

Aboriginal Women

Criminalization, Over-Representation, and the Justice System

- According to the 2001 Census, the proportion of Aboriginal people in Canada has increased with around 4.4% or 1.3 million people reporting at least some Aboriginal ancestry.
- Aboriginal people made up just 3.8% of the population in 1996.
- While in 2003-2004, 41% of non-Aboriginal prisoners are serving their sentences on conditional release in the community, only 31% of those on conditional release are Aboriginal.
- There are fundamental differences between non-Aboriginal Canadian conceptions of justice and Aboriginal conceptions of justice. The Canadian justice system is essentially experienced by its Aboriginal population as a foreign and inappropriate system for the resolution of conflict in Aboriginal communities.
- The cultural differences in the Aboriginal and non-Aboriginal notions of justice leads to the misunderstanding of the actions and reactions of Aboriginal people in the courtroom. Judges and juries misunderstand their words, demeanor and body language, which can negatively impact their sentencing.
- “To require people to act in ways contrary to their most basic beliefs and their ingrained rules of behaviour not only is an infringement of their rights – it is a deeply discriminatory act.”
- The over-representation of Aboriginal people within the Canadian criminal justice system is indisputably the most egregious example of the racist legacy of colonization.

Criminalization of Aboriginal Women

- The impact of discriminatory practices is felt even more by Aboriginal women, who are more over-represented than Aboriginal men in the criminal justice system. There is a higher proportion of Aboriginal women serving federal sentences in prison, as opposed to being released on bail or under supervision in the community, than there is for non-Aboriginal women.
- Aboriginal women are over-represented in the federal correctional system, representing only 2% of women in Canada and 29% of women in federal prisons in July, 2003. In July, 2003, 60% of Aboriginal women serving federal sentences were in prison.
- Aboriginal youth are over-represented among criminalized young people, and this discriminatory pattern is expected to continue. Research shows that Aboriginal youth are criminalized and jailed at earlier ages and for longer periods of time than non-Aboriginal young people. Within the criminal justice system, Aboriginal youth experience a lack of access and availability of legal counsel and community based resources and services.
- Aboriginal women and girls are vastly over-represented in state institutions and continue to suffer the shameful and devastating impact of colonization; from residential school, to child welfare seizure, to juvenile and adult detention and current trends now indicate that “treatment” will be the next colonial control of choice.
- Aboriginal women are over-represented in the maximum security prison population, making up 46% of maximum security federally sentenced women, 35% of the medium security population and 23% of minimum security women in 2003. The Custody Rating Scale is used for the security classification of federally sentenced women, but it was designed for men not women, and results in unnecessarily high security classifications, particularly for Aboriginal women. This results in ineligibility for programming intended to prepare the women for eventual release and to increase their chances of success. Aboriginal women classified at maximum security are also denied access to the support of the Healing Lodge.
- Aboriginal people are over-represented in the correctional system due in large part to discrimination against Aboriginal people in the justice system through its procedures but also because the Criminal Code targets the poor

through the prohibition of acts like vagrancy, public intoxication and stealing. Aboriginal people are over-represented among the poor in Canada. The justice system and education system, which may have been used to improve their social conditions are biased against them.

Social Conditions and Justice

- “Aboriginal peoples have experienced the most entrenched racial discrimination of any group in Canada. Discrimination against Aboriginal people has been a central policy of Canadian governments since Confederation.
- The colonization of Aboriginal people continues today, not only as a consequence of the Indian Act, land thefts, residential schools, but also as a result of child welfare, social services, health, education and economic policies. The Canadian Government administers policies aiming to control virtually every aspect of Aboriginal life. Education has been used as a tool for the cultural assimilation of Aboriginal Canadians in the past, and continues to be culturally biased. The material taught in Canadian schools focuses on the culture, history and reality of non-Aboriginal Canadians, and while Aboriginal people no longer attend residential schools many are still forced to leave their communities in order to attend high school.
- In 2001, there was a gap of about 15 percentage points between the post-secondary educational attainment of Aboriginal Canadians and non-Aboriginal Canadians.
- The justice system has played a major role in the creation of poor social conditions in Aboriginal communities today. It has failed to provide them with protection against oppression and has instead been a tool of this oppression through the denial of Aboriginal land claims, the imposition of residential schools, the separation of families through child welfare practices, and the denial of Aboriginal control over their own communities. This has resulted in social disruption in the community and widespread poverty.
- Aboriginal housing is indisputably the Canadian government’s constitutional responsibility and fiduciary duty based on treaty agreements. However, 43% of on-reserve housing were inadequate and in need of repair in 1999-2000, without fully operational bathrooms, central heating, and clean water. There is also a problem with overcrowding and the spread of infectious diseases,

with an estimated 30,000 more dwellings needed on reserves. This human rights violation has been highlighted United Nations human rights committees and the Canadian Human Rights Commission.

- In 2001-2002, only 56% of on-reserve housing was deemed adequate. This proportion then decreased to 53% in 2002-2003.
- In 1999-2000 43% of on-reserve households were receiving social assistance (32000 out of 74000).
- The average number of Aboriginal social assistance recipients per month increased by 2.6% between 1998-1999 and 2002-2003.
- “Historically, the justice system has discriminated against Aboriginal people by providing legal sanction for their oppression. The oppression of previous generations forced Aboriginal people into their current state of social and economic distress. Now, a seemingly neutral justice system discriminates against current generations of Aboriginal people by applying laws which have an adverse impact on people of lower socio-economic status. This is no less racial discrimination; it is merely “laundered” racial discrimination.... To change this situation will require a real commitment to ending social inequality in Canadian society ...”

Violence

- In 2004 Amnesty International released a report titled: “Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada”. The report includes stories about Canada’s missing and murdered Aboriginal women, and concludes: **“In every instance, Canadian authorities could and should have done more to ensure the safety of these women and girls.”**
- Both spousal assault rates and spousal homicide rates are higher for Aboriginal women than for non-Aboriginal women, with spousal homicide rates of Aboriginal women eight times higher than those of non-Aboriginal women (4.72 per 100,000 couples and 0.58 per 100,000 couples, respectively, between 1991 and 1999). The Royal Commission on Aboriginal Peoples (1996) linked the high rate of violence in Aboriginal communities to systemic discrimination, economic and social deprivation, substance abuse, and a cycle of violence across generations. The long-term effects of colonialism on

traditional values and the disruption of family life created by residential schools.

- Violence against Aboriginal women in particular can be traced back to colonialism. Many Aboriginal communities were matriarchal or semi-matriarchal before colonization imposed patriarchal religious, economic and political institutions upon them. Aboriginal women face both racism and sexism as a result, being seen not just as Aboriginals and not just as women but as Aboriginal women, commonly objectified and dehumanized in racist and sexist stereotypes that make these women at risk of physical, emotional and sexual violence.
- Before colonization, Aboriginal women were in a position of honour, seen as being closest to Mother Earth and Creation. With colonization, they were stripped of their position as Aboriginal traditions and structures were destroyed.
- Now discrimination based on both the sex and race of Aboriginal women is manifested in the response or lack of response of law enforcement to violence against these women.
- While Aboriginal people are over-policed in that they are arrested and detained under circumstances in which non-Aboriginal people may not, they are also under-policed in that they are not available for preventive and supportive police services.
- In a tragic example of police unresponsiveness, in February 2000, Corinne McKeowen and Doreen Leclair were stabbed to death after five desperate calls for help were ignored by police.
- The over-representation of Aboriginal women in the criminal justice system is linked to their victimization, which is rooted in colonization and is perpetuated by current state practices. Aboriginal women may be charged when they are reacting to abuse or when they are reacting to the poor social conditions in which the double discrimination against them has left them.

Health

- Canadian laws have been used to oppress the traditional ceremonies and methods Aboriginal people have employed to deal with personal issues and

pressures. Until recently, many were prohibited by law and even now that they are considered legal they are denigrated by some. This has had a significantly negative impact on the well-being of Aboriginal people today.

- The prevalence of AIDS in the Aboriginal population has steadily increased in the last ten years. In 2002, Aboriginal peoples accounted for 6% to 12% of new HIV infections in Canada, compared with 9% in 1999. Aboriginal people account for around 17-26% of new HIV infections.
- In 1990 Aboriginal people accounted for 1% of total AIDS cases in Canada. In 2001 that number had climbed to 7.2%. In the same time period the rate of infection for tuberculosis was 8 to 10 times higher for Aboriginal people than for the general population in Canada.
- In 2001, there was a gap in life expectancy between Aboriginal people and the general Canadian population of 6.4 years. In fact, the median age for the Aboriginal population is 24.7 years compared to 37.7 years for the non-Aboriginal population. In 2000 the potential years of life lost by injury was almost 3.5 times higher for Aboriginal men and women than it was for the rest of Canada. In the same year Aboriginal communities had 6 times the number of tuberculosis cases in the Canadian population.

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