

The Impact of the Truth and Reconciliation Commission's Recommendations on Violence Against Women

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I. Introduction

This paper offers a brief discussion of the implications of the Truth and Reconciliation Commission's recommendations on violence against women, with an emphasis on family law services and law reform. I begin with a review of the background on the Truth and Reconciliation Commission; the report and recommendations. I then discuss the unique circumstances and challenges Indigenous women face with respect to violence against women, spousal and family violence. In the context of these circumstances and challenges, I then engage in a discussion of the implications of the recommendations on violence against women, family law services and law reform.

II. Background on the Truth and Reconciliation Commission's Recommendations

The Truth and Reconciliation Commission (TRC) was established in 2007 to facilitate reconciliation among former students of the Indian Residential School system, their families, their communities and all Canadians. Between 2007 and 2015 the TRC travelled across Canada and collected testimony from more than 6500 witnesses to the residential school system.

In 2015, the TRC released a 6-volume final report as well as a summary report that included 94 calls to action¹. The recommendations are divided in two parts: legacy (1 to 42) and reconciliation (43 to 94). Domestic violence is referred to in the following calls to action:

36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.

39. We call upon the federal government to develop a national plan to collect and publish data on the criminal victimization of Aboriginal people, including data related to homicide and family violence victimization.

¹ Truth and Reconciliation Commission of Canada, "Truth and Reconciliation Commission of Canada: Calls to Action", online: <http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf>

40. We call on all levels of government, in collaboration with Aboriginal people, to create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms.

41. We call upon the federal government, in consultation with Aboriginal organizations, to appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls. The inquiry's mandate would include:

- i. Investigation into missing and murdered Aboriginal women and girls.
- ii. Links to the intergenerational legacy of residential schools.

50. In keeping with the United Nations Declaration on the Rights of Indigenous Peoples, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.

Recommendation 53 calls upon the Parliament of Canada, in consultation and collaboration with Aboriginal peoples, to enact legislation to establish a National Council for Reconciliation. The mandate of this council would include:

- vi. Progress on reducing the rate of criminal victimization of Aboriginal people, including data related to homicide and family violence victimization and other crimes.

In December 2017, the first steps were taken towards the establishment of a National Council for Reconciliation with the appointment of a Federal Interim Board of Directors. In April 2018, the Interim Board of Directors sought public input on how it can implement its mandate. To date, the Council has not yet been established.

III. Unique Circumstances and Challenges Faced by Indigenous Women

Colonialism has Naturalized Spousal Violence in Indigenous Communities

Sexist and racist colonial views of Indigenous people – men as innately savage and violent and women as subservient and sexually deviant – have naturalized spousal violence in Indigenous communities². The issue of responding to the issue of spousal violence can only be addressed after clearing a path through the persistent racism and stereotypes. Colonialism has been posited as the central condition out of which interconnected forms of violence, including spousal violence, arise.³ Many Indigenous peoples themselves see family violence as a direct consequence of colonialism.⁴ Colonialism has resulted in institutionalized racism that is a cause

² <https://www.ccnsa-nccah.ca/docs/emerging/RPT-FamilyViolence-Holmes-Hunt-EN.pdf> at page 5.

³ *Ibid.*

⁴ *Ibid.*

of family violence in indigenous communities as well as a systemic barrier faced by Indigenous women in accessing services.

The Indigenous Population is Growing Rapidly

According to Statistics Canada (2017), on and off reserves, First Nations, Metis, and Inuit populations are the most rapidly growing populations in Canada. Since 2006 First Nations population has grown by 39.9%, Metis by 51.2% and Inuit by 29.1%. The Indigenous population is younger than the non-Indigenous with an average age of 32.1 years. The number of First Nations people with registered or treaty Indian status rose by nearly 31% from 2006 to 2016. Nearly 50% of First Nations people with treaty or Indian status lived on reserve, and over half of First Nations people live in the western provinces of Canada⁵.

Indigenous Women Experience Severe Marginalization

Indigenous women experience severe marginalization across Canada. Indigenous women face high risks of experiencing homelessness, living in poverty, poor health, under or unemployment, addiction and mental health issues and addiction. These women represent a disproportionate percentage of incarcerated women. Indigenous women account for approximately 33% of federally incarcerated women and in 2010/2011 they made up 41% of all females sentenced in custody⁶.

Indigenous Women Experience Higher Rates of Spousal Violence

Indigenous people generally, and Indigenous women particularly, are significantly more likely to experience domestic/family/spousal violence. According to a report by Statistics Canada, titled "Family violence in Canada: A statistical profile, 2014":

- Indigenous people (9% living in the provinces and 18% living in the territories) were more than twice as likely as non-Indigenous people (4%) to report being a victim of spousal abuse
- Indigenous women (10%) were three times more likely to report being a victim of spousal abuse as non-Indigenous women (3%)
- Indigenous women (19%) residing in the territories reported higher proportions of spousal violence than Indigenous women (10%) living in the provinces
- 51% of Indigenous victims of spousal violence reported experiencing the most severe forms of spousal violence (i.e., having been sexually assaulted, beaten, choked or threatened with a gun or knife) compared with 23% of non-Indigenous victims

⁵ Canadian Domestic Homicide Prevention Initiative, "Domestic Violence Risk Assessment, Risk Management and Safety Planning with Indigenous Populations", online: <http://cdhpi.ca/sites/cdhpi.ca/files/Brief_5-Online.pdf>

⁶ *Supra* note 1.

- 60% of Indigenous women experienced spousal violence reported experiencing the most severe forms compared with 41% of Indigenous men
- 45% of Indigenous spousal violence victims reported physical injuries resulting from the abuse compared with 30% of non-Indigenous victims
- 50% of spousal violence cases involving an Indigenous victim, the abuse was reported to police; this was the case for less 28% of spousal violence cases involving non-Indigenous victims
- While rates of self-reported spousal victimization among the non-Indigenous population decreased between 2009 (6%) and 2014 (4%), rates for Indigenous people were nearly unchanged from 2009 (10%) to 2014 (9%)
- 40% of Indigenous people reported experiencing some form of childhood physical and/or sexual maltreatment before the age of 15 compared with 29% of non-Indigenous people⁷

A 2017 report from the Department of Justice, Research and Statistics Division, titled, "Victimization of Indigenous Women and Girls", found research showed that while all women and girls in Canada were at risk of violence at the hands of intimate partners, Indigenous women and girls self-report experiencing dramatically higher rates of violent victimization. The findings of the report include the following:

- Indigenous female victims of spousal violence were more likely to fear for their lives (53%) in comparison to non-Indigenous female victims (29%)
- Self-reported abuse towards Indigenous mothers was higher (31%) than that reported by non-Indigenous mothers (12%). The most common perpetrator was a partner, husband or boyfriend.
- 31% of Indigenous mothers reported being a victim of abuse and 16% reported being a victim of intimate partner violence (IPV) compared with 12% of non-Indigenous mothers who reported being a victim of abuse and 6% reported being a victim of IPV
- 22% of Indigenous women self-reported being a victim of post-separation intimate partner violence (PSIPV) compared to 7% of non-Indigenous women within five years after the separation
- Indigenous women experience more coercive control than non-Indigenous women and that more of them were younger than their non-Indigenous counterparts
- 71% of Indigenous women who were victims of spousal violence contacted a formal victim service

⁷ Statistics Canada, "Victimization of Aboriginal people in Canada, 2014", online: <<https://www150.statcan.gc.ca/n1/pub/85-002-x/2016001/article/14631-eng.htm>>

- Only 5% of all shelters are located on reserves
- 63% of the shelters in Canada reported offering culturally relevant services for Indigenous women, 46% reported offering culturally relevant services for Indigenous children and 21% reported having available services in at least one Indigenous language (primarily Cree, Ojibway or Inuktitut)
- The majority of women in shelters both on- and off-reserve were fleeing abuse and the proportion of those on-reserve fleeing abuse was slightly higher (78% and 73%, respectively)⁸

IV. Implications of the TRC's Recommendations on Violence Against Women

Implications for Family Law Services and Law Reform

The implications of the Recommendations for family law services and law reform are primarily consequential or tangential. That is, steps taken to comply with the calls to action outlined above will have consequences for family law services and family law, generally. None of the recommendations make reference to family law services or family law reform. The recommendations consist primarily of calls for the development of support services, collection of data and public inquiries.

V. Conclusion

In light of the statistical increased vulnerability to domestic violence that indigenous women are at risk of, it is disconcerting that the Recommendations do not go further. This is particularly the case given the direct, one could argue causal, relationship between colonialism and domestic violence in indigenous communities. If reconciliation is in fact the goal, and one accepts the role the residential schools and their impact on the lives of indigenous persons, their families and communities, then it seems to be a tragic oversight that the Commission did not include more calls to action to redress. Finally, it is additionally disappointing that such little has been done to date to respond to the calls to action that do relate to domestic violence and particularly violence against women.

⁸ Department of Justice, "Victimization of Indigenous Women and Girls", online: <<https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/july05.html>>