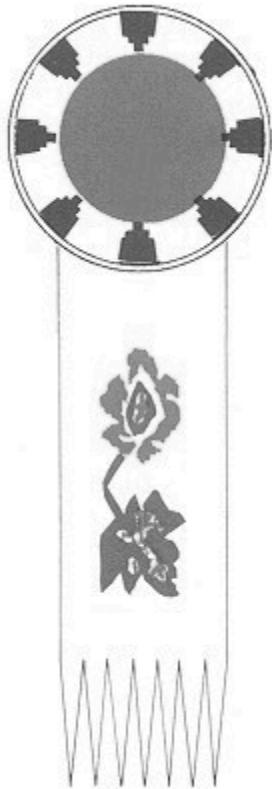


Native Women's Association of Canada



VIOLATIONS OF INDIGENOUS HUMAN RIGHTS

~ December 2002~

Special Rapporteur: Investigation

An NWAC Submission

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Submission to the Special Rapporteur investigating the Violations of Indigenous Human Rights

The Native Women's Association of Canada (NWAC) is a national non-profit organization incorporated in 1974. It is an aggregate of the associations in the provinces and territories in Canada. The objectives of NWAC include advancing the issues and concerns of Native women, and its role as a national voice of Native women has been recognized by courts and tribunals. It is with these objectives in mind that this report is being written and submitted.

Aboriginal people, including those living on reserves, are among the poorest in Canada. It is well documented and researched that Aboriginal people experience discrimination on the basis of race. It is also well documented and researched that Aboriginal women, living on and off reserve, are targets of discrimination, both by the broader society and also in Aboriginal and reserve communities.

Recently, the United Nations said that most First Nations reserves are no different than Third World countries. In this country with resources appropriated from Indigenous traditional territories, there is no reason for Indigenous Peoples living in Canada to be in the situation that we are currently in.

1. History of Colonization and its effects on Aboriginal Women

Since contact, Aboriginal people have had to adapt to Eurocentric patriarchal values and beliefs that have been forced through goals of assimilation, conversion, extermination and blatant cultural genocide. Violations of our Aboriginal human rights has been continuous issue since colonization. Aboriginal women and children have been the most affected by these violations. Aboriginal women have had to deal with dispossession of their traditional territories, disassociation with their traditional roles and responsibilities, disassociation with participation in political and social decisions in their communities, disassociation with themselves and their families, disorientation of culture and tradition, etc. All of these "disses" have lead up to a series of effects on Aboriginal Women further discussed in this report. The Manitoba Justice Inquiry has stated that "Aboriginal women and their children suffer tremendously in contemporary Canadian society. They are the victims of racism, of sexism and of unconscionable levels of domestic violence." The Inquiry also noted that "the justice system has done little to protect them from any of these assaults." These issues will be presented in this report along with other violations impacting on Aboriginal women as a result of a piece of the most blatant racist piece of legislation, the Indian Act.

2. Violence and Aboriginal Women

Aboriginal women continue to face violence in their lives every day. For some, this is a normal way of life because they are not aware that there is a better life. According to various statistics, Aboriginal women in Canada experience consistently higher rates of reported intimate violence than the overall female population. At least one in three is abused by a partner compared to one in ten women overall and there are some estimates of as high as nine in ten [Proulx and Perrault]. Four out of five Aboriginal women have witnessed or experienced intimate violence in childhood.

A survey by Correctional Services of Canada pointed out that abuse played a more widespread part in the lives of Aboriginal women compared to non-native women. It indicated that 90% of Aboriginal and 61% of non-Aboriginal women had been physically abused, whereas 61% of Aboriginal and 50% of non-Aboriginal women had been sexually abused. The findings from this study indicated that 75.9% of Aboriginal women, for whom information was available, had childhood/adolescent experiences of abuse (i.e. gave a general statement or described a specific type of abuse), whereas these experiences were indicated in the case of 55.6% of non-Aboriginal women. Also, a smaller percentage of Aboriginal women (10.8%) stated that they did not experience any type of abuse, compared to the non-Aboriginal women (21.6%).

There are many complexities in defining and pinpointing the violence in Aboriginal communities. There is a long history of oppression that has specifically affected Aboriginal women and children. Oppression and colonization have in turn created internal oppression and colonization in most Aboriginal communities where most Aboriginal men are controlling their communities. The Aboriginal Justice Inquiry in Manitoba noted that violence and abuse in Aboriginal communities have reached epidemic proportions. Another report completed for the Royal Commission on Aboriginal Peoples concluded that family violence within Canada's Aboriginal people is distinctive from white communities because "violence has invaded whole communities and cannot be considered a problem of a particular couple or an individual household" (Peoples, 1996: 56).

Violence affects Aboriginal women the most because traditionally Aboriginal women are the nurturers, caregivers and givers of life. They were respected for this role; however, as a result of the impact of colonization, violence is something that has remained in the community and the respect for Aboriginal women's roles has diminished.

3. Missing Aboriginal Women and Unresolved Murders

Aboriginal women have been continuously reported missing across Canada. Approximately 500 Aboriginal women have been murdered or reported missing over the past 15 years. There has been little, if any, media coverage, and police do not seem to be actively searching for any of these women. Many Aboriginal women have also been murdered with no complete investigations into their deaths. We cannot forget that these women's spirits are still wandering and have not been able to rest.

In 1996 Indian and Northern Affairs Canada reported that, "Aboriginal women with status under the Indian Act and who are between the ages of 25 and 44 are five times more likely to experience a violent death than other Canadian women in the same age category. (Aboriginal Women: A Demographic, Social and Economic Profile, Indian and Northern Affairs Canada, Summer 1996)" The crime has not stopped and with approximately 1.5 million Aboriginal people in Canada and half of that population being women, Aboriginal women have become prime targets and are the most vulnerable to such acts of violence.

One of the reasons why The Manitoba Justice Inquiry was done was because of the murder of Helen Betty Osborne. She was killed because she was an Aboriginal woman and because four White men thought she was "easy". These four men were driving along in the Pas, Manitoba, when they encountered nineteen year old, Helen Betty Osborne. She was walking home when they abducted her, raped her and then brutally killed her with a screwdriver. One of the saddest aspects of the so called police investigation was the fact that the police began their investigation within the Aboriginal community. When no suspects were found then the police dropped their investigation. There were some reports that four men were bragging about Osborne's death. It has also been found that many of the people in the Pas knew the names of the murderers but nothing was done for sixteen years. In the end, only one of the men received any jail time. This demonstrates a complete disregard for the life of an Aboriginal woman. It also shows the failure of the police in Manitoba to properly investigate her death. This continues to happen today.

Aboriginal women have been victims of such crimes for many years. Anna Mae Aquash was a Mi'kmaq woman from Nova Scotia who was murdered 24 years ago with no resolution as to who her murderer was. Anna Mae Aquash died in an execution-style murder after violence broke out between the FBI and the American Indian Movement at Wounded Knee in South Dakota. Despite her daughters' push for an arrest, still nothing has been done. More recently, another Mi'kmaq woman, Cheryl Ann Johnson's drowned and partially nude body was found in shallow water off Sydney's popular boardwalk in Nova Scotia. Her death was investigated by police for only one day.

In Saskatchewan, in 1992, Shelley Napope, Eva Taysup and Calinda Waterhen were all Aboriginal women who were victims of violence murdered by a serial killer whose prey was Aboriginal women. This serial killer, John Crawford, had just come out of prison for manslaughter for brutally killing 35-year-old Mary Jane Serloin in Lethbridge, Alta. in 1981. In the Serloin case, the judge found that "one of the most troubling aspects of the attack was Crawford's callous disregard" for his victim. He was sentenced to just 10 years and only served five before beginning a string of new assaults and murders. In 1990, while living in Saskatoon, he was fined for attempting to engage the services of a prostitute. Two years later he was charged with raping Janet Sylvestre, a thirty-six-year-old Aboriginal woman. Before the year was up, he had murdered three more Aboriginal women. There are also allegations the police were watching John Crawford and witnessed him brutally assaulting Theresa Kematch. The police did nothing to stop the assault and instead the RCMP arrested her later that night.

In December 1996, Pamela Jean George, a 28-year-old mother of two, was beaten to death. She lived in Regina, Saskatchewan. Steven Kummerfield and Alex Ternowetsky were convicted by jury of manslaughter for the murder and sentenced to six and a half years each by Justice Ted Malone. Judge Malone instructed the jury to remember that George was "indeed a prostitute," when considering whether she consented to the sexual assault. The issue of consent was important in determining whether the young men should be convicted of manslaughter rather than first-degree murder. The judge also stated that "it would be dangerous to convict the men on the murder charge." Ternowetsky hid in the trunk of the car when they picked Pam George up, so that she would not know that there were two of them. George never agreed to be with both men. She struggled to get away from them but they forced her to perform oral sex on them. When she refused and fought back with them, she was beaten so badly that her family could not open the casket for her funeral.

The manslaughter conviction was appealed by Crown prosecutor Matt Miazga. Kummerfield was paroled on November 10, 2000, after serving just under four years in New Brunswick, because officials feared for his safety in a Saskatchewan prison where there is a large Native population. He currently lives in a half-way house in Vancouver. Ternowetsky was granted day parole in August, 2000.

Lawrence Joseph, vice-chief of the Federation of Saskatchewan Indian Nations, called the verdict a "gross miscarriage of justice. "Today's announcement of the full parole of this killer (Kummerfield) is another example as to why we have to take a look at the system," Joseph said. "I think this points to who is administering the system. Who is it? Is it people with knowledge of the practical realities facing the marginalized people, the poorest of the poor in this country? "Who's administering this so-called justice system? Just take a look, it's certainly not First Nations people. "

Today, more than half of the women missing from Vancouver's Downtown Eastside are Aboriginal women. For too many painful years, the Downtown Eastside of Vancouver, British Columbia has been home to dozens of Aboriginal women whose spirits were lost somewhere along the way and whose lives were consumed by drugs and prostitution.

Janet Henry is one of the more than fifty women who are missing - a story that was sensationalized internationally because of a police investigation at a pig farm in Port Coquitlam, British Columbia. The Vancouver pig farm is owned by Robert Pickton, who has been charged with first-degree murder in the deaths of six of the women. Police have found more human remains on the Port Coquitlam farm, where investigators expect to spend more than a year looking for evidence. Pickton was charged in 1997 with attempted murder, but the charges were stayed. Relatives of the missing women have stated that the police did not do enough with tips suggesting Pickton's pig farm could be linked to the disappearances. The women, most of whom were prostitutes and addicted to drugs, began disappearing in 1983, although the majority of them - 39 - went missing in the last six years. The province's solicitor general has rejected calls for an inquiry into police handling of the case while Pickton is before the courts.

The mysterious disappearance of Janet Henry has touched the lives of hundreds, perhaps thousands of people in First Nation, urban Aboriginal and non-Aboriginal communities and especially in their homes too. Families of the missing women have stories that share similarities. Despite their lives on the streets, these women stayed in touch with their families, surprisingly often. NWAC and other women organizations have been lobbying government to provide more funding for women's services and programs. It is alarming to notice the slow action by police to acknowledge there may be a serial killer prowling the drug-plagued neighbourhood. NWAC would like to see more funds donated by government, organizations, and individuals to assist in the war against sexual abuse and violence on women.

In a report, "Stop The Undeclared War Against Aboriginal People", which was prepared for the World Conference Against Racism in August, 2001, many women gathered to share their experiences of oppression and resistance. It was found that killing and maiming of Aboriginal women was not uncommon. Rather it was far too common to have women disappear, and killed without any investigation.

4. Aboriginal Women and the Justice System

The criminal justice system has failed Aboriginal people. This fact has been stated by the Royal Commission on Aboriginal people as well as in many federal reports and provincial and territorial inquiries. It has failed because it is a system that has been created with basic European cultural values; values that are very different from Aboriginal cultural values. It is an adversarial system full of complex and foreign concepts; a system that is alien to most Aboriginal people; a system that has also impacted upon the lives of Aboriginal women.

The overall aim of criminal law is to protect society from harm, which includes the protection of values and morals of the rights of individuals in addition to physical protection of person and his/her property [Ruby, 1987; 1]. Because of the difference in culture, the protection of values and morals are dealt with differently. The protection of values in a "white" society is based on individuality. However, protection of values in an Aboriginal society is based on individuality within his or her community.

4.1 Fundamental Differences of Justice

There are many fundamental differences between non-native and native values. They can be divided into many different categories based on cultural, political, linguistic, social, and spiritual concepts. The criminal justice system is described as a "court of law not a court of justice" [Worme, 1992]. It has been described as a hierarchy and best explained as follows:

...the accused is consigned to the lowest place on the scale. Next in rank above him are his captors, the police officers. Still higher in standing, importance and education are the lawyers... At the top and presiding over all else is the judge. [Ross, 1992]

It is an adversarial system full of complex and foreign concepts; a system that is alien to Aboriginal people; a system that Aboriginal people are frustrated with. A member of one native community stated as follows:

Adding to our frustration is the sense that the legal system has come to take over, from our community, the role it once placed in handling 'justice' matters. [C.H.C.H.]

One basic fundamental difference is the concept of "justice". Mainstream Canadian society believes that justice is based on fairness and when an accused person has committed a crime, he or she is socially deviant and therefore, he or she must be punished. If he is found guilty, he is punished for his crime. However, based on Aboriginal values, if someone has done something wrong, it is viewed as a "misbehaviour which requires teaching or an illness which requires healing. "[Ross, 1992; 168] To an Aboriginal person, justice means to restore harmony, peace and balance. An elder at an Aboriginal policing conference in Edmonton, Alberta said, "We know you have a legal system; we're just not sure it's a **justice** system."

An offender is viewed as someone who is out of balance - with himself, his family, his community and the Creator [C.H.C.H.]. Aboriginal communities are more interested in breaking the cycle of violence and in order to break that cycle, the offender must be accountable to those who are most affected: him/herself, the victim, the family/ies and the community. The mainstream justice system does not allow for any type of accountability to the victim.

4.2 The Justice System, Sexual Abuse and Family Violence

The criminal justice system has failed women and children [Canadian Panel on Violence Against Women, 1993]. It is a court of law that is confined to its legal rules and legal process. Its legal rules, as stated earlier, are based on basic European values - a patriarchal society where historically, women were treated as a commodity, a resource, a form of property acquired and controlled by men [Ibid]. Because of this tradition, men believe that it is their right to dominate and control women and believe that violence is one way to enforce that right.

The Canadian Panel on Violence Against Women heard many complaints from women across the country who felt that the existing system calls for a "fundamental overhaul of the administration of justice" [Ibid]. The panel set out many problems relating to issues such as police procedures, enforcement of restraining orders and peace bonds, the conduct of Crown attorneys, lawyers and judges, trial procedures, probation and parole.

The basic underlying problem with respect to these issues is gender bias. Many of the "players" within the criminal justice system, such as police officers, Crown attorneys, lawyers and judges are male. Many still believe in the many myths and stereotypes that haunt women today. Many of them may either be abusers themselves, be in denial or are just not willing to deal with these issues. It must be stressed that society must

recognize and stop encouraging these myths to ensure that women and children are not further violated.

The criminal justice system is an adversary system that is incapable of resolving conflict within a sexual abuse or family violence context. Society promotes the belief that incarceration is a form of punishment and deterrent for violent offenders. The process of dealing with an offender who has been convicted of a crime of violence against a woman (eg. sexual assault, assault, etc.) and who has been sentenced to jail as a result has been "motivated by a mixture of feelings of anger, revenge, vulnerability, guilt and shame" and based upon personal feelings of victimization. Sending someone to jail does not break the cycle of violence and does not resolve the conflict between the offender, the victim, their families and their community. Instead, the offender serves his sentence and returns from jail further out of balance than he was before he went to jail. The victim is still a victim until he or she is able to deal with the issue him/herself. Otherwise, the conflict is still there.

Another issue to deal with in the justice system is the issue of bias, generally, of judges who are making decisions about Aboriginal issues. Leaders representing major national and regional First Nations Organizations in Canada submitted ten formal complaints to the Canadian Judicial Council in regard to the conduct of Judge Frank Barakett of the Quebec Superior Court (Family Division), in the case of *Lavoie v. Isaac-Lavoie*. The attitudes, statements and comments made by Judge Barakett were shocking and flagrantly discriminatory. The Lavoie case involved Ms. Audrey Isaac, a citizen of the Listuguj Mi'kmaq First Nation and her two children. She was seeking custody of her twin daughters, after fleeing back to her community in Listuguj from California. Her relationship with her non-native husband severely deteriorated and she found herself in desperate circumstances.

In Kahtou News Online dated November, 2000, the following comments were made by representatives of the various organizations:

Michele Audette of the Quebec's Native Women's Association stated that "Judge Frank Barakett's ignorance, insensitivity and discrimination towards Aboriginal peoples and, more specifically, towards Aboriginal women cannot be tolerated. Furthermore, the little importance that he attaches to violence against women are evidence of his inability to do justice. Judge Frank Barakett's ruling, which is riddled with stereotypes and contempt towards Aboriginal peoples, definitely undermines the Aboriginal women's trust in the Canadian judicial system."

National Chief Matthew Coon Come of the Assembly of First Nations stated "That a judge should tell a woman who is seeking to protect her children and ensure their happiness that she should give them heroin to keep them happy is outrageous and inappropriate. Such judicial conduct unjustly encourages a stereotypical view of First Nations as drug abusers. There were no drugs or alcohol involved in the Lavoie case. In view of the repeated inappropriate conduct of this judge in the Lavoie case, he should be removed from the bench. He represents all that is wrong with Canada's justice system".

Vice-Chief Ghislain Picard stated that: "The Judge's comments throughout the judicial process are totally unacceptable. They are filled with contempt and ignorance which cast serious doubts on the fairness of the system. such attitude shows a glaring lack of respect towards our peoples and what we stand for. "

It was noted in the news report that "the judge also conveniently omitted to look at the criminal record of her non-Aboriginal ex-husband", branding him "a solid citizen" who has had no problems with the law. He blatantly ignored the ex-husband's six convictions for criminal assault on his ex-wife and her mother. In addition, in the absence of any evidence whatsoever, the Judge concluded in his judgment that Ms Isaac had "brainwashed" and "indoctrinated" her children, when she introduced them to Mi'kmaq culture. Further, the Judge insulted all First Nations in Canada when he referred to their cultures as a "child like myth of pow wows and rituals".

"I have always put my faith in the judicial system for my protection and that of my children. I would hope that when evidence is presented that I'd be treated equally and fairly under the law. I can relate to Ms Audrey Isaac as a mother of twins myself. I am appalled that in today's society, any judge who has a position of trust in Quebec Superior Court, Family Division, could render a decision against Ms Isaac while making derogatory comments in relation to evidence and circumstances presented. I am deeply disturbed with Judge Frank Barakett's comments not only in court but with those in his written decision. I fully support the removal of Judge Barakett from the bench and would suggest to anyone who has had cases heard before this judge to ensure that they received unbiased decision," said Darlia Dorey, Fomler President of the Native Women's Association of Canada.

Fourteen months after the complaint was made, a Panel of the Canadian Judicial Council reviewed Justice Barakett's conduct to determine whether an investigation by an Inquiry Committee was warranted to remove him from the bench. The Panel concluded that "the comments which form the subject of the complaint letter did not affect the outcome of the case in which they were made." The Panel stated in its letter to the judge, "In this case, there is no evidence of malice or improper motive on your part... In other words, the public could be expected to have confidence that you have learned from this experience and will approach issues related to Aboriginal culture with greater understanding and respect in the future." The Panel concluded that there would be no investigation by an Inquiry Committee as the conduct that was complained about, "while improper", was not "serious enough to warrant removal."

The decision of the Canadian Judicial Council has not convinced Aboriginal people, women, especially, that they should have confidence in the judicial system. There is no confidence that this judge will decide with impartiality any future cases concerning Aboriginal people or women. There are still many valid and significant reasons why many Aboriginal people believe that the system is too often unjust and unfair and that the system "protects its own". As noted by a report of the Quebec Native Women's Association to the CJC, "Many of our people feel that, in relation to Aboriginal peoples, judges within the CJC - as in the courts - are too often incapable of upholding the

principles of judicial independence and impartiality. When it comes to disciplining judges, the CJC will too often 'protect their own'. It has also been emphasized that the members of your Council include no Aboriginal people. For many, this helps to explain - but does not excuse - what they perceive as a profound insensitivity within the CJC to the discrimination and other unfair treatment that our people experience." [QNWA June, 2001 Letter]

4.3 Concept of Guilt

Mainstream society relies on the criminal justice system to provide the punishment to offenders. Therefore, the system focuses on whether the offender is guilty or innocent. If an accused is alleged to have committed a crime, he is innocent until proven guilty and the Crown must prove its case beyond a reasonable doubt. An accused has an opportunity to plead guilty or not guilty. Even if an accused had committed the offence, he has a right to plead not guilty.

Therefore, the presumption of innocence concept is one of the most alien to an Aboriginal person. [Law Reform Commission of Canada] There is a difference between a legal guilt and a moral guilt that conflicts with the criminal process. An Aboriginal person does not understand that pleading "not guilty" does not mean "an outright denial". He does not understand that the Crown has to prove his case beyond a reasonable doubt. The word "guilty" does not mean exactly the same in any Aboriginal language. It is difficult to explain to a Cree person whether he or she was guilty or not guilty. You would have to explain to that person that pleading "not guilty" does not mean he did not do it. If a Mohawk were to plead "not guilty", it would be considered a lie because it means a denial of the truth of the allegation [Ross, 1989; 1]. In the Cayuga language, to ask if an accused were guilty, you would be asking him if he were condemned.

4.4 Concept of Protecting Society

The overall aim of criminal law is to protect society from harm, which includes protection of values and morals of the rights of individuals in addition to physical protection of person and property [Ruby, 1987; 1]. Because of the difference in culture, there is obviously a difference in values of an Aboriginal individual and a non-aboriginal person. The protection of values and morals in a "white" society is not the same in an Aboriginal society. Victimisers are to be viewed and related to as people who are out of balance - with themselves, their family, their community and their Creator.

4.5 Principles of Sentencing

4.5.1 Deterrence

Clayton Ruby describes that when a court wishes to sentence with deterrence in mind it wants to demonstrate to society "the fearful consequence of committing the offence in question; or to teach the offender the unprofitability of repeating his offence, or in extreme cases, prevent him from doing so" [Ibid]. A judge must then give an accused some sort of punishment for committing his crime and that the threat or example of punishment discourages crime. It is the Haudenosaunee Confederacy's belief that "[o]nly the Creator has the power to judge people" [Longboat, 1992]. Hollow Water's belief is that "[o]ur tradition, our culture, speaks clearly about the concepts of judgment and punishment. They belong to the Creator. They are not ours. They are, therefore, not to be used in the way that we relate to each other." [C.H.C.H.] This belief is held by many other Aboriginal traditional cultures.

4.5.2 Incarceration

As a form of punishment and deterrence, an accused can be sentenced to a term of imprisonment. The length of imprisonment is imposed by the trial judge. Sections of the Criminal Code set out a minimum and maximum period of incarceration, which varies with the "seriousness" of an offence.

Most Aboriginal people and non-Aboriginal people believe that jail does not deter offending behaviour. It does not allow offenders to take responsibility for the harm they have caused. Not allowing offenders to take responsibility and sending them to jail may cause more harm than anything. Judge Stuart in Moses stated that "the justice system expects offenders with fragile self images, overwhelmed by personal problems, lacking any significant personal support system, without financial or personal resources to function independently, to miraculously gain control over their life. When they fail,... the justice system too readily closes the door on further rehabilitation and opens the door to jail. ...Jail has a much higher prospect of very negative consequences." [*R. v. Moses*, 1992]

In some Aboriginal communities, to send a person to jail does not protect their community; it causes more harm to them. "[R]ather than making the community a safer place, the threat of jail places the community more at risk" [C.H.C.H.]. Aboriginal communities are more interested in breaking the cycle of violence and in order to break that cycle, the offender must be accountable to those who are most affected: him/herself, the victim, the family/ies and the community.

5. Women in Prison

There is a definite correlation between colonialism and Aboriginal women being over-represented in the legal system. For some women, the crimes that they have committed were poverty-related. For others, the crimes were more serious and tended to be alcohol-related or in response to physical abuse. The most frightening aspect is that the over-representation is a lot higher for First Nations women in comparison to non-Native women. Historically, many First Nations women were sentenced to Kingston's Prison for Women. This prison was located a fair distance away from many of the First Nations women's communities. Consequently, these women had to deal with separation from their children and their families. Unfortunately, a number of these women committed suicide while inside.

6. The Indian Act

In 1876, the Federal Government introduced the most blatant piece of racist legislation, the Indian Act. The purpose of the 1876 Indian Act was to civilize, Christianize and assimilate Aboriginal peoples. This Act was an example of the patriarchal notions common to this time period. It was discriminatory and had (and still has) extremely detrimental effects on Aboriginal women. The Indian Act controlled every aspect of their lives. It established patriarchal notions in which Indian status derived from the male head of the household. This directly contradicted the practices of matriarchal communities whereby the identity of the children derived from the women. As a result of patriarchal marriage provisions, if Aboriginal women married a non-native man, they lost their Indian status and were considered white women. In addition, they were prevented from living in their own communities, exercising their inherent rights, and returning to their community if they separated, widowed or divorced.

6.1 Definition of Indian Status

The Indian Act set up marriage provisions that were extremely discriminatory. Indian status was determined by a person's father or whom they were married to. For example, under section 12 (1) (b) of the Indian Act, if an Indian woman married a non-Indian man, then she lost Indian status and their children were not recognized as Indians. It did not matter if the man was Metis or Native American; if the man did not have "recognized Indian status" then the woman and children were not recognized as Indians. Conversely, if an Indian man married a non-Native woman, then she would gain Indian status and their children would have Indian status. In addition, when an Indian man married an Indian woman from another community then she ceased to be a member of her own community and became a member of his reserve.

These marriage provisions had profound effects on all Aboriginal women. They were forced to leave their communities and could not return even if they were divorced or widowed. Some women were allowed to return to their communities for a maximum of 48 hours and then they would be asked to leave by the Indian Agent or by their Band

Council. Conversely, the "new" Indian white women would gain status, have Aboriginal or Treaty rights, be able to live on the reserve and still pass on Indian status even if they were divorced or widowed.

These discriminatory marriage provisions were challenged in the Lavell and Bedard cases. These women were attempting to use the Canadian Bill of Rights to shield themselves from the racist Indian Act. Unfortunately, the Supreme Court of Canada utilized an extremely narrow interpretation of the marriage provisions and allowed the law to stand.

Since all legal avenues were exhausted in Canada, Sandra Lovelace took her battle to the United Nations Human Rights Committee. She argued that the Indian Act discriminated against her based on her gender. The Committee found that Canada was violating Lovelace's ability to live in her community, practice her religion and exercise her rights. This "victory" was a hollow one for Lovelace as the United Nations decision could not force Canada to amend section 12 (1) (b). It did, however, act as a catalyst for the passage of Bill C-31.

6.2 Enfranchisement

The Federal Government set up this policy to allow status Indians to voluntarily sell their Indian status and live in mainstream society. This policy was a dismal failure; therefore the Federal Government amended the policy to allow for involuntary enfranchisement, which meant that a status Indian would lose their status if they volunteered to fight in either of the World Wars; if they went to University; if they wanted to join the clergy; if they demonstrated a particular skill; or if there was any suggestion that a woman was living with a non-Native man, regardless if there was no proof of this occurring. In the cases where an Indian man sold his status, he enfranchised not only himself but also his wife and any children who were not the age of majority.

6.3 Wills and Estates Provisions

Under this provision, an Indian man could not leave his property to his wife. It had to be left to the eldest son who was then expected to "look after" his mother. This provision was another attempt to introduce patriarchal notions into Aboriginal communities.

6.4 Matrimonial Property

When the Federal Government introduced Certificates of Possession on reserve, it was designed so that only Indian men would be able to own their homes on the reserves. In cases where the women and children were subject to physical or mental abuse, it was not the men who were forced to leave, but the women and children had to move to another place on the reserve or in some cases to an urban area because of this policy.

This provision directly contradicted traditional Aboriginal beliefs where it was the woman's inherent rights that she "owned" the land where the family lives.

It has been held by the Supreme Court of Canada that the provisions of provincial family law legislation dealing with the division of family property upon divorce or separation are invalid, inapplicable, inoperative or of no force or effect with applied to lands on an Indian reserve. There exists no federal legislation applicable to Indian reserves which sets out comprehensive, certain legislative scheme for dealing with claims to occupation, possession, partition or ownership of the matrimonial home by one of the spouses upon separation or dissolution of the relationship. Band by-laws also do not create any such scheme.

Consequently, claims to occupation, possession, partition or ownership of the matrimonial home, which for all Canadians are dealt with under provincial or family law, cannot be adjudicated with respect to matrimonial homes, which are on Indian reserves. There exists no orderly, fair and certain process for adjusting the interests and claims in and to land on an Indian reserve of a married couple upon separation or divorce of their marriage, that recognizes the interests of the mother and children in stability of housing and continued contact with their family and community. As a result the women and children of these relationships are left with nothing and with nowhere to go, unless they have the support of their families. Most often, families, on reserve are "fending" for themselves and it is very difficult to try to accommodate another family. Therefore, women and children are again left to "fend" for themselves whereas the men in the relationships have a home. Most women and children have to move away from their communities into an urban setting and try to find stability there. Many times, this is a culture shock for some women who have to move away from their families and their community. Many times, these women have to move into low-income or subsidized housing in order to maintain themselves and their family. The men in these relationships do not have to deal with these issues.

Unless the women can secure permission of the Band Council to live on the reserve in the former matrimonial home after separation, an Aboriginal woman and her children face exile from her own community. Their relationship to family and culture is severed and the move off reserve places them in an environment where they will experience discrimination and the grim consequences of their poverty.

This total failure by the Canadian state to provide any legislated scheme by which to decide claims to occupation, possession, partition or ownership of the matrimonial home on reserve lands is a total violation of the rights of Aboriginal women and children. In addition to violating these rights, there is no Canadian legislation to deal with the interests and claims of a married couple's matrimonial home upon separation or divorce that recognizes the interests of the mother and children in the stability of housing and continued contact with their family. This violates Canada's obligations under the *Convention on the Elimination of Discrimination Against Women*, *Convention on the Rights of the Child*; the *Covenant on Economic, Social and Cultural Rights*, and other international obligations undertaken by the Government of Canada.

The mere fact that Canada has legislative jurisdiction over Indians and lands reserved for Indians does not entitle it to ignore its constitutional and international obligations to Aboriginal women and children when passing legislation pursuant to that jurisdiction. Within its jurisdiction applicable to Indians and lands reserved to Indians, it is obligated to observe constitutional and international standards in the same way it is obligated to observe such standards in all of its other legislative activity.

6.5 The Chief and Council System

When this system was imposed onto Aboriginal communities, only the men could run and vote for office. This provision remained in effect from 1876 to 1951. This provision effectively denied Aboriginal women a voice in how their communities should be run. This directly contradicted Aboriginal women's roles in their traditional governments. In Haudenosaunee governments, the women were responsible for choosing their leader within their clan system. The women were the ones who had the knowledge and instinctiveness to know who the responsible leaders would be. The imposed elected system forced most Aboriginal women into submission. They were not allowed a vote nor a voice in determining the fate of the community.

6.6 Bill C-31, An Act to Amend the Indian Act (1985)

This Bill was created as a result of the passage of the Canadian Charter of Rights and Freedoms, 1982. The Federal Government had no choice but to amend the Indian Act because it was discriminatory based on gender. Under Bill C-31, it abolished the concept of enfranchisement and it called for the return of Indian status to those people who had lost it plus one generation. Anyone beyond this two-generation cut-off rule was not eligible to reapply for Indian status. It should be apparent that if the Federal Government was amending a discriminatory provision then the return of Indian status should have been extended to when the discrimination began. In this case, the discrimination goes back to the 1869 Act For the Gradual Enfranchisement of Indians and continued in the 1876 Indian Act. Unfortunately, this cut-off has denied Indian status to many people who should have been recognized as Indians.

6.7 The "New" Marriage Provisions

Bill C-31 has created two brand new designations: sections 6(1) and 6(2). The main difference between these two groups is the ability to pass on Indian status. Unless the 6(2) person marries someone with 6(1) status then his or her children will not have Indian status. This provision is still discriminatory because the majority of people who have 6(2) status are the children of Indian women who married non-Native men. The frightening aspect of this Bill is the fact that by 2060 it is estimated that there will no more Aboriginal people with Indian status.

6.8 Membership Codes

Bill C-31 gave each Band the right to determine who could be a Band member. The Bands had until the middle of 1987 to set up a Code. These Codes had to be approved by the Minister of Indian Affairs. The Minister would not approve any Code that was discriminatory. If the Bands missed the deadline then they had to accept back everyone with some historical tie to their community. Generally, the Bands would either accept everyone back or no one back. Some of the reasons for accepting no one back were money, resources, and an insufficient land base.

These Membership Codes have created many divisions in the communities over the issue of who should be allowed to return to the reserve. Many people are blaming the women for marrying non-Native men, suggesting that they should have known the consequences of their marriages despite the fact that it was still alright for status men who married non-native women to remain on reserve. As such, they believe that these women should not be allowed to return to the community. Regardless of their beliefs, these Codes have created a lot of hardships for Aboriginal women. They struggle to regain their Indian status only to find out that they are not welcome or allowed to return home.

6.9 Residential Schools

Five generations of Aboriginal people have been affected by the Federal Government's oppressive policy of assimilation. Provisions in the Indian Act forced Aboriginal parents to send their children to residential schools. Many Aboriginal children were physically, mentally, emotionally, spiritually, sexually, culturally, and verbally abused while residing in these purported educational institutions. The detrimental effects of abuse in residential schools impacted upon many lives of Aboriginal people causing a loss of culture, a loss of traditional values, a loss of Aboriginal languages, a loss of family bonding, a loss of parenting skills, a loss of self-respect, and a loss of respect for others. It has also been linked to problems of alcoholism, drug abuse, powerlessness, dependency, low self-esteem, suicides, prostitution, gambling, homelessness, sexual abuse and violence. Some survivors of the residential schools system and/or their descendants have also been in conflict with the legal system as a result of the detrimental effects.

The government acknowledged missionaries' goals to Christianize Aboriginal people and took advantage of the situation. By contracting with the missionaries, the government's goals of assimilation were enhanced. "[T]heir aims were carefully complementary if not identical." [Titley, 1992] The Manitoba Justice Inquiry stated quite clearly the intentions of the government when implementing these residential schools:

Far from simply 'civilizing' Indians, as had been the apparent purpose of government policy in the first half of the 19th century, the new system actually utilized aggressive, coercive methods to bring about Aboriginal assimilation. Government officials clearly represented the values and circumstances of their

times. They were neither stupid nor incompetent. The culture in which they dwelt was imbued with racist assumptions and presumptions that were not considered abhorrent to anyone in Canadian society except to the Indians. [Manitoba Justice Inquiry]

Aboriginal people in Canada and their various cultural attributes are as diverse as Canada's multicultural population. Despite their diversities, all Aboriginal people share in the belief of spirituality, respect for all living things and survival. Prior to colonialism, they had a belief in their own sacred and spiritual tradition and adapted their lifestyle to their environmental surroundings. During the pre-Confederation times, missionaries of various religious denominations set up camp amongst the various Aboriginal nations and learned their language. These missionaries were either ignorant in believing that Aboriginal people had their own belief system or oblivious to their own superior attitudes that Christianity was the only belief. Their goals were to convert Aboriginal people's pagan beliefs to their Christian beliefs. This was not difficult to do because the two systems were very similar as both were based on the belief in the Creator or God and the spiritualness of life.

The impact of colonialism has varied in different geographic areas of Canada and the formation of formal education for the Aboriginal population has also varied. In the early 1600's, French Catholic missionaries lived and worked with the Micmacs of eastern Canada. They learned the Micmac language and learned their phonetic literacy (which was the Micmac's form of writing) [Battiste, 1986; 30]. The missionary schools existed until 1920 when the Canadian government legislated compulsory attendance of children to attend school under the Indian Act. In 1930, there was a gradual decline of Micmac literacy as a result of the imposition of the residential school system. "The Shubenacadie residential school in Nova Scotia became a nightmare" [Ibid] and continued until the mid-1950's when provincial legislation took over. Aboriginal children were "integrated" into education rather than "assimilated."

The Jesuits, as chief missionaries in Quebec, set up a college in 1635 to educate the Huron, Montagnais and Algonquian children. At that time, these missionaries were frustrated because they were unable to convert the children. They basically felt that they needed to convert the parents first. The reason they could not convert at that time was because traditional beliefs of the Huron, Montagnais and Algonquian people were strong and they were a very proud and independent people. [Jaenen, 1986; 45]

By the late 1700's, missionaries were set up in Upper Canada, now known as Ontario. They learned the Iroquois culture and their language. A Moravian mission was opened in 1793 among the Delawares in which both English and Delaware was taught and books were written in both languages. The Mohawk Indians at Tyendinaga (Bay of Quinte near Belleville) in 1843 requested two schools; one where they could use their language and another for English. The Superintendent of Indian Affairs refused and insisted on English "because the intercourse of the rising generation must be with the whites and it therefore appears to me that teaching them in their own language is time and labour lost." [Wilson; 1986; 64] By 1880, the residential school system was set up in Ontario.

Oblate priests established missions west of Ontario by the late 1860s and early 1870s. Many numbered treaties were being made at this time between the government and the Aboriginal peoples of the Northwest Territories, Northern Ontario, Saskatchewan and Alberta. The Qu'Appelle Residential School in Saskatchewan was the first Oblate missionary school, established in 1874. The priest in charge was conscious of and sensitive to the native culture and he diverged from the government's assimilationist attitudes. The federal bureaucrats were closely evaluating his teaching methods and as a result of their interrogation, he was forced to change his programs. The attitude of the priest at the St. Mary's Mission School in British Columbia, which was established in 1861, was similar [Gresko, 1986; 88]. Traditional values were kept and the use of their language was allowed. The children were also allowed visits with their relatives. This was also the case at the Blue Quills Residential School in Alberta. [Persson, 1986; 150] However, as a result of government's intervention, again, English was enforced and traditional values were not allowed.

In the Northwest Territories, the missionary period was between the years 1850 to 1920. There was a rivalry between the Anglicans and the Oblates to convert as many Inuit and Dene as they could. There were several missionary schools across the territory and the first government grant provided under the Indian Act was given in 1894. Complete government control began in 1920. The federal government controlled Aboriginal education. In 1946, the territorial government assumed control of education for all white and mixed blood children. By 1960, all mission schools were closed and all hostels (or residential schools) were controlled by the federal government. By 1969, control of Aboriginal education was transferred to the territorial government and residential schools were phased out. (Bischoff, 1989]

Apparently, the missionaries' intentions were to "help" the destitute and suffering Aboriginal people. One of the problems, of course, was their superior attitude and belief that Aboriginal people needed to be civilized and needed to learn the "real belief" in God. Although some acknowledged cultural differences, their conversion process did not end. Many Aboriginal parents were aware of the advent of the whiteman and thought that their children would have an advantage of learning the "cunning of the whiteman". They believed that their children would benefit by learning both worlds. They were unaware of the government's intentions to take away a part of their life and spirit.

An Indian Commissioner named Hayter Reed wrote to the Superintendent General in 1889 and stated:

Every effort should be directed against anything calculated to keep fresh in the memories of children habits and associations which it is one of the main objects of industrial institutions to obliterate. [Titley, 1986]

Brian Titley summarized it well when he stated that Indians received "special treatment" in regard to the Department of Indian Affairs' Indian education policy because:

What singled out the Indians for special treatment was the vast cultural distance that separated them from their Anglo-Canadian masters. They could only bridge that distance by intense and prolonged application of schooling to the younger generations. In that way, a cultural wedge would be driven between younger and older Indians, and the former would gradually be absorbed into the dominant society. In the progress, they would abandon their native languages for English, their 'pagan superstitions' for Christianity, and their primitive economic activities for the steady labour of agriculture or industrial employment. Education was to be nothing less than an instrument of cultural annihilation, which would at once transform the Indians into an unskilled or semi-skilled workforce while forcing them into the mold of Anglo-Canadian identity. [Ibid; 93]

In 1894, provisions were added to the Indian Act¹, which secured compulsory attendance of Indian children at industrial or boarding schools. This M established authority to provide for industrial or boarding schools and to declare that an existing school (meaning the missionary schools) would be the same. It became a criminal offence if a parent or guardian failed, refused or neglected to send their children to school. An Indian Agent was authorized to literally "snatch" or "gather up" children between the ages of seven and fifteen years, who were forced out of their parents' arms, homes, extended families and communities.

Amendments to the Indian Act in 1914 provided more specific provisions for authority of the Governor in Council, who declared that any school or institution which provided board and lodging and instruction was a residential school. The Superintendent General could unilaterally make an agreement for the admission of a child in a residential school. They were authorized to inspect such residential school at any time.² They were also given the unilateral power to take land for school purposes.³

There were complete revisions to the Indian Act⁴ in 1919-20 where details of the Governor in Council's duties were established. The first provided for establishing day schools on any Indian reserve for children of that reserve and establishing industrial or boarding schools for the Indian children of any reserve, district or territory designated by the Superintendent General. Another duty was to establish that any school or institution which entered into a written agreement with the Superintendent General to admit Indian children and provide them with board, lodging and instruction was to be an industrial school or a boarding school.⁵

The Superintendent General's duties were also provided in these revisions.⁶ One of his duties was to provide transportation of Indian children to and from the boarding or industrial schools, including transportation for annual vacations (which was usually only during the summer). Another was to make regulations prescribing a standard for the

¹ *An Act further to amend "The Indian Act."* R.S.C. 1886, c. 43. S.C. 1894, c. 32, s. 11

² *An Act to amend the Indian Act.* R.S.C. 1906, c.81. S.C. 1914, c. 35, s.1

³ *An Act to amend the Indian Act.* R.S.C. 1906, c.81, S.C. 1914, c. 35, s. 2

⁴ *An Act to Amend the Indian Act.* R.S.C. 1906, c.81. S.C. 1919-20, C.50

⁵ *Ibid.* s. 1

⁶ *Ibid.*

buildings, equipment, teaching and discipline in all schools and for the inspection of such schools. Other duties included controlling the annuities and interest moneys of Indian children attending an industrial or boarding school, to maintain each school and to maintain the children themselves. Further duties were to appoint a truant officer (who had the powers of a peace officer) and to enforce the attendance of Indian children at school. He had the authority to enter any place where he had reason to believe there were Indian children between the ages of seven and fifteen years.

The chief and council of any band had the right to inspect the school but only when the times were agreed upon by the Indian agent and the principal of the school. This gave them opportune time to get the school cleaned up and the children ready. A survivor of residential school, Hazel Stirling who was one of the speakers at a Residential School Conference in Winnipeg, Manitoba stated that when the inspectors came out to the schools, the children were very well prepared. They were dressed in the only dress they owned (the same one they wore at Christmastime and Easter) and they were fed good food.

When requested by the Indian agent, a school teacher or the chief of a band could examine any case of truancy. They had an opportunity to warn the parents or guardians of the consequences of truancy. They were notified in writing and were given three days to send their child to school. If after the three days' the parents still failed to send their child to school, they would be liable on summary conviction before a justice of the peace or Indian agent to a fine of not more than two dollars and costs, or imprisonment for a period not exceeding ten days or both. The child could also be arrested without a warrant and conveyed to school by the truant officer. It did provide that they would not be liable to such penalties if such child was unable to attend school by reason of sickness or other unavoidable cause, or passed an entrance examination for high school or was excused in writing by the Indian agent or teacher for temporary absence to assist in husbandry or urgent and necessary household duties.

Further amendments were made in 1930⁷ wherein any child between the ages seven and sixteen years who was physically able must attend either a day, industrial or boarding school as designated by the Superintendent General. A decision was also made by the Superintendent General that if he felt that it would be detrimental to discharge a sixteen year old, he could authorize that that child "be detained at school" until at least the age of eighteen.

6.9.1 Negative Affects

Despite the variations of the government's intervention and imposition of residential schools in various regions, the negative impacts were still the same. Many Aboriginal political leaders and activists were "products" of these schools. Many of these leaders have admitted that the negative effects of the residential school system have clouded their world view and caused harm to those around them [Fontaine, Edmonton Journal,

⁷ *An Act to Amend the Indian Act, R.S.C. 1927, S.C. 1930, c.2*

1991]. The most negative period during colonialism was the federal government's implementation of residential schools.

Why has it taken so long for the stories to surface? Why have we not spoken out before? We have spoken out. Our parents and grandparents have spoken out. There were complaints about the small amount of schooling and the huge amount of manual labour the children had to do. There were complaints about the abuse of children but our complaints fell on deaf ears. [Sellars, Former Chief of Williams Lake, B.C.]

The following are specific negative effects and losses experienced by a number of various Aboriginal people across the country. The stories told about these losses are innumerable and can only be told by the persons who have actually experienced them. Many families, women, children, grandchildren and great-grandchildren, etc. have been greatly affected by these losses, which have caused an intergenerational chain of abuse and violence.

6.9.1.1 Emotional Deprivation

Many children were deprived of any emotional and nurturing contact, which is usual between parents and children. The supervisors, usually the nuns, were responsible for fifty or more children at one time. It was impossible for any of them to give any time or attention. Sometimes, siblings were resident in the same school; however, they were segregated from each other because of the age difference. Some were not even aware that their brother or sister was in the same school. Most of them were not allowed to speak or to visit each other.

Many of the children were told that they could not express any type of emotion with anyone. Therefore, they learned how to hide their emotions and learned how to conceal their feelings within themselves. As a result of these hidden emotions and buried thoughts, many later became spouses and parents and were unable to express love, caring and nurturing to anyone. They never learned how to communicate, how to cry, how to be happy - the usual emotions that need to be expressed to live a normal life and to be able to create a bonding with loved ones.

The emotional deprivation forced upon these children affected them when they became adults. Their emotions were still kept within themselves. This has caused a chain of negative feelings attitudes such as the incapability to bond with family members, the inability to communicate, the inability to actually have a warm and loving relationship with their children and families and the inability to be an effective parent. This has caused a breakdown of parenting skills and has affected generations of families.

6.9.1.2 Psychological Harm

Many children were transported by plane or boat away from their communities. Some were transported by car and traveled for hundreds of miles without stopping. This was a devastating and traumatic experience for all children who were very closely bonded to their families and who had never left their parent's side let alone their community. The pain of separation from their family, friends and a way of life has caused grave psychological harm.

Psychological harm differs from emotional deprivation. Psychological harm is a deep, ingrained damage done to a person's mind. Psychological harm has also been caused by constant degradation and brainwashing provided by the nuns and priests in the residential schools. Children were constantly being told that they were dirty and dumb savages. The brainwashing was described as follows:

When you hear it often enough, especially in your most vulnerable years as a child, you begin to believe it and start to act it out. We believed we weren't as good as other people. We believed it because that is the way we were raised at the schools, that is the way we were taught, that is the way we were programmed to believe.

As a result of the brainwashing, many adult children of these residential schools have denied their Aboriginality. Many have refused to accept that they are Aboriginal people. Some have been brainwashed so badly that they do not even realize the impact it has had on their life.

6.9.1.3 Living Conditions

Many complained of the living conditions of the dormitories. They were usually cold, dark and damp. The meals they received were atrocious. Many complained that the food was rotten and they were forced to eat it. Many complained that the food was not cooked. They would try to throw their food into the garbage. However, if they got caught, they were forced to dig it out and eat it.

These terrible living conditions were the cause of health problems of many children. In 1904, Dr. p .H. Bryce was appointed as medical inspector for the Department of Interior. From 1907 until 1909, he investigated the health of children in the residential schools in the prairie provinces. He had made recommendations to Duncan Campbell Scott, the Minister of Indian Affairs at that time, to ensure that health problems were dealt with. Although some inexpensive recommendations were followed, health problems still existed. Scott ended Dr. Bryce's services in 1913 and abolished the services of a medical inspector altogether in 1918 [Titley].

6.9.1.4 Physical Abuse and Death

There were instances of physical abuse by all employees of the residential schools. The children were physically beaten by a strap (one was made out of a pulley strap) or by sticks until they were broken. They were punched, thrown, whipped and shoved. Many of the beatings took place at night without anyone watching and some were beaten so badly that they became unconsciousness.

Some children died while in the residential school and it was unknown what the cause was for most of these deaths. Some did die of pneumonia, some died of tuberculosis and some died of scarlet fever. Many parents were unaware that their children had passed away either until it was time to pick them up or when they were supposed to come home.

6.9.1.5 Sexual Abuse

In a 1992 report to the Mackenzie-Fort Smith Diocese, it was stated that not more than 15 out of the 200 persons interviewed said they were sexually abused. The author stated that it was "highly likely that not everyone opened up about this highly charged matter and that further revelations of sexual abuse will be forthcoming." At a reunion of the students in Chesterfield Inlet, approximately forty disclosed that they were the victims of sexual abuse [Tingilik, 1993]. In a study prepared by the Soda Creek Tribal Council in British Columbia, it was found that 70 percent of the children had been sexually abused.

Many of the children, male and female, were being abused by more than one person. Some young girls were impregnated and forced to give their child up. Some were physically beaten until they miscarried. These stories are endless. There are no words to possibly describe the effects of this type of abuse.

6.9.1.6 Spiritual Harm

Spiritual harm can be described as the loss of language and the loss of a spiritual belief. Many Aboriginal children came from traditional families where spiritual ceremonies were a part of their life. Many children were physically beaten for speaking their languages. They were told that their pagan beliefs were the work of the devil and that they would go to hell if they ever spoke a word.

Not allowing native spiritual teachings and punishing children for speaking their language has caused grave harm to Aboriginal people's spirit. When these children returned back to their community, they were imbalanced. They did not know where to turn; they did not fit in the whiteman's world nor did they fit in their own people's world. If they were able to cope, they stayed in the community, had children, and abused them. The cycle of abuse began. The next generation then attended residential school. Even if

they were not physically or sexually abused, they were still spiritually and mentally abused. When they left the school and went home, their parents were probably abusing alcohol by this time. The dilemma does not end.

All of these losses have been compared to losses experienced as a result of being wrongfully imprisoned. These were identified by Professor Archibald Kaiser as follows:

- 1) loss of liberty
- 2) loss of reputation
- 3) humiliation and disgrace
- 4) pain and suffering
- 5) loss of enjoyment of life
- 6) loss of potential normal experiences
- 7) other foregone developmental experiences, such as education or social learning in the normal workplace
- 8) loss of civil rights
- 9) loss of social intercourse with friends neighbors and family
- 10) physical assaults while in prison by fellow inmates and staff
- 11) subjection to prison discipline, including extraordinary punishments imposed legally
- 12) accepting and adjusting to prison life, knowing that it was all unjustly imposed
- 13) adverse affects on the claimants future, specifically the prospects of marriage, social status, physical and mental health and social relations generally.

We all know that many of our thoughts, attitudes and morals are the result of parental guidance, influence and discipline. With Aboriginal people, it is not only parental influence but the influence and caring of the extended family, such as aunts, uncles, cousins, grandparents, etc. As a result of children being taken away, any type of close bonding with family disappeared.

Many of these children were not provided with any type of education in life skills. They were not prepared for the real world when they left the residential school. After living in the residential school system for so many years, they became dependent on it and then became dependent on the government. Those who were able to get out of residential school, usually at the age of 16, did not have any concept of how to live day to day.

The combination of all of the detrimental effects upon the lives of those who attended these schools has caused a chain of intergenerational abuse and violence. Many of those who were unable to deal with the day to day problems when leaving residential schools turned to other types of abuse; whether it was alcohol, drugs, violence against others or violence against themselves.

7. Child Welfare System

In all Aboriginal traditional cultures, children are considered gifts from the Creator. If they are not loved or taken care of, the Creator can take them back. Aboriginal women were considered the caretakers of these children, which gave them the respect as the givers of life. Unfortunately, as the residential schools were continuing the deliberate assault on Aboriginal families, so, too was the Child Welfare system working hand-in-hand with the assimilationist policies. As noted above, many generations of families had to endure the blatant cultural genocide of residential schools. This caused a family breakdown and a loss of family bonding and a loss of connection to each other as extended families. Children who were in residential schools were not taught to love, to care, to nurture. They did not have these skills and when they became parents, they did not have parenting skills. All they learned was how to survive in residential school. They were not capable of showing affection; therefore their own children suffered and the cycle of abuse began. "By the late 1940s, four or five generations had returned from residential schools as poorly educated, angry, abused strangers who had no experience in parenting." [Fournier & Crey, 1997; 82]

In the early 1950s, federal officials began using the residential school system as an "alternative parenting institution rather than as educational facilities" (Fournier & Crey, 1997; 82). Indian agents picked up Aboriginal children if they felt that the children were being neglected or not being competently cared for by the parents. Many times the Indian agents did not understand Aboriginal culture and the concept of an extended family. Many times, Aboriginal children were cared for by their grandparents or aunts or uncles because it was more feasible for them to take care of them. The Eurocentric value based system that families had to be taken care of by a father and a mother took over. "Indian agents were already applying the culturally inappropriate judgements that would become commonplace in the child welfare era" [Ibid.].

In 1951, Ottawa delegated jurisdiction of Aboriginal health, welfare and educational services to the provinces. The Indian Act was amended to ensure that all provincial laws applied to status Indians unless it conflicted with a treaty or federal laws. Once the provinces were in charge and were guaranteed payment for each Indian child they apprehended, the numbers of Aboriginal children skyrocketed. "Only 1 percent of all children in care were native in 1959, but by the end of the 1960s, 30 to 40 percent of all legal wards were aboriginal children, even though they formed less than 4 percent of the national population." [Ibid. At 83] This era was soon to be defined as the "Sixties Scoop", despite the fact that the apprehension and adoption of Aboriginal children still continues to this day. By the late 1970s, one in four status Indian children were picked up by social workers. Many non-status and Metis children were not included in these statistics, which meant that one in three or one out of every child was apprehended. In British Columbia, today, one out of every three Aboriginal children is a crown ward. [Ibid. At 88].

The white social workers followed in the footsteps of the missionary, the priest and the Indian Agent to "save and protect" Aboriginal children. Many Aboriginal children were

adopted into non-Aboriginal homes, which then lead to many problems to those children because they lost the connections to their Aboriginal roots. Many Aboriginal children were adopted as far away from their home community as possible, including to the United States.

It was noted in Fournier & Crey's research that the caseloads of social service agencies was so high that the social workers were unable to properly screen homes. They were also not able to monitor the foster or adoptive homes. Many of those foster and adoptive homes were more interested in the dollars that they received for adopting an Aboriginal child. Many of the people who adopted these Aboriginal children were sexual molesters, or abusers who had no regard for the lives of the children, or they wanted these children to work in their homes. Even if there were nurturing adopted parents, many of the Aboriginal children growing into their adolescent years would rebel and would have to deal with the fact that they were "adolescent, aboriginal and adopted."

In many cases, children were taken from their families because of poverty and because they were Aboriginal. If the Indian Agent or social worker felt that the home was not up to standards, the children were taken from their loving homes.

It has been the result of a chain of events of colonization that has caused an Aboriginal family breakdown. The history of child welfare has caused detrimental affects to Aboriginal people, including women and children. Many Aboriginal people who are homeless, who are facing problems with Canadian law, who may be in youth detention centres or prisons, are products of the child welfare system. In a 1990 survey of Aboriginal prisoners in a jail in Prince Albert, Saskatchewan, it was found that over 95 percent of them came from a group home or a foster home. These numbers are outrageous, but true. We are certain that if we were to survey most Aboriginal people in prisons, they have either been a foster child, adopted or went through residential school.

There are currently jurisdictional issues between the federal and provincial government as to who should be providing child welfare services to Aboriginal people. As a result of jurisdictional disputes between the provincial and the federal government in deciding which government will provide services to Aboriginal people, Aboriginal children have had to suffer. This is obviously a violation their human rights.

8. Conclusion

In this report, we have emphasized elements of the Aboriginal experience in Canada that have had particularly heavy impact on women and children. In doing so, we do not mean to overlook other serious abuses of the rights of all Aboriginal people. Women, like men, must endure the harsh results of Canada's disrespect for its Treaty obligations, seizures of land and resources, and official violence toward those who would protest such conduct. NWAC, like other Aboriginal groups in Canada, has taken firm stand in favour of implementing the recommendations of the Royal Commission on Aboriginal Peoples, and establishing self-government in a genuine and respectful way.

What we add to your general knowledge of the picture in Canada, we hope, is an understanding of the particular ways in which the policies and practices of the Canadian state have harmed Aboriginal women and children.

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