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►► Understanding Policy Behind the Inquiry - Where do we go from here?

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►► 1. The Context

On almost a daily basis in Canada, there are news stories of violent attacks against Indigenous women. The statistics of violence and deaths are haunting.¹ Quite simply, Canada is in the grip of a national tragedy that has been unfolding over many years. Adding to the tragedy is that many believe there is no reprieve in sight, given what they see as the historical systemic disregard and failure of the Canadian government and law enforcement to address its colonial history that has been the cornerstone in dealing with Indigenous people. Clear examples of policy and law failures to protect Indigenous women are seen in the Pickton murders, the Tina Fontaine murder, and the attack against young Rinelle Harper. There are many more.

1.1 The Costs of Colonization

Aboriginal women make up just over four percent of the country's female population, yet account for approximately 16 percent of female homicides. Nearly 1,200 Aboriginal women have disappeared or met violent deaths in the country over the past three decades, a representation three to four times higher than for non-Aboriginal women.² By virtue of being an Aboriginal female in Canada, there

is a very real risk of becoming a victim of violence and yet another statistic, even without engaging in high-risk activities. Many are born into a society with complex socioeconomic issues evident in poverty, unemployment, isolation and high incidence of substance abuse. Aboriginal girls are vulnerable to the effects of historical colonialism and its manifestations of physical and sexual abuse. Studies have shown that sexually exploited or trafficked Aboriginal women and girls are trapped in cycles of poverty, violence, and degradation.³ The lifestyles of some women driven by poverty and addictions allow Canadian society to further marginalize and dismiss the violence. The victims, in many cases, are blamed and stigmatized for being engaged in potentially harmful behavior. However, the question that needs to be answered is why are they in such hopeless and dangerous situations? The fact is "[t]hey are women and human beings first, and their mothers loved them and wanted to protect them. Each and every time we refer to individuals who are involved in the sex trade as 'hookers,' 'prostitutes,' 'ho,' etc., we dispirit them."⁴ The harms from colonization, the residential school system, dispossession of identity and culture via the *Indian Act*, racism and the marginalization of Aboriginal women are underlying causes of vulnerability and the violence experienced.

New policies must address the causes of systemic violence and be based on a revamped, fair, and rational economic and social order and on an analysis that implements constitutionally protected inherent Aboriginal and treaty rights.

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►► 2. The Issues

A myriad of reports on murdered and missing Indigenous women in Canada over the past 15 years provide more than 700 recommendations. Unfortunately, few have been implemented.⁵ There has been a recurring failure in law, policy and political will to implement the necessary responses to address the crisis. As a result, the voices of the people affected have been ignored, and questions that arise from the resistance to respond leave many people, both Indigenous and non-Indigenous, calling for a specific focus on the issues through a National Inquiry process. However, given the numerous studies to date, others question the need for more study. They argue that the issues, challenges and solutions are well known, and the time has come for action.

How is it, then, that so many Aboriginal women can disappear with hardly any response in Canadian society, law, or policy?

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►► 3. Supports for an Inquiry

In December 2015, the Truth and Reconciliation Commission of Canada (TRC) launched its six-volume Final Report. Call to Action #41 reads:

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

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

On December 8, 2015, after the election of the Liberal Party, the Government of Canada announced the launch of an inquiry consistent with the recommendation of the TRC. Minister of

Indigenous and Northern Affairs Carolyn Bennett, outlined the process that the inquiry would take. The pre-inquiry would be a collaborative, inclusive process that will assist in identifying terms of reference, outline activities, and identify who the commissioner(s) of the inquiry will be. The pre-inquiry is meant to determine the scope, objectives, and parameters of the inquiry. Consultations with survivors and families of the murdered and missing Aboriginal women will occur throughout Canada. National, provincial, and territorial organizational representatives will be consulted to seek their views on the design and scope of the inquiry. To date, a series of preparatory meetings have been held in Ottawa, and more are scheduled in the coming weeks. The federal government has committed \$40 million over two years for the inquiry; details will be announced in early 2016.⁶

►► 4. The Policy Question

4.1 Canadian Apathy: Opportunity to Address

A decade ago, the National Aboriginal Health Organization noted that the Stolen Sisters Report confirmed that more than 500 First Nations women went missing between 1995 and 2005. The report noted that if a proportionate amount of non-Indigenous Canadian women went missing, the number of the missing would equal the population of a small city. Undoubtedly, a loss of that magnitude would have triggered a massive response from the public, the police, and all levels of government.⁷ How is it, then, that so many Aboriginal women can disappear with hardly any response in Canadian society, law, or policy?

Former Prime Minister Harper was adamant that his Government would not launch an inquiry into missing and murdered Indigenous women. The former PM said he considered it a criminal justice matter. In contrast, the Liberal Government, as one of its earliest acts, announced that it would not only launch an inquiry, but implement all 94 recommendations of the Truth and Reconciliation Commission. While the announcement of a 2016 inquiry is an important first step forward, other action still must be taken to ensure that findings are, in fact, implemented and avoid becoming another set of recommendations that end up being ignored.⁸ Policy and law must be enacted in a timely manner to support the inquiry findings and recommendations.

4.2 Implementation Policy

4.2.1 Systemically

Policy makers need to understand why many policies do not work for Aboriginal people. A good start would be to review current policies to identify those that are not working and, in some cases, doing harm. A review of underlying causes of harmful policies is critical. For instance, an outdated federal guardian and ward policy underpins the Non-insured Health Benefits Program that disperses health care to First Nations and Inuit. This policy, used as a means to implement institutionalized colonialism, stated that Aboriginal people in Canada were wards of the Federal Government. Although overturned in 1982, it underpins many of the current policies that are in place today.⁹ New policies must address the causes of systemic violence and be based on a revamped, fair, and rational economic and social order and on an analysis that implements constitutionally protected inherent Aboriginal and treaty rights. It must be based outside the realm of other people directing what is correct and best for Aboriginal people. A revamping must also include culturally relevant policies using the principles of the United Nations Declaration on the Rights of Indigenous People.

Any changes have to be broad and systematic, starting from immediate policy structure to long-term policy change. Attitudes systemically ingrained must change. This can only be achieved through processes targeted at education and effective policy development. Linkages must be created that bridge the divide between policy makers, the government and Aboriginal people. It is important that training for the public servants on Aboriginal policy development is undertaken. For example, the Indigenous Peoples' Health Research Centre¹⁰ has been instrumental in educating policy makers on a) understanding why we have harmful policy, b) learning to identify harmful policy in their own departments, and c) learning how to rewrite policy so it will assist in implementing changes to address root causes of systemic violence in Canada. The goal is to recognize incorrect and damaging existing policy and make changes through various venues, such as the development of briefing notes to Ministers or changes to the language of the existing policies to reflect the correct legal underpinnings that equalizes rather than separates policies and peoples.

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Policy developments must come from a collaborative and holistic perspective. It is important to review all aspects of government departmental policy with an eye for the recognition of underlying

laws that form the basis for policy. Policy makers must also take heed through the pre-inquiry to determine what they think will work to change existing policies by listening to the voices of the families who have been affected by the deaths or disappearances of their loved ones.

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Broken down into manageable packages, a multi-point strategy can be implemented through education, identification, alternative policy options, communication, and strategic action plans. The underlying laws that form the basis for the policies identified must be reviewed and revised to reflect a reconciliation of constitutional protections of the First Nations, Metis, and Inuit people in Canada. A coordinated approach with the lawmakers and policy makers is critical to bringing about lasting change.

4.2.2 Immediate Review

The Truth and Reconciliation Commission of Canada has concluded its formal work with 94 recommendations and Calls to Action. Policy makers must review and analyse these recommendations, prioritize their validity, and then implement the recommendations that will work for their departments and the overall policy and law processes in Canada. Many of the recommendations provide insightful and useful alternatives to the status quo.¹¹ In conjunction with the TRC recommendations, the National Inquiry on Murdered and Missing Indigenous Women will provide a coordinated national approach including viable solutions to change the status quo and start addressing the harms directed to Indigenous women in Canada.

5. Conclusion

Aboriginal women are vulnerable to violence because they are women, Aboriginal, and are often poor. The manifestations of historical and current harm are rooted in colonialism, racism, poverty, sexism, marginalization, and inequality. Establishing and following through with concrete steps of change that all Canadians can be proud of is a goal worthy of pursuing. The pathway to positive change is set before all Canadians, Aboriginal and non-Aboriginal, with the Truth and Reconciliation Commission of Canada's 94 Calls to Action and the National Inquiry on Murdered and Missing Indigenous Women. Policy and law review followed by deliberate action is the obvious way forward. It's time for a comprehensive approach that confronts our decades of failures to establish policies that recognize the humanity of all women and protects them as equals, deserving respect and dignity.

NOTES

1. Canada, Homicide in Canada, Juristat – November 25, 2015; RCMP, Missing and Murdered Aboriginal Women: A National Operational Overview, 2014; RCMP, Missing and Murdered Aboriginal Women: A National Operational Overview, 2015 Update; Robert Alexandra Innis, Moose on the Loose: Indigenous Men, Violence and the Colonial Excuse (with Errata), Aboriginal Policy Studies, Vol. 4, No. 1 2015, online: <http://ejournals.library.ualberta.ca/index.php/aps/article/view/24193>.

2. See Native Women's Association of Canada. What Their Stories Tell Us: Research Findings from the Sisters in Spirit Initiative (2010), online: http://www.nwac.ca/wp-content/uploads/2015/05/2010_What_Their_Stories_Tell_Us_Research_Findings_SIS_Initiative.pdf. See also, Maryanne Pearce, An Awkward Silence: Missing and Murdered Vulnerable Women and the Canadian Justice System. (Diss.: University of Ottawa, 2013).

3. See *ibid*, also Y.M. Boyer, M. Kampouris, "Trafficking of Aboriginal Women and Girls", Public Safety Canada, Ottawa, Ontario, April 2014, online: <http://iphrc.ca/pub/documents/Boyer%20&%20Kampouris%20Report.pdf>.

4. Boyer, *Ibid*.

5. LEAF, "New research available for MMIW advocates," December 2014, online: <http://www.leaf.ca/new-research-available-for-mmiw-advocates/> [LEAF].

6. Canada, "National Inquiry into Missing and Murdered Indigenous Women and Girls," January 2016, online: <http://www.aadnc-aandc.gc.ca/eng/1451512439995/1451512465810>.

7. Y.M. Boyer, "First Nation, Métis and Inuit Women's Health – A Constitutional Analysis" Discussion Paper Series #4, National Aboriginal Health Organization and the Native Law Centre of Canada (March 2006) at 19, online: http://www.naho.ca/documents/naho/english/publications/DP_womens_health.pdf.

8. See for instance, Canada, Royal Commission on Aboriginal Peoples, Report, (Ottawa: Canada, Communication Group

Publishing, 1996), online: http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html.

9. A comparison of the health benefits between the federal and provincial systems is clearly discriminatory based on the guardian and ward policies. See for instance, Boyer, Yvonne, Moving Aboriginal Health Forward: Discarding Canada's Legal Barriers (Purich Publishing 2014), at 72 to 90 and 137.

10. Indigenous Peoples' Health Research Centre, online: <http://iphrc.ca/>.

11. LEAF, *supra* note. 5.



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