Corporeal Punishment:

Canadian Legal Culture, The Legacy of Colonialism, and the Bodies of Aboriginal Women

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I. Introduction

In the native language spoken on Tachie Reserve in northern British Columbia, the word for "police" translates literally to "those who take us away."[1] The etymological history of this word has its origin in the common perception of police during the era of Indian residential schools. During this period, the people of the Tachie Reserve saw police not as a source of protection, but as enablers of the disruption and degradation of Aboriginal communities.[2] The police acted as the strong-arm of the law. During this era, they used their strength to disempower and disintegrate Aboriginal communities rather then protect them. It was the police who were responsible for taking Aboriginal children away from their families in order to transport them to residential schools.[3] Empowered by the law, police perpetuated the colonial project of imposing a dominant ideology through force. At the heart of this dominant ideology was the notion that Aboriginal customs and culture were less valuable than those of the colonizers and their descendants. Enabled and emboldened by law, a modern colonial power removed Aboriginal children from their homes and brought them into a space of civilization. In this space of civilization, Aboriginal cultures, languages, and traditions were refused entry.

Space takes on great symbolic value in much of Canada's colonial history. The space of

1 Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (Human Rights Watch, 2013) 2 <http://www.hrw.org>. [HRW, *Those Who Take*].
2 *Ibid.*
3 *Ibid* at 29.

civilization that formed the core of the residential school system is not only the literal space of the school buildings. It is also a conceptual space that divides racialized and non-racialized groups into separate spheres. The space of civilization is the space of order and reason. Historically, it is the space of whiteness. The space of racialized Otherness, in contrast, is a space that must be conquered and disciplined. It is central to the very nature of colonialism to imbue space with heavy symbolic value. In Canada and in much of the world's colonial history, the spaces claimed by white settlers are the symbol of colonial victory and ownership. Land is a symbol of dominance. Though the rights of Aboriginal peoples have been constitutionally recognized,[4] the rights of Aboriginal groups to the spaces they once inhabited are still strongly contested.[5] By denying land claims, Canadian law affirms the historically constructed reality that Canada belongs to its colonizers.

In modern times, the bodies of Aboriginal women have, like land, become colonized space. Within the Canadian legal culture that exists today, Aboriginal women have been subjected again and again to the message that the space of their bodies is not their own. Like the land, their bodies are subject to the control and power of those who have benefited through systemic racism and colonialist history. Aboriginal women are told this through the actions of those who casually brutalize and murder them. The same message is reinforced by law enforcement authorities who withhold protection and instead commit abuses upon these women. It is repeated also by the government of Canada, which refuses to take meaningful action to protect the right of Aboriginal women to bodily integrity and safety.

Those Who Take Us Away, the word in the Carrier language for police, is the title of a report released in 2013 by Human Rights Watch. This report documents the ongoing failure by police to

4 *The Constitution Act*, 1982, Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 s 35.

5 For an example of how the Supreme Court established a duty to consult but not a duty to reach an agreement respecting Aboriginal land claims, see *Haida Nation v British Columbia (Minister of Forests)*, [2004] 3 SCR 511, 2004 SCC 73; for an example of the judiciary validating the government historical extinguishment of Aboriginal land claims, see *Calder v British Columbia (Attorney General),* [1973] SCR 313.

protect Aboriginal women and girls from violence in communities in northern British Columbia. The report also documents violent behaviour by police officers themselves against Aboriginal women and girls. These injustices are told in stories from the women themselves, in statistics about these women, and in various photographs. Among the most striking depictions of abuse documented in the report is a series of several colour photographs near the beginning of the report. These images show the face of a seventeen-year old Aboriginal girl, who, in 2011, was punched repeatedly by Royal Canadian Mounted Police (RCMP) officers while she was handcuffed.[6] Her face is discoloured with bruises. The body of this girl becomes a contemporary colonial space, claimed and marked by those who exert dominance over her. Her wounds are text written upon her body. When read, they tell a history of systemic abuse and the misuse of power.

Another photograph in the HRW report shows dog bites on the left leg of a twelve-year old girl who was arrested by the RCMP in 2012.[7] The girl had been reported to the police for allegedly spraying another person with bear mace. Her injuries were inflicted upon her by the dog used by the police who searched her. Her body becomes a graphic reminder of whom law punishes and who it protects. The bodies of the police are not present anywhere in the image. Their identities are shielded. They stand far outside the margins of the photograph, which was taken by the girl's mother. They also stand outside the space of accountability. They are symbols of the law and, consequently, the failure of the law. The body of the girl, marked by this failure, is evidence of the lingering legacy of colonial power, a power which determines who is and who is not a valid human subject worthy of protection under the legal system that exists.

A third photograph in the HRW report shows vivid, coloured fabric. It is a picture of several folded pairs of underwear held by a community worker in a small town in northern British Columbia

6 HRW, *Those Who Take, supra* at 6.
7 *Ibid.*

where she works.[8] As part of her job, this community worker distributes underwear to Aboriginal women on the street. Some of these women have told her of experiences of sexual assault by RCMP officers, who then took their underwear away from them.[9] The bodies of these women become the arena upon which a disturbing imbalance of power is enacted. Bodies of Aboriginal women, inevitably racialized and gendered, become the text on which a colonial history reinscribes and perpetuates its legacy.

This paper addresses a simple issue: that Aboriginal women in Canada are systematically and regularly abused and murdered and very little is done on official levels to counter this. To name it a simple issue, however, is not to deny its complex history and complex workings. Rather, it is only to point out that, on the surface, there is a clearly identifiable problem. This problem is that Aboriginal women are not accorded the protection and dignity that other individuals in Canada enjoy. It is unfathomable to think that the Canadian government would act with such reckless indifference if a proportionate number of white women went missing or were murdered. However, the government has not acted in any meaningful way to protect Aboriginal women. The Native Women's Association of Canada (NWAC) has documented 582 cases of missing and murdered Aboriginal women across Canada in the years leading up to and including 2010,[10] after which point their funding for this research was discontinued by the Canadian government. Of the homicides documented by NWAC, nearly half of them remained unsolved.[11] The HRW report cites a statistic stating that between 1997 and 2000, the rate of homicides of Aboriginal women was almost seven times higher than the homicides of non-Aboriginal women.[12] The Canadian government, the police, and the judiciary have all contributed to

8 *Ibid* at 7.
9 *Ibid.*
10 Native Women's Association of Canada, *What Their Stories Tell Us: Research Findings from the Sisters in Spirit Initiative* (NWAC 2010) 1, 20-21 <http://www.nwac.ca/programs/sis-research>.
11 *Ibid* at 22; HRW, *Those Who Take*, *supra* at 26.
12 Vivian O'Donnell and Susan Wallace, "First Nations, Métis, and Inuit Women," *Women in Canada: A Gender-based Statistical Report* (Statistics Canada, 2011) at 43 <http://www.statcan.gc.ca/pub/89-503- x/2010001/article/11442-

the erasure of Aboriginal women as valid human subjects under the law. Canadian legal culture and government policy developments have been woefully inadequate in their responses to the systemic, ongoing violence perpetrated against these women. Despite the widespread demand for a national inquiry by countless organizations and individuals, this call has been repeatedly ignored.

Any informed and responsible discussion of the disappearance and murder of Aboriginal women in Canada cannot ignore race as a vital factor of analysis. As it stands, however, much of Canadian legal culture has engaged in an ongoing project of race erasure, effectively eliminating race as a factor of consideration in its approach to the issue of Aboriginal women and violence. This includes both those who develop law and policy, as well as the judiciary itself. Canadian legal culture has entrenched race as a marker of Otherness, but at the same time has refused to consider race as a factor which merits attention and analysis. Without an analysis of race and racism, there is no possibility of effective, informed action to stop violation against Aboriginal women. Until Canadian law adopts a coordinated approach which is cognizant of race literacy, attuned to gender inequality, and conscious of the intersectionality of oppression, Aboriginal women will continue to be the victims of systemic violence and officially sanctioned indifference.

II. The Power to Give Legitimacy: Aboriginal Women, the *Indian Act*, and official acts of omission

The colonial history of Canada is the framework on which the continued subjugation of Aboriginal women is built. Both historically and in a modern context, there has been a systemic erasure of Aboriginal women as valid human subjects worthy of legal recognition and protection under the law. This erasure is present in the government's refusal to take meaningful action, such as through a national inquiry. It is present too in the refusal of Canadian legal culture at large to approach the issue of

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eng.htm>; HRW, *Those Who Take*, *supra* at 25.

violence against Aboriginal women as an issue of racial inequality. Canadian law cannot begin to engage in a meaningful project to protect the bodies of Aboriginal women if it cannot even acknowledge the lived reality of these bodies. This lived reality is one in which race is an ever present factor that determines how Aboriginal women are treated by society, police, and the justice system. No body ever comes detached from its race, gender, and other vital elements of identity. The refusal of the government and judiciary to grant meaningful recognition of race and racism as factors contributing to the systemic violence against Aboriginal women, is willful neglect. Canadian law must undertake a commitment to race literacy in order to understand the history of law and how the legacy of this history continues to subjugate Aboriginal women and allow them to fall between the cracks of legal protection.

In the current *Charter*-informed era of constitutionally entrenched equal rights, statutory law and government bodies cannot legally impose dehumanizing treatment of Aboriginal women under the law.[13] However, they can look the other way. They can ignore or downplay the problem. Indifference and inaction, it must be remembered, are not the same as neutrality. One of the features of indifference is its implicit ability to confirm or deny who is a worthy subject of recognition. When official bodies refuse to act in a meaningful way to remedy injustice, the implicit message is that there is no injustice worth remedying.

The mistreatment of Aboriginal women in Canadian law has a long history. This history perpeatuates a contemporary legacy through law's current disregard for missing and murdered indigenous women. A vital aspect linking history and present is the power of law to erase the legal subjectivity of Aboriginal women. A key example of this historical erasure is in the pre-1985 *Indian Act*, which conferred “Indian status” in a very gendered manner, only permitting Aboriginal women

13 *Charter of Human Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being schedule B to the *Canada Act* 1982 (U.K.), 1982, c 11. Section 15 of the *Charter*, which applies to law and government policy, guarantees freedom from discrimination based on both race and gender.

status if they had an Aboriginal husband or father.[14] Without a father or husband to lend them legitimacy, Aboriginal women were legally displaced from their culture and history. An Aboriginal woman's race would still define her body, marking her as the racialized Other. At the same time, however, her identity existed in a liminal non-space, as neither white nor Aboriginal.

Under the regime of the old *Indian Act*, Aboriginal women were not seen as worthy of full legal recognition. This history is vital to consider as a backdrop to the ongoing violence against Aboriginal women, because it implicitly sanctioned the idea that Aboriginal women in Canada were second class citizens. While the gendered bestowal of Indian status is no longer in effect post-1985, Canadian legal culture still has a long way to go in terms of acknowledging and remedying widespread injustices committed against Aboriginal women. The legal erasure of Aboriginal women under the *Indian Act* was an act of commission. Legally sanctioned actions on the part of the Canadian government at this point in time can more accurately be characterized as acts of omission. These acts of omission include the refusal of the government to create a national inquiry. Another act of omission, which I explore below, is the refusal of Status of Women Canada to commit to meaningful action or even acknowledge race as a basis for systemic violence against Aboriginal women. These acts of omission, though they seem like non-actions, are actions in the sense that they involve choice and carry out a measured scheme. Like the pre-1985 *Indian Act*, these acts of omission constitute the denial of basic humanity and dignity. In the face of such extreme levels of violence, the refusal to take action is itself a statement about the worth given to Aboriginal women in Canadian legal culture.

III. Reducing Racialized Women to their Bodies: the legacy of the colonial sex trade

Part of remedying the situation as it now stands means acknowledging the wrongs of the past

14 *Indian Act*, R.SC, 1951, c I-5. Section 12(1)(b) of this incarnation of the *Act* stripped Aboriginal women and their descendants of their Indian status if they married a man who did not have Indian status.

and undoing their influence. Aboriginal women are essentially reduced to property in the pre-1985 *Indian Act*. They are defined solely in terms of their relationship with men. Embedded in this colonial statutory scheme is the residual influence of the era in which women were seen as the property of men, owned by their fathers and then, through marriage, by their husbands. Despite the changes to the *Indian Act*, Canadian law and culture have not moved far beyond this legally sanctioned objectification of Aboriginal women. Today there are men who still believe themselves entitled to Aboriginal women's bodies. While this entitlement may not be sanctioned by law, law has too often looked the other way.

Many of the women who have been murdered or disappeared in Canada worked as sex workers. Canadian law has widely turned its back on these women, allowing them to slip between the cracks of legal protection. These women know that, while working the streets, they have every reason to live in fear. They know that the streets are not their own. The safe use of the streets is granted to those who have power. The streets are part of the space that colonialism took from Aboriginal cultures both literally and figuratively. Colonialism no longer dominates new lands, but its legacy imposes restrictions on who can use the lands with a sense of freedom. Laws around sex work in Canada punish sex workers rather than the johns, their clients.[15] By doing this, law denies protection to those who are most vulnerable.

The legacy of colonialism determines who can use the streets safely, empowered by the knowledge of legal protection. Aboriginal women are denied this protection. Colonial history has taught predators that the bodies of Aboriginal women are there to be misused and violated. This colonial mindset empowers these predators to abuse Aboriginal sex workers. It affirms to them that Aboriginal women are lesser human beings who warrant punishment rather than protection. These women are not owners or meaningful participants in the land. Instead, they are intruders who are punished for their intrusion by strangers who force them into dark, secluded spaces where they are

15 *Criminal Code*, RSC 1985, c C-46 ss 211-213.

abused and sometimes murdered. These women know that it is whiteness that has power over the city streets. They know that they are powerless.

This powerlessness has a particular history. The sexual objectification and abuse of Aboriginal women is by no means a modern invention. The dehumanization of Aboriginal women working in the sex trade is a modern operation of the colonial logic that reduced Aboriginal women's bodies to objects of commerce. Under Canadian colonialism, Aboriginal women were forced into a regime in which their bodies became objects of trade and sale.

Ron Bourgeault, a professor of sociology at the University of Regina, has written on how Aboriginal women's subjugation "is rooted in early French and English colonial praxis and inexitricably bound with class and race divisions of capitalist development."[16] Bourgeault explores the commodification of Aboriginal women in Canada, focusing in particular on the eighteenth century. In his words, "As society was transformed through a policy of domination, Indian women became sexual commodities to be purchased through the exchange of European goods, particularly alcohol, for their services."[17] Through this process, Aboriginal women became reduced quite literally to things, on par with other objects of trade.

Bourgeault cites at length a passage written by Philip Turnor, an inland surveyor for the Hudson's Bay Company, as clear evidence of the colonial project to commercialize and profit from Aboriginal women's bodies. The passage, reproduced as in the original, reads as follows:

> The Jepowyan [Chipewyan] Indians complain very much of the injustice done them by the Canadians in taking their women from them by force; some of the Canadians keep no less than 3 women and several 2 – an instance happened this day of the injustice of the Canadians in the traffic of the Fair Sex – A Canadian that had 2 women before, went to their tents and took a

16 Ron Bourgeault, "Race, Class, and Gender: Colonial Domination of Indian Women," in Ormond McKague, ed, *Racism in Canada* (Saskatchewan: Fifth House Publishers, 1991) 129.
17 *Ibid* at 139.

> young woman away by force, which was the only support of her aged parents. The old Indian her father, interfered, he was knocked down and dragged some distance by the hair of his head, altho so inform with age that he is obliged to walk with a stick to support himself . . . all this is encouraged by their masters, who often stand as Pimps to procure women for their men, all to get the men's wages from them. The summer masters role employ is in taking care of the men's women, which is, in my humble opinion, a very immodest employ, but be it as it will they make great profit, the Masters in the Traffic of the Females for the mens uses.[18]

Bourgeault notes that there was no historical precedent for the sexual trafficking of Aboriginal women in Aboriginal communal societies themselves. This practice was entirely a creation of the white settlers, in particular those who worked for the Hudson's Bay Company and the North West Company.[19]

In his analysis of the passage written by Turnor, Bourgeault notes the important fact that Aboriginal women did not choose to be objects in the sex trade, but were forced into sexual labour by white settlers. In Bourgeault's theorization of the workings of colonialism, this practice "stood as an expression of the inferiorization and continued subjugation of both Indian society and Indian women."[20] The logic of this practice suggests that those who engage in sex work are marked as lesser human beings. It associates sex work, whether performed by choice, out of necessity, or because of force, with degradation and baseness. It defines Aboriginal women by the services that can be performed by their bodies rather than defining them as full beings. By reducing them to sexual labour, this logic suggests that they are only bodies, not souls, and so are not worthy of care or concern.

IV: Judicial Indifference: racialized violence and sex work in Canada in the modern context

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18 *Ibid* at 145; 145; Samuel Hearne and Philip Turnor, *Journals of Samuel Hearne and Philip Turnor,* (Toronto: The Champlain Society, 1934) 447.
19 Bourgeault, *supra* at 145.
20 *Ibid.*

Canadian legal culture must recognize that violence against Aboriginal women has at its basis both gender and racial inequality. Accordingly, law must equip itself with tools to address intersectionality of oppression. With some rare exceptions, the judiciary's treatment of sex workers has consistently refused to engage in an anti-oppressive approach which acknowledges the reality that racialized poverty often forces women into sex work. These sex workers, racialized, gendered, and poor, become easy targets for predators. An intersectional approach is necessary to recognize the particular vulnerabilities of these groups.

Corinne Longworth looks at the 2007 conviction of Robert William Pickton, a pig farmer from British Columbia, who killed sex workers whom he picked up from the Downtown Eastside of Vancouver.[21] Pickton was found guilty of the second-degree murder of six of the twenty-six women he was charged with killing. Longworth, familiar with the fact that many Aboriginal women enter into the sex trade in order to survive economically, comments at length on the racialized element of these murders. In her words,

> The fact that it took close to 50 female prostitutes, many of whom were Aboriginal and lived in abject poverty, to go missing to spur a media frenzy is indicative of the lack of concern prostitutes are generally afforded by society. Surely media and police attention would have been engaged, yet earlier and far more appropriately, if 50 middle-class, white, non-prostituted women had gone missing.[22]

Longworth argues that, while many feminist approaches to sex work advocate the importance of respecting women's choices, we cannot assume that choice is the norm.[23] Some women chose to go into sex work, while others do so because of the insurmountable obstacle of poverty. If there is a continuum

21 Corinne Longworth, “Male Violence Against Women in Prostitution: Weighing Feminist Legislative Responses to a Troubling Canadian Phenomenon” (2010) 15 Appeal 58.
22 *Ibid*.
23 *Ibid* at 68.

of choice, the group furthest away from the position of voluntariness is the women of the Downtown East Side (DTES). Choice is not a helpful concept in relation to "the Aboriginal, street prostitute, living in poverty on the DTES, who self-identifies as a victim of colonialism, capitalism and patriarchy."[24]

For Aboriginal women in sex work, violence has become the norm. In an article about gendered racial violence, Sherene Razack focuses on the events at issue in the case of *R v Kummerfield (S.T.) & Ternowetsky*, a case that came out of the Saskatchewan Court of Appeal in 1998.[25] The facts of *Kummerfield* are harrowing, but, given the frequency of violence against Aboriginal women in Canada, they are all too familiar. In the spring of 1995, two nineteen-year old university athletes celebrated the end of a semester by persuading an Aboriginal woman and sex worker, Pamela George, to get into their car with them. They drove George to a secluded area outside Regina. In this secluded space, the two men, Kummerfield and Ternowetsky, threatened to murder her if she did not perform sexual acts on them. The two men each beat George severely and left her lying face down. George's body was found soon after. Nearly one month later, Kummerfield and Ternowetsky were apprehended by the RCMP on charges of the murder of Pamela George. Both men were convicted on charges of manslaughter.

Razack's analysis centres on the colonial elements of the factual scenario that enabled two white men to exercise power over an Aboriginal woman. Because of the history of domination of Aboriginal women and Aboriginal cultures in general, these men knew that they were entitled to take what they wanted.[26] Kummerfield and Ternowetsky were implicitly empowered by a colonialist history that conferred ownership of the land around them. By extension, the woman's body in front of them became another space on which to assert dominance.

In addition to denouncing the perpetrators of violence, Razack also takes issue with the law's

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24 *Ibid*.

25 *R v Kummerfield (S.T.) & Ternowetsky*, [1998] 163 Sask R 257 [*Kummerfield*]; Sherene Razack, "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George," in Sherene Razack, ed, *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002).

26 *Ibid* at 129.

response to George's murder. Razack critiques the fact that the conviction was manslaughter rather than murder.[27] She also notes that the trial judge had instructed the jury to take into account that George was working as a sex worker on the night of her murder.[28] Though the Court of Appeal concluded that this instruction did not degrade George,[29] the emphasis placed on George's sex work does little but reaffirm the notion that some human beings are worth less than others. To suggest that George's sex work was a relevant consideration to a jury verdict is to affirm the logic that George put herself in a place of risk and so invited abuse.

The two men who murdered Pamela George treated her as an object without human value or identity. While the legal system should be neutral in terms of value judgments, the court was also guilty of dehumanizing George. George was judged by the court for performing sex work. Razack notes that the trial judge had instructed the jury to remember that Kummerfield and Ternowetsky were within their rights to hire her and that she had consented to perform sexual acts upon them.[30] By emphasizing that George was a sex worker in this manner, the court defined her primarily in terms of her sexuality. Nowhere in this jury instruction, or the decision as a whole, was there any recognition of the legacy of colonialism that, through racialized poverty, has driven many Aboriginal women to sex work. Without providing any historical and contemporary context about Aboriginal women and sex work, the court implicitly suggests that George was just a woman who made bad choices with her life. Razack points out that it is notable that George is judged for engaging in sex work, whereas Kummerfield and Ternowetsky are not judged for having purchased George's services. In Razack's words, "[George's] activity was a crime which carried the risks of violence, while theirs was a contract."[31]

Razack stresses that any responsible analysis of the facts of this case must refrain from erasing

27 *Ibid* at 125.
28 *Ibid*.
29 *Ibid*.
30 *Ibid* at 152.
31 *Ibid*.

George's race. While George was targeted as a woman and as a sex worker, she was targeted too because she was an Aboriginal woman. In Razack's words,

> While it is certainly patriarchy that produces men whose sense of identity is achieved through brutalizing a woman, the men's and the court's capacity to dehumanize Pamela George came from their understanding of her as the (gendered) racial Other whose degradation confirmed their own identities as white – that is, as men entitled to the land and the full benefits of citizenship.[32]

Pamela George's body became for these men an object of modern colonial conquest. Rather than acknowledge her as a fellow human being, Kummerfield and Ternowetsky treated George's body as a space they were entitled to occupy and use. Just as the colonial violence claimed bodies and land for its own purposes, so two young men perpetuate this colonial project in their acts upon an Aboriginal woman.

The murder of Pamela George is a clear manifestation of the workings of a racist history. Razack comments on how the sexualized conceptions of Aboriginal women from colonial times are still at play in terms of the sexual violence Aboriginal women face today in the sex trade.[33] She suggests that the "nineteenth-century perception of the Aboriginal woman as a licentious and dehumanized squaw" continues to operate today.[34] As an example of this, she cites the 1971 murder of Helen Betty Osborne, an Aboriginal student who was picked up while walking down a street in The Pas, Manitoba, and assaulted and killed. The Aboriginal Justice Inquiry's discussion of the murder concludes that Osborne's killers, "seemed to be operating on the assumption that Aboriginal women were promiscuous and open to enticement through alcohol or violence. It is evident that the men who abducted Osborne believed that young Aboriginal women were objects with no human value beyond

32 *Ibid* at 126.
33 *Ibid* at 135.
34 *Ibid.*

[their own] sexual gratification."[35]

The familiar pattern of such stories is striking. Men take Aboriginal women outside a familiar space and brutalize their bodies. A fact pattern very similar to what happened to Pamela George is documented in the HRW report.[36] In both instances, men took an Aboriginal woman outside town to an unfamiliar location, sexually assaulted her and threatened her with death. In the story documented by HRW, which occurred in 2012, the men in question were police officers. The secluded space in many of these stories is important in terms of its symbolic value. Outside the city or town, secluded space symbolizes the space outside civilization. It is the space in which the illegitimate can happen, because, theoretically, one is outside the surveillance of the law. However, in the case of the events reported anonymously to HRW, the law itself was there watching and perpetrating abuse. When police enter into a space outside legitimacy, the boundaries between law and lawlessness dissolve.

While Canadian legal culture has, on the whole, done little to ensure the protection of Aboriginal women, a case heard at the Supreme Court of Canada level in 2012 offers some hope. This case is *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*.[37] Given the overrepresentation and underprotection of Aboriginal sex workers in the Downtown East Side of Vancouver, this case represents significant judicial acknowledgement of the difficulties faced by Aboriginal women. In the case, Sheryl Kiselbach, a former sex worker, and the Downtown Eastside Sex Workers United Against Violence Society (DESWUAV) were granted public interest standing to challenge *Criminal Code* provisions about sex work. The position of Kiselbach and the DESWUAV is that the *Criminal Code* sections 210 to 213 infringe the section 2(d) *Charter* right to freedom of association; the section 7 right to security of the person; section 15 equality rights in that

35 *Ibid*; Manitoba, *Report of the Aboriginal Inquiry of Manitoba: The Deaths of Helen Betty Osborne and John Joseph Harper*, vol 2 (Winnipeg: Queen's Primer, 1991) 52.
36 HRW, *Those Who Take*, *supra* at 8.
37 *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society,* 2012 SCC 45.

the provisions negatively impact members of a disadvantaged group; and the section 2(b) right to freedom of expression, because the provisions rendered illegal communication which could serve to increase safety and security for sex workers.

As an organization, the DESWUAV is aimed at improving working conditions for sex workers. It is run by current and former sex workers. As mentioned above, there is a large Aboriginal community in Vancouver's Downtown East Side, many of whom engage in sex work. As sex workers and as Aboriginal women, these women are one of the most marginalized groups in the country. They are severely affected by the current *Criminal Code* provisions that render working conditions unsafe for sex workers in a way that threatens their lives and physical integrity. The significance of the Supreme Court of Canada granting Kiselbach and DESWUAV standing is that the women they represent will be given a judicially sanctioned opportunity to fight against laws that place them in harm's way. The decision takes into account Kiselbach and DESWUAV's argument that the *Criminal Code* provisions adversely impact a great number of women.[38] Justice Cromwell, writing for the Supreme Court, agreed with the Chambers Judge that this claim raises serious issues as to the validity of these provisions.[39] The significance of this ruling is that it represents an acknowledgement under Canadian law that laws around sex work adversely affect women who are marginalized and in need of greater protection. However, there is much that still needs to be done to ensure the safety and dignity of Aboriginal women under the law.

V. Aboriginal Women, Violence, and International Law

In 2004, the international NGO Amnesty International prepared a report entitled *Stolen Sisters:*

38 *Ibid* at para 68.
39 *Ibid* at para 70.

A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada.[40]

The purpose of the *Stolen Sisters* report was to examine the role of discrimination as a basis for acts of violence against Aboriginal women in Canada.[41] In the words of the report,

> This discrimination takes the form both of overt cultural prejudice and of implicit or systemic biases in the policies and actions of government officials and agencies, or of society as a whole. This discrimination has played out in policies and practices that have helped put Indigenous women in harm's way and in the failure to provide Indigenous women the protection from violence that is every woman's human right.[42]

In other words, implicit assumptions and biases create an atmosphere in which violence and dehumanization thrive. The report stresses that the effects of systemic discrimination enable and embolden human rights violations. Aboriginal women cannot be free from these violations in a culture and legal system that is not committed to racial equality and full accountability.

The report canvased Canada's role in the international legal framework applicable to violence against women. It stated that the violence experienced by Aboriginal women in Canada elicits serious human rights concerns because of Canada's lack of official response. For instance, it was notable that Canada had refused to ratify the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, which is the only international human rights treaty that focuses specifically on violence against women.[43]

The report suggested that the treaties which Canada has ratified should form the basis for action on the part of the Canadian government in order to eradicate violence against Aboriginal women. It cited the *Convention on the Elimination of Discrimination against Women*, which requires that

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40 Amnesty International, *Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada* (Amnesty Canada, 2004) <http://www.amnesty.ca/>. [Amnesty, *Stolen Sisters*].
41 *Ibid* at 3.
42 *Ibid.*
43 *Ibid* at 4.

participating parties "undertake to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise."[44] The report also drew on the *International Covenant on Civil and Political Rights*, which provides that state parties undertake "to ensure to all individuals . . . the rights recognized in the present Covenant."[45] These are two examples of international law that require governments not only to ensure that their own officials adhere to human rights laws, but also take effective measures to prevent private citizens from committing human rights violations.[46]

Inaction on the part of the government infringes the human rights of individuals. According to the *Stolen Sisters* report, when Aboriginal women are the target of sexist and racist attacks and are not assured sufficient protection by the government and law enforcement, then many vital human rights are at stake. Drawing on key human rights treaties that Canada has ratified, Amnesty International suggests that each of these treaties provides basis for legal protection of the rights of Aboriginal women to be free from violence. The report cites the *International Covenant on Civil and Political Rights* as a basis for the right to life,[47] the right to be protected against ill treatment,[48] the right to security of the person,[49] and the right to gender equality[50] and racial equality.[51] It cites the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment* as foundation for protection against ill treatment and torture.[52] It draws on the *Convention on the Elimination of Discrimination against Women* as a

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44 *Convention on the Elimination of Discrimination against Women,* 18 December 1979, 1249 UNTS 13, art 2(e) [*CEDAW*]; Amnesty, *Stolen Sisters*, *supra* at 4.
45 *International Covenant on Civil and Political Rights,* 16 December 1966, 999 UNTS 171, art 2(2) [*ICCPR*]; Amnesty, *Stolen Sisters*, *supra* at 4.
46 *Ibid*; Amnesty, *Stolen Sisters*, *supra* at 4.
47 *ICCPR*, *supra*, at art 6; Amnesty, *Stolen Sisters*, *supra* at 4.
48 *ICCPR*, *supra* at art 7; Amnesty, *Stolen Sisters*, *supra* at 4.
49 *ICCPR*, *supra* at art 9; Amnesty, *Stolen Sisters*, *supra* at 4.
50 *ICCPR*, *supra* at arts 2(1), 3; Amnesty, *Stolen Sisters*, *supra* at 4.
51 *ICCPR*, *supra* at art 2(1); Amnesty, *Stolen Sisters*, *supra* at 4.
52 *Convention against Torture and other Cruel, Inhuman or Degrading Treatment*, 10 December 1984, 1496 UNTS 85, art 2; Amnesty, *Stolen Sisters*, *supra* at 4.

guarantor of gender equality under the law.[53] Finally, it names the *Convention on the Elimination of all forms of Racial Discrimination* as the legal basis for a guarantee of racial equality.[54]

The report suggests particular strategies that makers of Canadian law and policy could adopt in order to implement the human rights guarantees required under international law. One suggestion is that those involved in the administration of justice should undergo education and training programs related to gender-based violence. It also suggests specialized programs designed to counter social and cultural tendencies that enable gender-based violence.[55]

The idea of specialized programs, however, derives from the language of the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*.[56] As long as Canada refuses to ratify this treaty, Canada does not by law have to take action to end gender-based violence. While our *Charter* equality guarantees protect the right to be free from discrimination based on race or sex, these guarantees have not been utilized a basis for ending violence against Aboriginal women. As long as there is no concerted effort on the part of the government and the judiciary to commit to and engage in a project of race literacy and accountability, Canadian legal culture can refuse to engage in meaningful analysis or change by choosing not to acknowledge race and gender as relevant issues. Canadian legal culture benefits from a climate of silence and denial in which the racism of the past and the present are erased. This erasure is made easier by the fact that the language of race and racism are so seldom brought into any official analysis about Aboriginal women and violence. Part of the privilege of those in power is that they do not have to acknowledge that which does not affect them. As law professor Stephanie Wildman so succinctly notes, "Part of the privilege of whiteness is

53 *CEDAW*, *supra* at art 2; Amnesty, *Stolen Sisters*, *supra* at 4.
54 *Convention on the Elimination of all forms of Racial Discrimination,* 21 December 1965, 660 UNTS 195, art 2; Amnesty, *Stolen Sisters*, *supra* at 4.
55 *Ibid*.
56 *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para")*, 9 June 1994, Organization of American States, art 8; Amnesty, *Stolen Sisters*, *supra* at 4.

the freedom not to think about race."[57]

VI. The Power of Silence: A close reading of *Ending Violence Against Aboriginal Women and Girls*, a report from the Standing Committee on the Status of Women 2011

The strategic silence of the Canadian government around the issue of Aboriginal women creates a chilling climate in which effective action is impossible. Very little can be accomplished when vital language and conceptual tools are missing from official reports and undertakings. A key example of a government initiative that erases vital language of accountability is the 2011 Status of Women Canada report on Aboriginal women.[58] Though written about Aboriginal women, the report is glaringly lacking in discussion about race, gender, or systemic discrimination. The refusal to acknowledge race and gender as vital tools of analysis allows the Status of Women report to refrain from committing to meaningful policy change. It represents a microcosm of the Canadian government's broader approach to the problematic issue of violence against Aboriginal women. This approach has been to acknowledge that violence is occurring, but to deny the underlying issues contributing to the violence and also to deny the government's own complicity.

Entitled *Ending Violence Against Aboriginal Women and Girls: Empowerment – A New Beginning*, the report is a useful summary of the historical and contemporary ways in which Aboriginal women have been oppressed as a group. However, despite its subtitle, the report does little to formulate a meaningful plan for empowering Aboriginal women. Instead, the report reads as self-congratulatory and dismissive of the current landscape of legally entrenched racism.

Empowerment is an equitable redistribution of power. To empower a group of people must

57 Stephanie Wildman, "Obscuring the Importance of Race: the Implications of Making Comparisons Between Racism and Sexism (or Other -Isms)," in Richard Delgado & Jean Stefancic, eds, *Critical Race Theory: The Cutting Edge* (Philadelphia: Temple University Press, 2000) 653.

58 House of Commons, Standing Committee on the Status of Women, *Ending Violence Against Aboriginal Women and Girls: Empowerment – A New Beginning* (December 2011) [Status of Women, *Ending Violence*].

mean understanding and analyzing the power dynamic that has placed them in a position of oppression in the first place. To empower entails addressing both historical racism and its current legacies. As law professor Esmeralda Thornhill writes in "Focus on Racism: Legal Perspectives From a Black Experience," legal culture must have in its arsenal a fundamental understanding of power in order to address manifestations of racism.[59] In reference to contemporary Canadian legal culture, she affirms that,

> We do not understand Racism. We employ no operational definition or conceptual framework to examine Racism. We fail to acknowledge the determinant factor of POWER – institutional power within the equation of Racism Chaos reigns. We confuse "impartiality" with "neutrality". We fail to grasp the added dimension inherent in Racism as opposed to other blameworthy misconduct such as brutality, abuse of power, excessive and even deadly force.[60]

The Standing Committee on the Status of Women report has no such acknowledgement of power and racism. While the report acknowledges the need for empowerment of Aboriginal women, upon close reading, it fails to address systemic racism. Indeed, the word "racism" itself appears only once in the main body of the report in a quotation taken from Rona Ambrose, the Minister for the Status of Women. Ambrose comments on the legacy of racism experienced by Aboriginal women. In Ambrose's words, there are

> root causes of violence in the [A]boriginal communities that include things like poverty and racism, and this is why it's incredibly important for us to work with organizations, [A]boriginal organizations, across the country, and to partner with people like the RCMP and Justice

59 Esmeralda M.A. Thornhill, "Focus on Racism: Legal Perspectives From a Black Experience." *Legal Judicial Awareness: Race, Culture and the Courts*. Volume of Reference Materials (Ottawa: National Judicial Institute, 1995).
60 *Ibid* at 9.

Canada, because this has to be a multi-pronged approach.[61]

Ambrose's comment suggests that the Canadian government can only take meaningful action through partnering with Aboriginal groups. Her suggestions ring hollow, however, in the context of the 2010 defunding of NWAC and other Aboriginal organizations committed to ending violence against Aboriginal women.

On the whole, the report erases race as a meaningful topic of analysis. Given that the report is close to seventy pages in length, the fact that racism is only acknowledged in such a minimal way in the main body of the report (once, through the quotation from Ambrose), is significant. It demonstrates the lack of concern on the part of Parliament for race literacy and an understanding of how historical and systemic racism constitutes the foundation for violence against Aboriginal women. The only other place in the report where "racism" appears is in the attached dissenting opinion of the New Democratic Party of Canada.[62] The word "racist" appears once when the report states that some Aboriginal organizations and individual Aboriginal women had reported that police acted in an explicitly racist manner in relation to Aboriginal cultures and histories.[63] While the report records this allegation of racism by separate organizations, the language of the report itself maintains a wide conceptual distance between itself and the language of accountability.

In addition to the negligible mention of racism in the report, the word "race" also appears only once in the report. "Race" as a term appears in relation to the Assembly of First Nations and the First Nations Child and Family Caring Society of Canada.[64] In 2009, these two bodies lodged a complaint before the federal Human Rights Commission alleging that inequitable funding of child welfare services on and off reserve violated the *Canadian Human Rights Act* on the grounds of race. It is

61 Status of Women, *Ending Violence, supra* at 20.
62 *Ibid* at 59-65.
63 *Ibid* at 18.
64 *Ibid* at 37.

notable that the sole reference to race in the Status of Women report is not in reference to Aboriginal women, the subject matter that forms the basis of the report. Instead, "race" is addressed only insofar as it is the legal basis for a human rights challenge by an Aboriginal organization unaffiliated with the report. The report itself does not at any time engage in any analysis informed by race literacy. Importantly, when race and racism are mentioned explicitly, they are attributed to voices that are distinct from the voice of the report itself. The report cites other bodies' allegations of racism, but does not itself critically discuss race.

Through refusing to consider race and racism as vital topics of examination in relation to Aboriginal women and violence, the Status of Women Canada report engages in systemic racism. Its literal race-erasure is evidence of how law, in this case through the voice of a Parliamentary-appointed body, engages in willful ignorance about the impact of race on the lives of Canadians. Another passage from Thornhill, written in reference to the experience of racialized groups under Canadian legal culture, is appropriate in this context. She writes that "our legal institutions along with Canadian society as a whole would appear to be 'playing ostrich' – indulging in an obdurate form of endemic 'willful blindness' which refuses to recognize that de facto and de jure societal practices continue to legitimate Racism."[65] In refusing to acknowledge race, the Status of Women report condones the legal and societal processes through which systemic racism is perpetuated.

The mandate of the Status of Women report shifts the focus away from the experience and impact of violence on Aboriginal communities, and instead emphasizes "empowerment" as an all-encompassing watchword. What is problematic about this approach is that it shifts the focus away from the lived reality of Aboriginal women and instead allows the Committee to laud itself for its own good intentions. The report defines its agenda as follows:

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65 Thornhill, *supra* at 5.

> the Committee has chosen to shift its focus from the aftermath of the violence to empowering young Aboriginal girls and women, supporting their desire to strive for a better life of independence, confidence, influence and power, with the goal of reducing the victimization, poverty, prostitution and abuse experienced by Aboriginal women and girls.[66]

This approach fundamentally dismisses both the colonial history and the ongoing colonial project that contribute to the disempowerment of Aboriginal women. By emphasizing a focus on the positive future that can be attained through empowerment, it refuses to address and analyze "the aftermath" of violence. It hints to its reader not to be upset about the past or present reality, because what the Canadian government has deemed important and worthy of focus is the promise of future empowerment.

While the report's absence of analysis about systemic racism is troubling, what is useful in in the report is that it documents important statistics about Aboriginal women. It also records some experiences of Aboriginal women in their own words. The Committee saw many witnesses in preparing the report. These included both Aboriginal women and individuals representing organizations that encounter Aboriginal women, such as women's shelters and cultural programs. According to Dawn Harvard, then President of the Ontario Native Women's Association, the poverty rate among Aboriginal women is 40%.[67] Other witnesses brought forth testimony suggesting poverty is a root cause of the overrepresentation of Aboriginal women in sex work.[68]

The report documents testimony about access to justice on the part of Aboriginal women. The committee that prepared the report heard testimony on the lack of cultural and historical training on the part of police officers, which results in Aboriginal women being hesitant or unwilling to avail

66 Status of Women, *Ending Violence, supra* at 1.
67 *Ibid* at 2.
68 *Ibid* at 3.

themselves of police services.[69] The report also documents testimony about how Aboriginal women have encountered problems accessing legal aid.[70] In addition, it notes that only a small percentage of abuse reported by Aboriginal women results in charges.[71]

While the report is useful in documenting testimony of outside individuals and organizations, it becomes clear through reading the report that the committee did very little with the information it received from Aboriginal women and organizations. The report is glaringly inadequate in terms its proposals for meaningful action. The report names the Aboriginal Courtwork Program as an example of the federal government's response to the problems with access to justice faced by Aboriginal victims of violence. The purpose of this program is to "'providing Aboriginal persons charged with an offence with timely and accurate information at the earliest possible stage of the criminal justice process'."[72] While this program may be useful to Aboriginal offenders, it does nothing for Aboriginal women who have been murdered or missing. These women have no need for information about the court process. They are not offenders, but victims.

The fact that the report makes mention of the Courtwork program shows a reluctance to consider Aboriginal women as a disaggregated, discrete group discernible from Aboriginal people as a whole. A program designed to assist Aboriginal offenders with access to justice does nothing for women who are victims of violence. Such a program also does not take into account the fact that these women are victimized on the basis of both race and gender. Any effective plan on the part of the government must take into account the unique vulnerability of Aboriginal women as women and as racialized people. As discussed above, Aboriginal women are particularly vulnerable as sex trade workers. In an analysis of sex work and Canadian law, Karin Galldin, Leslie Robertson, and Charlene

69 *Ibid* at 18.
70 *Ibid* at 21.
71 *Ibid.*
72 *Ibid* at 22.

Wiseman note that Aboriginal women are particularly vulnerable because they are seen by their abusers as "immoral and sexually promiscuous.[73]" These stereotypes have both a racialized and gendered component. Government action designed to analyze the needs of Aboriginal women must not group all Aboriginal people together. Instead, it must acknowledge the ways in which Aboriginal women are seen as uniquely disposable because of both race and gender.

The recommendations laid out at the end of the Status of Women report are quite nebulous and undefined in scope. For example, the report recommends a collaborative approach to combatting violence against Aboriginal women. Its only suggestion for implementing this approach is that the RCMP share information about missing Aboriginal women with NWAC. Given that NWAC and many other Aboriginal organizations have lost the funding they once had, this suggestion seems ineffectual. The report states that the federal budget of Canada previously allocated 10 millions dollars to NWAC address the issue of murdered and missing Aboriginal women.[74] However, as the report also mentions, this initiative ended in 2010.[75] While it mentions the defunding of NWAC, the report refrains entirely from acknowledging the complicity of the Canadian government in systemic violence against Aboriginal women. Through taking away the ability of NWAC to research and document information about missing and murdered Aboriginal women, the government sent a much clearer statement about its commitment to Aboriginal women than was made in the report.

As the dissenting opinion of the NDP sets out, the recommendations of the report on the whole "are vague and fail to set out clear government action in response to violence against Aboriginal women."[76] The NDP opinion also makes the vital point that the final recommendations do not address the concerns and issues reflected in the testimonies included through the report: "[the] report neither

73 Karin Galldin, Leslie Robertson, and Charlene Wiseman, "*Bedford v. Canada*: a paradigmatic case toward ensuring the human rights of sex workers" (2011) HIV Policy & Law Review at note 57.
74 Status of Women, *Ending Violence, supra* at 11.
75 *Ibid.*
76 *Ibid* at 59.

thoroughly nor accurately reflects the voices of the women who were heard throughout the study, nor does it accurately incorporate the solutions they offered during their testimonies."[77] The NDP opinion explicitly acknowledges that the effects of long term, historical racism perpetuated against Aboriginal people is a core cause of violence against Aboriginal women.[78]

A second dissenting opinion attached to the Status of Women report also criticized the report's lack of nuanced analysis. This opinion was written by Judy Sgro, the Liberal Critic for Seniors Pensions and Status of Women. Sgro comments on the government's refusal to undertake a national inquiry about missing and murdered Aboriginal women, which she terms a "pronounced indifference."[79] Addressing the content of the report itself, Sgro notes that, "While Liberal Members of Parliament find the empowering elements of this discussion to be laudable, the total and ongoing lack of attention to understanding and resolving the root causes of the said violence represents a shortcoming that is both intolerable and offensive."[80] Sgro comments overtly on the report's documentation of funding, pointing out that one of the things that the main body of the report neglects to mention is that the funding for NWAC's Sisters in Spirit program was discontinued in 2010 with a final donation of $500,000. Significantly, this final grant was contingent on NWAC not using the name "Sisters in Spirit" or doing research, advocacy, or policy development with the funding.[81]

This final act of silencing on the part of the Canadian government has reinforced a resounding message about the value of Aboriginal women as subjects under Canadian law and policy. By sterilizing NWAC's vital research and the name Sisters in Spirit, the Harper government participated in a colonial project of strategic erasure. The Status of Women report engages in the same process of willful erasure and willful blindness. For all its refusal to use the language of race and racism, the heart

77 *Ibid.*
78 *Ibid.*
79 *Ibid* at 67.
80 *Ibid*.
81 *Ibid.*

of the report pulses with a resounding confirmation and acceptance of racism. This confirmation exists in the silence itself. By refusing to acknowledge the legacy of colonialism and the lived reality of racialized bodies, the report only pays lip service to serious human rights issues.

Vi. Conclusion

In the modern colonial mindset, the bodies of Aboriginal women become conceptually one with conquered land. These women, like the supposedly uninhabited land of centuries past, warrant no significant or meaningful protection on their own. Like the land, their bodies are permitted to be conquered by white settlers with little regard for their rights and dignity as human beings. Those in power, such as the police, sometimes perpetuate these harms directly. Sometimes those in power, such as government bodies, enable colonialist harms implicitly by turning away and refusing to act.

Canadian legal culture has allowed the legacy of colonial racism to continue. It has done this through refusing to make reparations for past and current abuses performed on Aboriginal women's bodies. This colonial legacy exists in the decisions of a judiciary which, in defining Pamela George as a sex worker, refused to acknowledge her humanity. In focusing on George as a sex worker, legal culture defined George by her body but still refused to acknowledge the way that the past had inscribed itself on this body. The colonial past is there written on her actions, proscribing her choices, telling her where she does and does not belong, where she is and is not safe.

This colonial legacy is present too in the actions and inaction of the Canadian government, which refuses to address historical and systemic harm. To address this harm would mean implementing meaningful policy changes and acknowledging how systemic racism, interwoven with misogyny, has made Aboriginal women a particularly vulnerable group. To acknowledge past and current wrongs must involve attentiveness to the lived experience of those who have been wronged. As it stands now,

Canadian legal culture has yet to make adequate acknowledgement of how race shapes the lives of Aboriginal peoples. It is not enough to make promises of empowerment. Authentic empowerment cannot come without a commitment to race literacy and accountability. True empowerment can only be possible when the bodies of Aboriginal women are no longer colonized or erased under the law, but acknowledged as full human subjects. Until then, Canadian legal culture will continue its colonial project of granting privileges and protection to some while dehumanizing and disregarding others.

Bibliography

Legislation

Charter of Human Rights and Freedoms, Part 1 of the *Constitution Act*, 1982, being schedule B to the *Canada Act* 1982 (U.K.), 1982, c 11.

The Constitution Act, 1982, Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 s 35.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment, 10 December 1984, 1496 UNTS 85.

Convention on the Elimination of all forms of Racial Discrimination, 21 December 1965, 660 UNTS 195.

Convention on the Elimination of Discrimination against Women, 18 December 1979, 1249 UNTS 13.

Criminal Code, RSC 1985, c C-46 ss 211-213.

House of Commons, Standing Committee on the Status of Women. *Ending Violence Against Aboriginal Women and Girls: Empowerment – A New Beginning* (December 2011).

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("*Convention of Belem do Para*"), 9 June 1994, Organization of American States.

International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171.

Manitoba. *Report of the Aboriginal Inquiry of Manitoba: The Deaths of Helen Betty Osborne and John Joseph Harper*, vol 2 (Winnipeg: Queen's Primer, 1991).

Jurisprudence

Calder v British Columbia (Attorney General), [1973] SCR 313

Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society, 2012 SCC 45.

Haida Nation v British Columbia (Minister of Forests), [2004] 3 SCR 511, 2004 SCC 73.

R v Kummerfield (S.T.) & Ternowetsky, [1998] 163 Sask R 257.

Secondary Material: Monographs

Amnesty International. *Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada* (Amnesty Canada, 2004) online: Amnesty Canada,

<http://www.amnesty.ca/>.

Hearne, Samuel and Turnor, Philip. *Journals of Samuel Hearne and Philip Turnor* (Toronto: The Champlain Society, 1934).

Human Rights Watch. *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia*, Canada (Human Rights Watch, 2013) online: Human Rights Watch, <http://www.hrw.org>.

Native Women's Association of Canada. *What Their Stories Tell Us: Research Findings from the Sisters in Spirit Initiative* (NWAC, 2010) online: NWAC, <http://www.nwac.ca/programs/sis-research>.

Secondary Material: Articles

Bourgeault, Ron. "Race, Class, and Gender: Colonial Domination of Indian Women," in Ormond McKague, ed, *Racism in Canada* (Saskatchewan: Fifth House Publishers, 1991) 129-50.

Galldin, Karin, Robertson, Leslie, and Wiseman, Charlene. "*Bedford v. Canada*: a paradigmatic case toward ensuring the human rights of sex workers" (2011) HIV Policy & Law Review.

Longworth, Corinne. "Male Violence Against Women in Prostitution: Weighing Feminist Legislative Responses to a Tcroubling Canadian Phenomenon" (2010 15 Appeal) 58-85.

O'Donnell, Vivian and Wallace, Susan."First Nations, Métis, and Inuit Women," *Women in Canada: A Gender-based Statistical Report* (Statistics Canada, 2011) online: Statistics Canada <http://www.statcan.gc.ca/pub/89-503- x/2010001/article/11442-eng.htm>.

Razack, Sherene. "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George," in Sherene Razack, ed, *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002) 157-84.

Thornhill, Esmeralda M.A. "Focus on Racism: Legal Perspectives From a Black Experience." *Legal Judicial Awareness: Race, Culture and the Courts.* Volume of Reference Materials (Ottawa: National Judicial Institute, 1995) 1-13.

Wildman, Stephanie. "Obscuring the Importance of Race: the Implications of Making Comparisons Between Racism and Sexism (or Other -Isms)," in Richard Delgado & Jean Stefancic, eds, *Critical Race Theory: The Cutting Edge* (Philadelphia: Temple University Press, 2000) 648-56.