
[607] Native Youth Sexual Health Network, "Indigenizing Harm Reduction", Visions Journal 2016, 11(4) online at Here to Help ["**Indigenizing Harm Reduction** "].
[608] Guide for Lawyers Working With Indigenous Peoples, *supra* at p. 14.
[609] Indigenizing Harm Reduction, *supra.*
[610] See generally MMIWG2S Executive Summary, *supra* at p. 43.
[611] Indigenizing Harm Reduction, *supra*.
[612] Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra* at p. 10.
[613] Indigenizing Harm Reduction, *supra*.
[614] Indigenizing Harm Reduction, *supra*.
[615] Indigenizing Harm Reduction, *supra*.
[616] Indigenizing Harm Reduction, *supra*.
[617] Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra* at p. 10.
[618] Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra* at p. 20.
[619] Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra* at p. 10.
[620] Indigenizing Harm Reduction, *supra*.
[621] Policy Brief: Harm Reduction = Reducing the Harms of Colonialism, *supra* at p. 11.
[622] Indigenizing Harm Reduction, *supra*.
[623] The Trauma Toolkit, *supra* at p. 15.
[624] The Trauma Toolkit, *supra* at p. 24
[625] The Trauma Toolkit, *supra* at p. 24
[626] Advocacy and Indigenous Intergenerational Trauma, *supra*.
[627] Emphasis added, see Becoming Trauma-Informed Begins With You, *supra*.
[628] The Trauma Toolkit, *supra* at p. 48
[629] The Trauma Toolkit, *supra* at pp. 9, 19.
[630] The Trauma Toolkit, *supra* at pp. 20, 51.
[631] The Trauma Toolkit, *supra* at p. 44 citing Maria Yellow Horse Brave Heart, "The Historical Trauma Responses Among Natives and Its Relationship with Substance Abuse: A Lakota Illustration", Journal of Pyshoactive Drugs, 35:1, 7—13, 2003.
[632] The Trauma Toolkit, *supra* at pp. 46—47.
[633] The Trauma Toolkit, *supra* at p. 46—47 citing Truth and Reconciliation Commission of Canada, "They Came for the Children", Chapters 1 and 6, pp. 10, 77, 86.
[634] The Trauma Toolkit, *supra* at p. 12; MMIWG2S Executive Summary, *supra* at p. 23.
[635] The Trauma Toolkit, *supra* at p. 49
[636] The Trauma Toolkit, *supra* at p. 6.
[637] The Trauma Toolkit, *supra* at p. 15 citing M. Harris and R.D. Fallot, "Using trauma theory to design service systems", New Directions For Mental Health Services, 89, 1—103, 2001.

[638] The Trauma Toolkit, *supra* at p. 16.
[639] The Trauma Toolkit, *supra* at p. 22.
[640] The Trauma Toolkit, *supra* at p. 16—17, 19.
[641] Becoming Trauma-Informed Begins With You, *supra*; see also The Trauma Toolkit, *supra* at pp. 19, 108—109.
[642] This reflects the approach adopted by the MMIWG2S Inquiry, which deployed a "families-first" approach, see MMIWG2S Executive Summary, *supra* at p. 5.
[643] The Trauma Toolkit, *supra* at pp. 17, 19—20, 27, 48, 97, and 107, citing Nancy Eds Poole and Lorraine Greaves, "Becoming Trauma Informed" and citing Truth and Reconciliation Commission of Canada, "They Came for the Children", Chapters one and size (2012) at pp. 10, 77, and 68, and citing K. Havig, "The health care experiences of adult survivors of sexual abuse: A systemic review of evidence on sensitive practice", Trauma, Violence, and Abuse, 9, 2008, at pp. 19—33.
[644] The Trauma Toolkit, *supra* at pp. 17, 19—20, 26, 100 [footnotes omitted].
[645] The Trauma Toolkit, *supra* at pp. 16—17, 19—20, 48, 96—98, 100 citing Nancy Eds Poole and Lorraine Greaves, "Becoming Trauma Informed", Centre for Addiction and Mental Health, 2012 citing Truth and Reconciliation Commission of Canada, "They Came for the Children", Chapters one and size (2012) at pp. 10, 77, and 68; Policy Brief: Reducing Harm = Reducing the Harms of Colonialism, *supra* at p. 13.
[646] The Trauma Toolkit, *supra* at pp. 16, 24.
[647] E.g. The Trauma Toolkit, *supra* at p. 12; Lessons Absent from Legal Education, *supra*.
[648] The Trauma Toolkit, *supra* at p. 16; Becoming Trauma-Informed Begins With You, *supra*.
[649] The Trauma Toolkit, *supra* at p. 98
[650] See generally, Government of Nunavut, "Ally Brochure", online.
[651] Treaty 7 Allyship Toolkit, *supra* at p. 3; Jackson Smith, Cassandra Puckett, and Wendy Simon, "Indigenous Allyship: An Overview", Office of Aboriginal Initiatives at Wilfred Laurier University (2015), online at p. 6 ["**An Overview of Allyship** "]; Lynne Davis, Chris Hiller, Cherylanne James, et al. "Complicated pathways: settler Canadians learning to re/frame themselves and their relationships with Indigenous peoples" Settler Colonial Studies: 2016, at p. 5 ["**Davis, Hiller et al.** "]; Indigenous Allyship Toolkit, *supra* at pp. 2, 6; Bethany Osborne, Ferzana Chaze, and Elijah Williams, "Learning to be Effective Allies to Indigenous Communities, online, at pp. 12—13, citing The Anti-Oppression Network, "Allyship", 2017, retrieved online ["**Learning to be Effective Allies** "]; Amnesty International Australia, "How To Be A Genuine Ally", February 2020, online ["**Amnesty on Being A Genuine Ally**"] at p. 3.
[652] Amnesty on Being a Genuine Ally, *supra* at p. 3.
[653] Indigenous Allyship Toolkit, *supra* at p. 1; Treaty 7 Allyship Toolkit, *supra* at p. 3.
[654] An Overview of Allyship, *supra* at p. 6; Learning to be Effective Allies, *supra* at p. 12 citing The Anti-Oppression Network, "Allyship", 2017, retrieved online.
[655] An Overview of Allyship, *supra* at p. 6; Learning to be Effective Allies, *supra* at p. 12 citing The Anti-Oppression Network, "Allyship", 2017, retrieved online.
[656] Indigenous Allyship Toolkit, *supra* at p. 1.
[657] Dr. Lynn Gehl, "Ally Bill of Responsibilities", online at p. 1 ["**Gehl**"]; Learning to be Effective Allies, *supra* at p. 42.
[658] Learning to be Effective Allies, *supra* at p. 27.
[659] An Overview of Allyship, *supra* at p. 18.
[660] Indigenous Allyship Toolkit, *supra* at p. 2; Treaty 7 Allyship Toolkit, *supra* at p. 5.
[661] Davis, Hiller et al., *supra* at p. 5 citing Davis.
[662] Amnesty on Being a Genuine Ally, *supra* at p. 3.
[663] Treaty 7 Allyship Toolkit, *supra* at p. 5; Learning to be Effective Allies, *supra* at pp. 15, 23; Amnesty on Being a Genuine Ally, *supra* at p. 3.
[664] Davis, Hiller et al., *supra* at p. 3.
[665] Learning to be Effective Allies, *supra* at p. 15.
[666] Advocacy and Indigenous Intergenerational Trauma, *supra*.
[667] Advocacy and Indigenous Intergenerational Trauma.
[668] An Overview of Allyship, *supra* at p. 17; Davis, Hiller et al., *supra* at pp. 3, 9—10.
[669] For resources for getting started, see those listed at *supra* note 438.
[670] Amnesty on Being a Genuine Ally, *supra* at p. 7.
[671] Indigenous Allyship Toolkit, *supra* at p. 4.
[672] Treaty 7 Allyship Toolkit, *supra* at p. 3; Learning to be Effective Allies, *supra* at p. 25.
[673] Learning to be Effective Allies, *supra* at p. 26.
[674] Treaty 7 Allyship Toolkit, *supra* at p. 4.
[675] Treaty 7 Allyship Toolkit, *supra* at p. 4.
[676] Learning to be Effective Allies, *supra* at p. 12 citing The Anti-Oppression Network, "Allyship", 2017, retrieved online; Davis, Hiller et al., *supra* at p. 4.

[677] Davis, Hiller et al., *supra* at p. 4 citing Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools*, *Truth Telling and Reconciliation in Canada*, Vancouver: UBC Press, 2010.
[678] Learning to be Effective Allies, *supra* at p. 14; Amnesty on Being a Genuine Ally, *supra* at p. 3.
[679] Learning to be Effective Allies, *supra* at p. 24; Gehl, *supra* at p. 1.
[680] Learning to be Effective Allies, *supra* at p. 14.
[681] An Overview of Allyship, *supra* at p.16; Treaty 7 Allyship Toolkit, *supra* at p. 3.
[682] Learning to be Effective Allies, *supra* at p. 24.
[683] An Overview of Allyship, *supra* at p. 16.
[684] Learning to be Effective Allies, *supra* at p. 24.
[685] Learning to be Effective Allies, *supra* at p. 44.
[686] Learning to be Effective Allies, *supra* at p. 22.
[687] Jamieson, *supra*.
[688] Jamieson, *supra*.
[689] Davis, Hiller et al., *supra* at p. 2; see also "Part I: Foundational Knowledge – Historic Moments."
[690] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 16.
[691] Treaty 7 Allyship Toolkit, *supra* at p. 4.
[692] Treaty 7 Allyship Toolkit, *supra* at p. 4.
[693] An Overview of Allyship, *supra* at p. 15 [footnotes omitted].
[694] Davis, Hiller et al., *supra* at p. 2.
[695] An Overview of Allyship, *supra* at p. 15; Communicating Effectively with Indigenous Clients, *supra* at p. 8; see Advocacy and Indigenous Intergenerational Trauma.
[696] In Canada, the names of nearly 30,000 places are of Indigenous origin. For example, this includes Canada, Kelowna, Kamloops, Manitoba, Winnipeg, Saskatoon, Ontario, Thunder Bay, Toronto, Mississauga Ottawa, Quebec, Yellowknife, Inuvik. See Government of Canada, "Indigenous Place Names", online; The Canadian Encyclopedia, "30 Indigenous Place Names and their Meanings, 23 November 2015, online; Government of Canada, "Origin of the names of Canada and its provinces and territories", online.
[697] To find the residential school located closest to your home, see CBC's interactive map, online. For a list of federal day schools, see Indian Day Schools, "Schedule K – List of Federal Indian Day Schools", online.
[698] An Overview of Allyship, *supra* at p. 15.
[699] Treaty 7 Allyship Toolkit, *supra* at p. 2.
[700] Treaty 7 Allyship Toolkit, *supra* at p. 2.
[701] Treaty 7 Allyship Toolkit, *supra* at p. 2; Learning to be Effective Allies, *supra* at p. 44.
[702] Treaty 7 Allyship Toolkit, *supra* at p. 2.
[703] Learning to be Effective Allies, *supra* at p. 17.
[704] Learning to be Effective Allies, *supra* at p. 17.
[705] Learning to be Effective Allies, *supra* at p. 17; see also Indspire, "Indspiring Change at Home: A virtual conversation with our community" 11 June 2020, featuring Roberta Jamieson and Jesse Thistle, online. Beyond acknowledging the land, actions including return of the land should be explored – this also enacts truth, e.g. see Native Governance Centre, "Indigenous Land Acknowledgement", online; Niigaan Sinclair at National Indigenous Justice Symposium, *supra*. This work also includes learning about environmental racism, e.g. see generally, Amnesty International, "World Water Day: Environmental racism threatens health and well-being of Indigenous peoples across Canada", 21 March 2019, online.
[706] Learning to be Effective Allies, *supra* at p. 27.
[707] Learning to be Effective Allies, *supra* at p. 15; Amnesty's 10 Ways, *supra*.
[708] MMIWG2S Executive Summary, *supra* at p. 21; see also, Native Women's Association of Canada, "Aboriginal Lateral Violence", 2015, online.
[709] Gehl, *supra* at p. 1.
[710] Davis, Hiller et al., *supra* at p. 2.
[711] Treaty 7 Allyship Toolkit, *supra* at p. 4.
[712] Gehl, *supra* at p. 1.
[713] An Overview of Allyship, *supra* at p. 13. Treaty 7 Allyship Toolkit, *supra* at p. 4.
[714] Gehl, *supra* at p 1.
[715] Gehl, *supra* at p 1.
[716] An Overview of Allyship, *supra* at p. 13; Amnesty's 10 Ways, *supra*; Amnesty on Being a Genuine Ally, *supra* at p. 5.
[717] Amnesty on Being a Genuine Ally, *supra* at p. 5.
[718] An Overview of Allyship, *supra* at p. 13.
[719] An Overview of Allyship, *supra* at p. 13.
[720] Gehl, *supra* at p. 1; Learning to be Effective Allies, *supra* at pp. 12, 15.

[721] Indigenous Allyship Toolkit, *supra* at p. 2; Treaty 7 Allyship Toolkit, *supra* at p. 3; Learning to be Effective Allies, *supra* at p. 24; Amnesty's 10 Ways, *supra*.
[722] Learning to be Effective Allies, *supra* at p. 24.
[723] Davis, Hiller et al., *supra* at p. 10.
[724] For resources for getting started, see those listed at *supra* note 438. Note that public events will usually be labelled and promoted as such, if you are unsure, ask for permission, see Amnesty's 10 Ways, *supra*.
[725] Generally, it is not appropriate to take pictures or notes at ceremonies.
[726] Treaty 7 Allyship Toolkit, *supra* at pp. 4—5; Learning to be Effective Allies, *supra* at p. 25.
[727] An Overview of Allyship, *supra* at p. 19.
[728] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 9—10.
[729] Guide for Lawyers Working with Indigenous Peoples, *supra* 19—20, citing John Borrows, "Heroes, Tricksters, Monsters, and Caretakers: Indigenous Law and Legal Education", 61 McGill Law Journal, 795 and John Borrows, *Canada's Indigenous Constitution*, Toronto: University of Toronto Press, 2010.
[730] E.g. see MMIWG2S Executive Summary, *supra* at p. 13; Indigenous Peoples Atlas of Canada: Métis, *supra* at pp. 22—23.
[731] Davis, Hiller et al., *supra* at p. 3.
[732] Corntassel, *supra* at p. 88.
[733] Davis, Hiller et al., *supra* at p. 4.
[734] Davis, Hiller et al., *supra* at p. 4, citing Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools*, *Truth Telling and Reconciliation in Canada*, Vancouver: UBC Press, 2010.
[735] Davis, Hiller et al., *supra* at p. 4.
[736] TRC Calls to Action, *supra*.
[737] An Overview of Allyship, *supra* at p. 7.
[738] MMIWG2S Inquiry Executive Summary, *supra* at p. 5.
[739] An Overview of Allyship, *supra* at p. 17.
[740] An Overview of Allyship, *supra* at p. 17.
[741] An Overview of Allyship, *supra* at p. 12.
[742] MMIWG2S Inquiry Executive Summary, *supra* at p. 10.
[743] MMIWG2S Inquiry Executive Summary, *supra* at p. 10.
[744] Learning to be Effective Allies, *supra* at p. 41.
[745] Treaty 7 Allyship Toolkit, *supra* at p. 4.
[746] Learning to be Effective Allies, *supra* at p. 41; Amensty's 10 Ways, *supra*.
[747] Indigenous Allyship Toolkit, *supra* at p. 6; Learning to be Effective Allies, *supra* at p. 22.
[748] Treaty 7 Allyship Toolkit, *supra* at p. 3.
[749] Learning to be Effective Allies, *supra* at p. 41.
[750] Treaty 7 Allyship Toolkit, *supra* at p. 4.
[751] Learning to be Effective Allies, *supra* at p. 41—42.
[752] An Overview of Allyship, *supra* at p. 12; Amnesty's 10 Ways, *supra*.
[753] An Overview of Allyship, *supra* at p. 12.
[754] Amnesty's 10 Ways, *supra*; Amnesty on Being a Genuine Ally, *supra* at p. 7.
[755] MMIWG2S Executive Summary, *supra* at p. 39.
[756] MMIWG2S Executive Summary, *supra* at p. 40.
[757] Indigenous Allyship Toolkit, *supra* at p. 3; Treaty 7 Allyship Toolkit, *supra* at p. 5.
[758] Indigenous Allyship Toolkit, *supra* at p. 1.
[759] Treaty 7 Allyship Toolkit, *supra* at p. 3.
[760] An Overview of Allyship, *supra* at p. 17.
[761] An Overview of Allyship, *supra* at p. 17.
[762] An Overview of Allyship, *supra* at p. 18.
[763] Indigenous Allyship Toolkit, *supra* at p. 2; Learning to be Effective Allies, *supra* at p. 14.
[764] Treaty 7 Allyship Toolkit, *supra* at p. 3.
[765] Learning to be Effective Allies, *supra* at p. 14.
[766] Amnesty on Being a Genuine Ally, *supra* at pp. 3, 6.
[767] Amnesty's 10 Ways, *supra*.
[768] Learning to be Effective Allies, *supra* at pp. 12, 14, 22; Gehl, *supra* at p. 2; Amnesty's 10 Ways, *supra*.
[769] Gehl, *supra* at p. 2.
[770] Davies, Hiller, et al., *supra* at pp. 1—2.
[771] Learning to be Effective Allies, *supra* at p. p 12.
[772] LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 43.

[773] See Peter A. Allard School of Law at the University of British Columbia, "Indigenous Community Legal Clinic", online.
[774] Katie May, "Program aims to bridge gap between lawyers, Indigenous communities", Winnipeg Free Press, 13 March 2020, online.
[775] See West Coast Environmental Law, "RELAW Revitalizing Indigenous law for land, air and water", online.
[776] MMIWG2S Executive Summary, *supra* at p. 15.
[777] Learning to be Effective Allies, *supra* at p. 27.
[778] Learning to be Effective Allies, *supra* at p. 27; Amnesty's 10 Ways, *supra*; Amnesty on Being a Genuine Ally, *supra* at p. 7.
[779] Jamieson, *supra*.
[780] Treaty 7 Allyship Toolkit, *supra* at p. 5.
[781] Learning to be Effective Allies, *supra* at p. 16.
[782] E.g., see Amnesty on Being a Genuine Ally, *supra* at p. 6.
[783] Gehl, *supra* at p. 2.
[784] Gehl, *supra* at p. 2.
[785] Gehl, *supra* at p. 2.
[786] Learning to be Effective Allies, *supra* at pp. 22, 26.
[787] Indigenous Allyship Toolkit, *supra* at p. 6.
[788] Learning to be Effective Allies, *supra* at pp. 15—16.
[789] Learning to be Effective Allies, *supra* at p. 16; Davis, Hiller et al., *supra* at pp. 9—10; Amnesty's 10 Ways, *supra*; Amnesty on Being a Genuine Ally, *supra* at p. 7.
[790] MMIWG2S Executive Summary, *supra* at p. 22.
[791] MMIWG2S Executive Summary, *supra* at p. 22.
[792] MMIWG2S Executive Summary, *supra* at p. 22.
[793] See Davis, Hiller et al., *supra* at p. 8 which use these questions as guidance to assess initiatives and efforts on reconciliation – they also provide helpful prompts to consider throughout allyship work.
[794] Davis, Hiller et al., *supra* at p. 11.
[795] Treaty 7 Allyship Toolkit, *supra* at p. 3.
[796] Gehl, *supra* at p. 2.
[797] Gehl, *supra* at p. 2.
[798] Amnesty's 10 Ways, *supra*; Amnesty on Being a Genuine Ally, *supra* at pp. 6—7.
[799] Learning to be Effective Allies, *supra* at pp. 25—26, 43.
[800] An Overview of Allyship, *supra* at p. 20.
[801] Amnesty on Being a Genuine Ally, *supra* at p. 7.
[802] Amnesty on Being a Genuine Ally, *supra* at p. 7.
[803] There are numerous leading Indigenous organizations, including: The Native Women's Association of Canada; Pauktuutit Inuit Women of Canada; and Women of the Métis Nation. Other leading Indigenous voices include those named Indspire Laureates –the highest honours Indigenous peoples bestow on their own people, and those designated Indigenous Peoples Counsel by the Indigenous Bar Associations, which recognizes outstanding Indigenous lawyers, see Indspire, "Laureates", online and Indigenous Bar Association, "IPC Award", online.
[804] Note that the "saviour complex gave rise to the policies responsible for colonization and the mission…to 'lift the uncivilized Indigenous people up and into civilization,' and free them from their inevitable damnation", see An Overview of Allyship, *supra* at p. 20; Learning to be Effective Allies, *supra* at p. 15; see generally, Judy Haiven, "'Be respectful allies, not saviours' – Dr Pam Palmater on reconciliation", The Nova Scotia Advocate, 7 November 2018, online.
[805] Jamieson, *supra*; Learning to be Effective Allies, *supra* at p. 12.
[806] Gehl, *supra* at p. 2.
[807] For example, there has been a surge of persons who previously identified as non-Indigenous, who are now identifying as Métis, sometimes because of having an Indigenous ancestor from the 1600's. However, this does not mean they are Indigenous, and many of these groups identifying as Métis are not accepted by the Métis Nation. See Jean Teillet, "The confusing world of Métis identity", The Globe and Mail, 13 September 2019, online; Gehl, *supra* at p. 2.
[808] An Overview of Allyship, *supra* at p. 20.
[809] An Overview of Allyship, *supra* at p. 20.
[810] Gunn explains that "When Europeans first arrived, initial interactions took place on a nation-to-nation basis, following Indigenous customary diplomatic protocols. The various nations lived (and continue to live) in organized societies, with sophisticated legal, political and economic systems. This relationship changed as England's interest in Canada changed from trade to settlement. The relationship shifted from nation-to-nation interactions as sovereign equals, to a colonial context where England (later Canada) assumed sovereignty and jurisdiction over Indigenous peoples. This colonial process violated and continues to violate Indigenous peoples' right to self-determination" see Brenda Gunn, "Moving Beyond Rhetoric:

Working Toward Reconciliation Through Self-Determination" Dalhousie Law Journal 38 (2015), at pp. 247—248 ["**Gunn on Reconciliation**"].

[811] MMIWG2S Executive Summary, *supra* at p. 11.

[812] Corntassel, *supra* at pp. 88—89

[813] Gunn on Reconciliation, *supra* at p. 240.

[814] Gunn on Reconciliation, *supra* at pp. 238—239

[815] Gunn on Reconciliation, *supra* at p. 269

[816] Brenda Gunn, "Self-Determination and Indigenous Women: Increasing Legitimacy through Inclusion", Canadian Journal of Women and the Law 26:2 (2014) at p. 262 ["**Gunn on Self-Determination** "].

[817] Gunn on Self-Determination, *supra* at p. 242, citing Mary Ellen Turpel, "Indigenous Peoples' Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition" (1992) 25:3 Cornell International Law Journal 579 at 580 and citing Megan Davis, "Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples" (2008) 9:2 Melbourne Journal of International Law 439 at 458.

[818] Gunn on Self-Determination, *supra* at p. 259 citing Mi'lanaq Case, UNHRC 205/1986 (1986) at para 14.2; An Overview of Allyship, *supra* at p. 7; Gunn on Reconciliation, *supra* at p. 269.

[819] Gunn on Reconciliation, *supra* at p. 241.

[820] Gunn on Reconciliation, *supra* at p. 254.

[821] Gunn on Reconciliation, *supra* at p. 254.

[822] LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 21.

[823] MMIWG2S Executive Summary, *supra* at p. 13."

[824] MMIWG2S Final Report 1A, *supra* at p. 175; see also The Path: Journey Through Indigenous Canada, *supra* at Module 5.

[825] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 20.

[826] Borrows on First Nations Law, *supra* at p. 646. For example, some Indigenous laws include: "the Anishinabe Seven Sacred Laws; the teachings of the Haudenosaunee of peace, respect, friendship and a good mind; Cree principles compliment the Seven Sacred Laws, are supported by the Métis and the 8 Inuit Qaujimajatuqangit guiding principles." These seven teachings include love, as "[t]o know love is to know peace"; respect, where "[t]o honour all Creation is to have respect"; courage, which is "[t]o face life with courage is to know bravery; honestly, which is "[t]o walk through life with integrity is to know honesty"; humility, which is "[t]o accept yourself as a sacred part of Creation is to know humility"; wisdom which is "[t]o cherish knowledge is to know wisdom"; and truth, which is "[t]o know of these things is to know truth". Moreover, the 8 Inuit Qaujimajatuqangit guiding principles are: "Inuuqatigiitsiarniq - Respecting others, relationships and caring for people. Tunnganarniq - Fostering good spirit by being open, welcoming and inclusive. Pijitsirniq - Serving and providing for family and/or community. Aajiiqatigiinniq - Decision making through discussion and consensus. Pilimmaksarniq - Development of skills through practice, effort and action. Piliriqatigiinniq/Ikajuqtigiingniq - Working together for a common cause. Qanuqtuurniq - Being innovative and resourceful Avatittinnik Kamatsiarniq - Respect and care for the land, animals and the environment." See LSO Report on Processes Affecting Indigenous Peoples, *supra* at p. 71.

[827] Guide for Lawyers Working with Indigenous Peoples, *supra* at p. 20.

[828] Gunn on Reconciliation, *supra* at p. 257.

[829] Gunn on Reconciliation, *supra* at pp. 255—256

[830] See LSO Report on Processes Affecting Indigenous Peoples, *supra*.

[831] Borrows on First Nations Law, *supra* at p. 634.

[832] Borrows on First Nations Law, *supra* at p. 638

[833] Borrows on First Nations Law, *supra* at pp. 653—654.

[834] Borrows on First Nations Law, *supra* at pp. 653—654.

[835] Gunn on Reconciliation, *supra* at p. 258.

[836] Gunn on Reconciliation, *supra* at pp. 252—253.

[837] See generally, Olivia Stefanovich, "Federal Court justice says judicial diversity targets need 'aggressive' timelines", CBC, 30 June 2020, online; Laura Ryckewaert, "'We have to be part of it': Indigenous MPs say there needs to be better representation", The Hill Times, 19 June 2019, online; Nic Meloney, "Supreme Court ruling shows the need for more Indigenous Parliamentarians and judges, says lawyer", CBC, 17 October 2018, online. For example, in Ontario, 1.4% of lawyers are Indigenous, despite Indigenous peoples making up 2.91% of the population. Notably, the "portion of Indigenous lawyers…has not increased since the 1990s" in the province. See Michael Ornstein, "Statistical Snapshot of Lawyers in Ontario", Law Society of Ontario, 25 March 2020, online at pp. 3, 7. The Honourable Harry LaForme is the only Indigenous judge to sit on an appellate court in Canada's history, see Sean Fine, "Harry LaForme, a groundbreaking Indigenous judge, looks back in anger at the milestone Canada missed", The Globe and Mail, 21 November 2018, online; see also, Gunn on Reconciliation, *supra* at p. 258.

[838] Guide for Lawyers Working with Indigenous Peoples, *supra* at pp. 21—22, citing Rose Voyvodic, "Advancing the Justice Ethic Through Cultural Competence", University of Windsor Faculty of Law.

[839] See generally, Chantelle Bellrichard, “Indigenous lawyers speak out about bias, racism at work” CBC News, 5 December 2017, online.
[840] See Kristy Kirkup, “Top court’s bilingual rule a barrier to Indigenous judges: Sinclair, Bellegrade”, The Globe and Mail, 16 May 2018, online. The appointment of an Indigenous judge to the Supreme Court of Canada is included as Call for Justice #5.12 from the Missing and Murdered Indigenous Women and Girls Inquiry, see MMIWG2S Calls For Justice, *supra*.
[841] Gunn on Reconciliation, *supra* at p. 259.
[842] Gunn on Self-Determination, *supra* at p. 261 citing Indigenous Bar Association, News Release, "Respecting Legal Pluralism in Canada; Indigenous Bar Association Appeals to Harper Government to Appoint an Aboriginal Justice to the Supreme Court of Canada" (19 July 2011), online.
[843] Gunn on Reconciliation, *supra* at p. 269.
[844] Amnesty on Being a Genuine Ally, *supra* at p. 4.
[845] Amnesty on Being a Genuine Ally, *supra* at p. 6.
[846] Gunn on Reconciliation, *supra* at p. 258.
[847] Gunn on Reconciliation, *supra* at p. 258.
[848] Gunn on Reconciliation, *supra* at p. 259.
[849] Gunn on Self-Determination, *supra* at pp. 242 and 260 [footnotes omitted]; See also Gunn on Reconciliation, *supra* at p. 243.
[850] Gunn on Self-Determination, *supra* at p. 261.
[851] Gunn on Reconciliation, *supra* at p. 260.
[852] Gunn on Reconciliation, *supra* at p. 260, citing HRC report, see footnote 122; see also Aboriginal Law Handbook at pp. 223—226.
[853] Amnesty’s 10 Ways, *supra*; Amnesty on Being a Genuine Ally, *supra* at p. 7.
[854] Gunn on Reconciliation, *supra* at pp. 260--261
[855] UNDRIP, *supra* at Art. 43.
[856] Gunn on Self-Determination, *supra* at pp. 243, 256—257, 269—271, 273 citing Andrea Smith, "Native American Feminism, Sovereignty, and Social Change" (2005) 31:1 Feminist Studies 116 at 121 at p. 21.
[857] Gunn on Self-Determination, *supra* at pp. 254, 256—257 citing Andrea Smith, "Native American Feminism, Sovereignty, and Social Change" (2005) 31:1 Feminist Studies 116 at 121 at p. 21.
[858] Among other things, this means the rights of Indigenous peoples to determine their economic priorities and the strategies for exercising these rights. It also includes guarding against the recreation of policies that sought to assimilate Indigenous peoples, through positive actions that promote Indigenous peoples’ culture in order to “undo the damage caused by years of colonial interference.” See Gunn on Reconciliation, *supra* at pp. 260—271 [footnotes omitted].
[859] Gunn on Reconciliation, *supra* at p. 269; Bourgeois 1463
[860] Gunn on Reconciliation, *supra* at p. 239—240
[861] Gunn on Reconciliation, *supra* at p. 242
[862] E.g. see Gunn on Reconciliation, *supra* at p. 241.
[863] An Overview of Allyship, *supra* at p. 18.
[864] Gehl, *supra* at p. 1.
[865] Gehl, *supra* at p. 2.
[866] For more information, see Overview of Allyship, *supra* at p. 19. It should be noted that there is a distinction between cultural appropriation and appreciation, whereby “the former is ‘theft based on power and privilege,’ whereas the latter is ‘engagement based on responsibility and ethics”, see generally, Jennifer Brant, “Cultural Appropriation of Indigenous Peoples in Canada”, The Canadian Encyclopedia, 20 July 2020, online.
[867] Indigenous Allyship Toolkit, *supra* at p. 3; Treaty 7 Allyship Toolkit, *supra* at p. 5.