Athabasca University Master of Arts - Integrated Studies

DECONSTRUCTING SEXUAL VIOLENCE: DIS-EMBODYING INDIGENOUS VOICES

By

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Abstract:

The purpose of this final project is to examine the underlying issues that Indigenous women face in the Canadian Judicial System. It examines three legal cases, their context and analysis of the same. The paper reviews the historical context of Indigenous women and the roles that Indigenous women historically held in pre-colonialism society in the land known as Canada. The examination of the language used in the courtroom for the victims and the defendants is also examined. The power dynamic in the courtroom coupled with the effects of colonialism creates a dangerous space for Indigenous women and girls who face their alleged assailants. The premise of this dangerous space is that it is a foreign concept, it does not exist in an Indigenous context thus it serves to subjugate Indigenous women and protects the members of the dominant society. It is a continuation of the erasure of Indigenous womanhood.

Introduction

I am writing from a position of privilege, power and protection. I know that to be true and I know that I am extremely fortunate to be in this position. I am Cree-Saulteaux from Saskatchewan and I know that it is just circumstance that I have the ability and support to write of sexual violence and Indigenous[1] women. In my circle of family and friends, there is not one of us who has not experienced or known someone who has experienced sexual violence and the failings of the court system in Canada. At the crux of the issue of violence and Indigenous women is the question of erasure of womanhood and in this erasure a space is created where Indigeneity does not exist. The Indigenous woman ceases to exist. Colonizing spaces and the resulting erasure of Indigenous women from the colonial mindset has, ultimately, resulted in actual physical erasure. This physical erasure manifests itself through the violence inflicted on Indigenous women. This space that is created by colonization and assimilationist legislation is used against Indigenous people. In this created space, the histories, experiences, roles and actualities of Indigenous women are erased. This space uses legal concepts to continue its subjugation of Indigenous women in the courtroom. The courtroom is the space that we will examine and its effects on Indigenous lives. It is a created space that is not part of our community, that is foreign to us, and it uses a language that is foreign to us. The law cannot afford distinctions within the created society of Canada. Canadian legal space acknowledging citizenship, humanity and

[1] In this paper, I will be using "Indigenous" when referring to First Nations, Metis and Inuit in Canada. There will be instances where I use Aboriginal when referring to First Nations only.

rights has been established historically to acknowledge and protect the rights of non-Indigenous men. It is predicated on notions of property – with women as men's property being the foundation for both common law family rights and property rights. These laws were imposed upon Indigenous peoples by the first European settlers on the land now called Canada. Indigenous women and sexual violence is not something that can be explained easily. It involves a created space that exists in Canadian society and in particular the judicial system where Indigenous nations are seen as the outsiders who must fight to uphold the rights negotiated in the treaties. The Canadian judicial system has systematically reduced these rights and has created a space where Indigenous women and children are expendable.

Legal Context

In this paper we will be examining the changing status of Indigenous women through the Canadian court system and the instances where it is apparent that Indigenous women are seen as "less than" their male counterparts. In order to address this legislative and judicial erasure of Indigenous women, three cases will be examined. The three court cases presented here involve one adult Indigenous female who was sexually assaulted and killed and the other two involve Indigenous children who were sexually assaulted. We will look at the facts surrounding the cases, issues that come to the forefront and examine how the ideas of supremacy, erasure and the devaluation of Indigenous life is affected by the judicial system and its processes.

Cases

R. v. Kummerfield

This trial took place in Regina, Saskatchewan, an urban setting in the downtown core where Pamela George, of the Sakimay First Nation, was working to support her two children. She was picked up by Alexander Ternowetsky and Stephen Kummerfield.[2] The two men are drunk and are looking for a prostitute.[3] One of them hides in the car's trunk while the other makes a financial deal for sex with Ms. George.[4] She gets into the car and is driven to the outskirts of Regina.[5] Once there, she realizes that there are two men. They are drunk and physically as well as sexually assault her. They leave her in the country where her body is found the following morning.[6] According to the pathologist, Pamela George's injuries were not life-threatening had she received help. She remained alive for 30 minutes to 4 hours after being beaten.[7] Her body was so badly beaten that her family had a closed casket at her funeral.[8] Both accused were university students from Regina. They were given sentences of six and one-half years imprisonment.[9]

[2] Kummerfield & Ternowetsky, supra note 5 at para 12.
[3] Ibid at paras 9 & 11.
[4] Ibid at para 12.
[5] Ibid at para 13.
[6] Ibid at para 6.
[7] Ibid at para 7.
[8] Commercial Sex Information Service, "Pamela George Murder Trial", December 6, 2000. Full text: http://www.walnet.org/csis/news/regina_96/pam_george.html
[9] Kummerfield & Ternowetsky, supra note 5 at p.3.

R. v. Edmondson

The trial takes place in Melfort, Saskatchewan. The crime takes place outside of Tisdale, Saskatchewan. Both are rural communities. A twelve year old Yellowquill First Nations' girl is found on the steps of a small town bar by three adult males.[10] She has run away from home.[11] She accepts a ride from the men and they proceed to buy her alcohol and get her drunk.[12] On a country road, all three attempt to sexually assault her; in the trial transcript, Edmondson acknowledges that he tried to have sex with her in this position [against the grill of the truck] but was unable to because of drunkenness.[13] Two of the men are acquitted and Dean Trevor Edmondson is sentenced to a conditional sentence of two years less a day served in his community, 200 hours of community service and a five hundred dollar fine.[14]

R. v. Ramsay

This trial takes place in Melfort, Saskatchewan. The crime itself takes place in Pelican Narrows, a small Northern community. The defendant was thirty two years of age, a non - Indigenous RCMP officer.[15] The victim was a fourteen year old Aboriginal girl. Mr. Ramsay is charged with rape, the assault taking place in 1969.[16] Mr. Ramsay, while in his RCMP uniform and with the implicit authority that his office held in a small

[10] Edmondson, supra note 4 at p.4
[11] Ibid
[12] Ibid
[13] Edmondson, supra note 2 at p. 11
[14] Edmondson, supra note 4 at pp.10-15.
[15] R. v. Ramsay, 1999 SKQB 173 (CanLII), at http://www.canlii.org/en/sk/skqb/doc/1999/1999skqb173/1999skqb173.pdf, p.2.
[16] Ibid at pp. 1-2.

Northern Aboriginal town in Saskatchewan, sexually assaulted a girl in the RCMP offices. He was convicted and appealed his case; he is then acquitted and subsequently is retried for indecent assault.[17] He was convicted and sentenced to one year's probation and community service. [18]

Analysis

Each of the cases takes place in Saskatchewan (which, notably, has a high Aboriginal population.)[19] Each of the defendants are non - Indigenous adult men. In each of the cases, their familial upbringing and their standing in the community are introduced into the court room yet these factors were not considered by themselves in the acts of the sexual assaults. They are portrayed as upstanding citizens while the female victim is not; they can produce letters of good standing from fellow citizens while she cannot. The Indigenous female victim in each instance is at a disadvantage in the court room:, there is no one there to support or produce letters of good standing for her, in each case she is under the age of consent and lacks the know-how on how to strengthen her case and her character. The victim in each case has not matured to the point where they have status in their communities, they are children. There is a community collective supporting the alleged rapists, who have held employment in their communities and who have matured to gain status in their respective peer groups. This sends a social message this it is okay to assault an Indigenous child, your community

[17] Ramsay v. Saskatchewan, 2003 SKQB 163 (CanLII) at http://www.canlii.org/en/sk/skqb/doc/2003/2003skqb163/2003skqb163.pdf, p.5.
[18] Ibid at p.5.
[19] http://www.ccab.com/uploads/File/One%20Pagers/Saskatchewan-Aboriginal-Population.pdf - Statistics from the 2006 census determined that there were 141,890 self identified Aboriginal people, this was a 9% increase from the 2001 census. The increase was expected to continue in the province.

will still stand up and proclaim your innocence. The emphasis is on Indigenous girls' and women's sexual experience. In the *Edmondson* case, we see a twelve year girl who has to provide information to refute what the doctors are saying about her. One doctor notes that she may have sexual abuse in her past and this may make her act out sexually. She cannot defend this; she is barely out of elementary school. The fourteen year old girl in the Ramsay case is asked by Ramsay if she is a virgin.[20] He uses her response as a coercive measure in that she is not a virgin and he will tell her mother if she does not have sex with him. [21] Ramsay and Edmondson are convicted. In either case there is no labeling of Edmondson and Ramsay as pedophiles.

In the 2001 sexual assault trial involving the young (twelve - years old) Yellowquill First Nations' female victim, she was referred to as the sexual aggressor and as the enticer of three adult males.[22] She alleged that she had been sexually assaulted by the three males on a country road.[23] She has testified at each of the trials of her assailants (*R. v. Edmondson*,[24] and *R. v. Brown* [25]). Jeffery Lorne Brown and Jeffery Chad Kindrat were tried together. The Edmondson trial ended in a conviction of one of her assailants and the other two ended with the acquittals of the other two alleged assailants. Dean Trevor Edmondson received a two year conditional sentence to be served by house arrest.[26] The judge presiding over this case, in his previous role as a lawyer, had defended two non-Indigenous males in the murder of Pamela George, a

[20] Ramsay, supra note 20 at p.2.
[21] Ibid at p.3.
[22] R. v. Edmondson, http://canlii.ca/en/sk/skca/doc/2005/2005skca51/2005skca51.pdf, p. 11
[23] ibid at para 22.
[24] Ibid
[25] R. v. Brown, 2008 SKQB 175, 2007 SKCA 148.
[26] R. v. Edmondson, 2003 CanLII 52806 (SK QB), <http://canlii.ca/t/1nz6k> , p.10

First Nations woman in Regina, Saskatchewan. Ms. George was beaten to death after being lured into a car.[27] The two trials related to the murder of Pamela George and the sexual assault of the twelve year - old girl are connected and the similarities between the two cases cannot be ignored. We have two Indigenous females and several non - Indigenous assailants, both involve sexual assaults, one of which ended in death. We cannot ignore the fact that the defense lawyer in the Pamela George trial is also the judge in the trial of the defendants for the sexual assault of a twelve year old girl. The judge states to the jury in *R. v. Edmondson* that in regards to the alleged sexual assault and the findings of the doctor that "support Edmondson's position that the complainant was not only a willing participant, but indeed, the aggressor."[28] This builds up a premise of "good boys" who have been enticed by a twelve year - old girl who is alleged to be sexually active elevating her status to that of a sexually active woman. The judge makes 28 references to the defendants as "boys" and refers to the victims as "Ms.", [29] reinforcing her sexual maturity and lessening their guilt because they could not know any better due to their sexual immaturity. There is no discussion of the fact that a twelve year old girl cannot give sexual consent, whether she is sober or drunk, there is no discussion of pedophiles preying on a young girl, and there is no discussion that the judge has a connection with a previous case involving Indigenous women and sexual assault. The diminished value of an Indigenous life is evident at all levels of the judicial

[27] R. v. Kummerfield & Ternowetsky, [1997] S.J. No. 149, QBC. No. 1 of 1997. At http://www.canlii.org/en/sk/skqb/doc/1997/1997canlii11511/1997canlii11511.pdf, p. 1.
[28] Nicholas Bonokoski. "Colonial Constructs and Legally Sanctioned Sexually Violent Consequences in R V Edmondson" in reconstruction: studies in contemporary culture. 7.1 (2007).
[29] Norma Buydens, "The Melfort Rape and Children's Rights: Why R v Edmondson Matters to All Canadian Kids" in Saskatchewan Notes, Canadian Centre for Policy Alternatives – SK., Volume 4, Issue 1, January 2005 at: http://www.policyalternatives.ca/sites/default/files/uploads/publications/Saskatchewan_Pubs/2005/sasknotes4_1.pdf

system. In order to comprehend how that has happened, one must evaluate the legislation that has affected Indigenous lives since colonialism. For many people, the main purpose of Canadian legislation, as it pertains to Indigenous peoples, has been to eradicate Indigenous ways of living, from the culture and language to the roles of men and women.

Dangerous Spaces

Canadian law can be seen as being repressive for Indigenous females and this creates a dangerous climate for Indigenous females within the Canadian court system (to say nothing of the climate within hostile urban communities). In the case of Pamela George, a Sakimay First Nations' woman in Regina, who experienced racism, sexual assault and ultimately death; this was attributed to where she worked. There is very little information on what her personal life was like; we know through articles that she was First Nations and had two children.[30] We do not know how her death and subsequent trial impacted her family. In her lifetime, she occasionally worked in the sex trade industry, [31] an industry where women are for sale for sexual services. Pamela entered into an economic arrangement with a non- Indigenous male, Steven Tyler Kummerfield. Unbeknownst to her, Alexander Dennis Ternowetsky was hiding in the trunk of the car Kummerfield was driving.[32] Had she known, the probability of her entering the car would have been greatly diminished; Pamela George's free will was

[30] Sherene Razack.Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George. Canadian Journal of Law and Society, 2000, Volume 15, no. 2, p.91.

[31] R. v. Kummerfield, 1998 CanLII 12311 (SK CA) at http://www.canlii.org/en/sk/skca/doc/1998/1998canlii12311/1998canlii12311.pdf, p.3.

[32] Ibid at pp.3-4.

taken away when Ternowetsky entered the trunk and hid. Both defendants knew that a woman was not going to leave with two men.[33] They had the foresight to trick Pamela George into getting into the car. The two non – Indigenous males demanded sex from her and once they assaulted her into submission, they beat her to death.[34] In death, she was further placed in another precarious space where her choices were being put on trial. She had engaged in prostitution. This, the trial judge advised, should be considered by the jury when considering their decision.[35] Throughout the testimony of the defendants, she is referred to as a "hooker."[36] One of Ternowetsky's friends testifies that he has heard him say "she deserved it, she was an Indian." [37] In the case of Pamela George, we see how her memory was further victimized by the judicial system. She became an object of aggression and rage and was killed thusly.

Indigenous women face both gender and racial discrimination in Canada's court rooms when they bring charges of sexual assault against alleged perpetrators, whether they are Indigenous or non - Indigenous. From the first instance of reporting to the ending of the trial they are faced with issues involving and revolving around colonization and intersectionality – junctures of violence, racism, oppression, discrimination and gender inequality. There are power dynamics working against Indigenous women in the court room; these power dynamics include the alienation of the language used and the erasure of their identity. Studies have been conducted to explore perspectives of victims from their first encounter with the Canadian judicial system from the first

[33] Kummerfield, supra note 27 at pp.3-4.
[34] Ibid at p.3.
[35] (Razack, 2000, 92)
[36] Ibid at p.34.

responders (police) to the court and community service workers to the trial personnel.[38] It has been established that race is often a key determinant in the manner in which a victim will be perceived by the people in the justice system and the manner in which the victim will approach the judicial process.[39] The judicial system does not take the history of the Indigenous victim into account. We see from the Supreme Court of Canada's decision in *R.v. Gladue*, that an Aboriginal offender's background and history can be used to determine sentencing[40] but this is not the case when the female victim is an Indigenous person. What can be seen from the case in which the people who took Pamela George's life is that the effects and experiences of oppression and violence from colonialism are not considered in the trial judgment. This is another form of bias and/or discrimination that Indigenous women face in a system built on patriarchy and British common law. According to the results of the Manitoba Aboriginal Justice inquiry, Aboriginal women have a higher rate of incarceration than Aboriginal men.[41] When an Indigenous woman suffers abuse, this is not just an attack on her identity as a woman but also an attack on her Indigeneity. In this regard, the issues of colonialism, race, and gender oppression cannot be separated.[42]

[38] One such paper is: Arielle Dylan, Cheryl Regehr, and Ramona Alaggia, And Justice for All?: Aboriginal Victims of Sexual Violence, Violence Against Women, Jun 2008; vol. 14: pp. 678 – 696

[39] Arielle Dylan, Cheryl Regehr, and Ramona Alaggia, And Justice for All?: Aboriginal Victims of Sexual Violence, Violence Against Women, Jun 2008; vol. 14: pp. 678 – 696 at 693 .

[40] R. v. Gladue, [1999] 1 S.C.R. 688.

[41] Report of the Aboriginal Justice Inquiry of Manitoba, 2001 at http://www.ajic.mb.ca/volumel/chapter13.html

[42] Andrea Smith. Not an Indian Tradition: The Sexual Colonization of Native Peoples, *Hypatia*, Vol. 18, No. 2, Indigenous Women in the Americas (Spring, 2003), pp. 70-85.

Historical Background/Legislative Impact

While examining the history of the land known as Canada, we can clearly see a pattern of internal cleansing of the Indigenous population through legislation. European colonizers moved into Canada and to make the land more palatable to their way of life, they tried to eradicate the Indigenous population.[43] It can be stated that Canadians have ideologized their identity based upon the often universalized understanding, application and perpetuation of imperialism and colonization. The civilization of this land can be traced to the attempted eradication of colour within its borders beginning with Indigenous population. This contributes to the lack of geopolitical stability for Indigenous populations within Canada. In the Canadian court systems, where jury representation is to be composed of your peers, there is not an all Indigenous jury when the alleged perpetrator is Indigenous. The subjugation of Indigenous women begins with the legislation and laws introduced to Canada at the start of colonization. Canadian legislation was introduced to control Indigenous peoples, to erase Indigenous cultures and to eradicate Indigenous languages from this land. The attempted erasure of Indigenous women began shortly after settler people's arrival and continues to this present time. Patriarchy and legislation resulting from colonialism is the root of Indigenous women's colonization and this shapes the current situation of Indigenous women in Canada.

[43] Dr. F.L. Barron, "A Summary of Federal Indian Policy in the Canadian West, 1867 – 1984". Native Studies Department, University of Saskatchewan. This paper was written in 1984, it provides a summary of the effects of legislation on Indigenous people in Canada, from the beginning of Canada's domination of Western Canada's lands, to industrial schools to the abolishment of cultural practices. All were attempts to dominate the land and to assimilate Indigenous ways of living. http://iportal.usask.ca/docs/Native_studies_review/v1/issue1/pp28-39.pdf

The erasure of Indigenous womanhood has been cultivated over time, beginning with Indigenous peoples' initial contact with European settlers. Assimilationist legislative policies (such as the *Indian Act*[44]*)* have impacted the stability of women in Canadian society. Prior to the arrival of the European settlers, Indigenous women held positions of power within their own nations and this was usurped by the arrival of European settlers whose understanding of governance was grounded in patriarchy and superiority. This created and creates a space characterized by patriarchal ideas whereby Indigenous women became objects that were owned by their male counterparts. Women could not possess any authoritative power within their nations. This was in direct contradiction of matrilineal Indigenous societies where Indigenous women held equal power in their governance. The subjugation of Indigenous women can be seen by the creation of laws governing them. This begins with the 1857 *Act to Encourage the Gradual Civilization of Indian Tribes in this Province, and to Amend the Laws Relating to Indians* which gave Indigenous men the ability to enfranchise himself, meaning to give up all rights of being an Indian and to become, through, legislation, a British subject.[45] By doing so, he automatically gave up his wife and children's rights in the process.[46] This is the first piece of legislation that is introduced whereby Indigenous women feel the legalized colonial pressure on their status and authority in their nations as devised, sanctioned and encouraged by the Canadian government. In modern times, we see this same type of patriarchal thinking in the Canadian judiciary where Indigenous and non - Indigenous perpetrators are given lenient sentences after being

[44] The full title is: An Act to amend and consolidate the laws respecting Indians, 1876", the full text may be found at: http://www.tidridge.com/uploads/3/8/4/1/3841927/1876indianact.pdf
[45] An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians. Section V., http://caid.ca/GraCivAct1857.pdf at para III.
[46] Ibid at para VIII.

convicted of sexual assault on Indigenous females, be they child or adult. It is the disregard and disintegration of Indigenous status and the transformation from human to object.

Further legislative attempts to dominate, assimilate and destroy Indigenous cultures, philosophies and worldviews began with the *Gradual Enfranchisement Act* of 1869.[47] The imposition of foreign laws and the complete disavowal of Indigenous legal orders were and are signifiers of Euro-Canadian legal domination. These marked the formal implementation by the federal government of attempts to assimilate Indigenous peoples into colonial society. Assimilation, so the logic went, would mean that Indigenous Nations would no longer exist, that Indigenous cultures would no longer thrive, and that all legal distinctions between Indigenous peoples and settlers would be erased.[48] The *Act* introduced the elected band council system of government (which resembles a municipal style government) with the intention of eliminating [49] known, shared and time proven traditional Indigenous governance structures. The *Act* possessed the potentiality to, and indeed did, change many Indigenous governments – many which were predicated on traditions of non – hierarchical, non – coercive and non – authoritarian power – into hierarchical, coercive and authoritarian representatives of the Crown.[50] The intent of the *Act* was clear: male dominated hierarchical governments would legally replace consensual decision making and eradicate the role

[47] The full title of the act is "An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42" and may be found at: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/a69c6_1100100010205_eng.pdf

[48] Leanne Simpson. Indigenous Studies 430 – Indigenous Governance Study Guide. (Athabasca University, 2005) 54

[49] Ibid at para 16.

[50] (Simpson, 2005, 54)

of women, children and Elders in this process. The enfranchisement legislation enabled any male Indian who met the qualifications to be enfranchised. His wife and children were automatically enfranchised with him, irrespective of their wishes in the matter.[51] The *Act* introduced the concept of ownership of the female body, the owner being her husband. This was not in line with the traditional roles of Indigenous men and women housed in many, many Indigenous societies. The wife was further discriminated as she received no allotment of reserve land upon being enfranchised. Indigenous women deemed to be within the reach of the legislation lost all property rights based on a decision by her spouse. In this way, women's authority, autonomy and within the Nations were legislatively attacked. Additionally, when her husband passed away, a woman legislatively assigned Indian status lost that authority and autonomy over herself as his land was passed to his children alone[52] – at which point many Indigenous women became dependent upon their male children for their well being, relationship to the land and continuity of relationship with community. The widow could only regain Indian status and band membership by marrying another Indian man.[53] This was one of the first steps towards the devaluation of Indigenous women in the Canadian legal regime.

The 1876 *Indian Act* [54] brought all existing legislation dealing with Indigenous people and Indigenous lands under the purview of one *Act*. The Department of Indian Affairs was created to administer the *Act* which controlled all aspects of Indigenous

[51] Royal Commission on Aboriginal Peoples. Excerpt from "Chapter 9, The Indian Act." In Report of the Royal Commission on Aboriginal Peoples, Volume 1: Looking Forward, Looking Back, (Ottawa: Minister of Supply and Services Canada, 1996) 300
[52] Gradual Enfranchisement Act, 1869. Supra note 42 at para 14.
[53] (RCAP, 1996, 300)
[54] Supra note 44.

peoples' lives; the *Act* defined who was an Indian, who Indian women could marry, halfbreeds, enfranchisement, everything from birth to death.[55] In many respects, it could be argued that by virtue of this legislation, Canada continued in its attempt to make Indigenous peoples wards of the Canadian state, their actions controlled by the Canadian government. In terms of governance, the *Indian Act* further attempted and still attempts to replace Indigenous traditional governing structures and governing traditions with the colonial band council system we now see in many First Nations across Canada.[56] The *Indian Act* attempted to an in some cases did solidify the foreign government's control of Indigenous peoples and over Indigenous lands. The *Indian Act* not only dispossessed (and many would argue continues to dispossess) women of community/communal authority, it very severely impacted their authority within the family through the imposition of patriarchal marriage and property rights.[57] In Nations where governance was family based, this has had devastating impact. Additionally, the Superintendent – General allocated and approved any land to widows and children of Indian men.[58] They were not considered to be a band member and could not take part in band business.[59] Their children were also not considered band members.[60] Women and their offspring legally ceased to be Indians.[61]

The definition of "Indian" was introduced in this *Act;* an Indian had to be someone "of Indian blood" or in, the case of mixed marriages, a non-Indian woman married to an

[55] Ibid at paras 1 – 100.
[56] (Simpson, 2005, 55)
[57] Kim Anderson. A Recognition of Being: Reconstructing Native Womanhood. Toronto, Ontario: Sumach Press, 2000. P. 69.
[58] Ibid at para 9.
[59] Ibid at para 88.
[60] Ibid at para 88.
[61] Ibid.

Indian man.[62] This opened the door to non-Indigenous women legally able to gain Indian status through marriage (and their children were also, unlike the children of Indigenous women also able to gain status under the *Act).*[63] This form of discrimination took power Indigenous women had, in terms of citizenship, and gave rights to non Indigenous women who were then considered Canadian legal Indians from that point forward. The same was not true for Indigenous women who married non – Indian men (non-status or non-Indigenous men, as understood in the legislation). These women's husbands did not gain status. In fact, Indigenous women who were legally categorized as Indian women lost their status and their children were not able to gain status under this Act.[64] As well, status Indian women were excluded from taking part in band land surrender decisions, since the new act restricted the procedure to "male members of the band of the full age of twenty – one years."[65] This section of the *Act* would not change until 1951, it was then that Indian women were permitted to participate in this process. As part of the revisions, cultural ceremonies, potlaches, pow wows were no longer restricted. [66]

The impact of the *Indian Act* is seen in the loss of status of Indigenous women in their own communities. Some European colonizers were taken aback by the position of

[62] (RCAP, 1996, 278)
[63] Indian Act, supra note 49 at para 2 (c)
[64] Ibid.
[65] (RCAP, 1996, 278)

[66] 1951-1981: Aboriginal Rights Movement, Canada in the Making at: http://www.canadiana.ca/citm/themes/aboriginals/aboriginals12_e.html

Aboriginal women in their respective societies.[67] Colonizers determined that in order to take over the land and the Indigenous population that was occupying it; they needed to disempower Indigenous women.[68] Settler law was one means by which to give this effect. Indigenous systems that had women in power were incompatible with of the colonial governance structures that were necessary to maintain colonial power over the Indigenous populations.[69] To colonizers, there is only one centre where culture/ideas originate and to where the ideas change the surrounding areas.[70] This did not reside with Indigenous women, as Indigenous women were perceived as a variation on the Victorian theme of women as property. This was the reasoning brought over to Indigenous territories by colonizers and just one justification that they utilized in order to attempt to take over Indigenous lands.

As we've seen, the Indian Act was underwritten with European ideas of patriarchy and the subjugation of women, whether they were non Indigenous or Indigenous. The *Act* had a profound effect on the attempted/actual disempowerment of Indigenous women. Indigenous women were and are part of the traditional political systems and participate/d in decision making in their communities. This was not the case for non – Indigenous women. It can be stated that, to a greater degree before colonization (and to some degree now), Aboriginal women were/are valued for their input and had considerable political authority.[71] The inclusion of women in decisions

[67] (Anderson, 2000, 58)
[68] (Anderson, 2000, 58)
[69] (Anderson, 2000, 58)
[70] James Sakej Henderson,. "Postcolonial Ghost Dancing: Diagnosing European Colonialism." In Reclaiming Indigenous Voice and Vision, edited by Marie Battiste. (Vancouver, BC: UBC Press, 2000) 61
[71] (Anderson, 2000, 66)

was critical for the security of the nation.[72] Aboriginal women who were not a part of the formal political system [Indigenous] voiced their opinions through the influence they exercised over their male partners.[73] Aboriginal women who were Elders also carried influence in policy decisions for their communities and it was through their roles as Elders that they secured this authority.[74] The exclusion of women from decision – making in important political and community matters not only disempowered many women, it also disempowered Indigenous cultures. [75] Values such as, balance, cooperation and respect were damaged. Colonialism brought patriarchy with it, as part of this change, family and governance structures changed Indigenous nations.[76]

The effects of enfranchisement on the women and children disentitled through Canadian law were pervasively destructive. When Indigenous women legally categorized as "Indians" (along with their children) lost their Indian status, they lost many other things with it. These included the right to live in the reserve community and even the right to treaty benefits or to inherit reserve land from family members.[77] The Act had prohibited Indians from participating in their traditions, cultures and communities and as a result there was a loss of culture and ceremonies. The current *Indian Act* (still thoroughly influenced by the 1876 *Indian Act)* still controls fundamental aspects of governance and leadership on reserves. The Act defined *what* an Indian

[72] (Anderson, 2000, 65)
[73] (Anderson, 2000, 67)
[74] Ibid
[75] Ibid. at 70.
[76] Joyce Green. "Constitutionalising the Patriarchy: Aboriginal Women and Aboriginal Government" Constitutional Forum/Forum constitutionnel. Vol. 4. No. 1-4. 2011. In this article, Joyce Green writes of the gender oppression that Indigenous women face in their own communities. The viewpoints of the Native Women's Association, the National Action Committee on the Status of Women and the National Metis Women of Canada and their experiences within their own governments to be included in federal government discussions.
[77] (RCAP, 1996, 288)

was, who could be an Indian, where an Indian could live and how the Indian could live. It was in this oppressive legislation that narrowly defined Indigenous identity that made Indigeneity a legal concept. Indigenous peoples were expected to fall within the parameters of their legislated identity, those who failed to do so faced legal consequences. The *Indian Act* was and continues to be an attempt to disempower Indigenous people and to dismantle Indigenous sovereignty. Bill C- 31[78] was the first legislative attempt to remove the sexual discriminatory practices from the *Indian Act.* It did not do so and in effect created new ones for Indigenous women.

> "The new provisions created two official categories of Indians; (1) a charter group of reinstated women and all who had band membership prior to 17 April 1985 (when Bill C-31 took effect); and (2) a group of registered status Indians who are not guaranteed band membership and all its attendant rights and privileges, but who must apply to the band itself."[79]

The bands[80] were able to regulate their own membership lists - which created another problem for people legally classified as "Bill C-31 Indians". The problem that arose was that there were Indians with status that did not have band membership. This created unequal entitlement in a number of realms (including resource and treaty entitlement). The amendment was a bandage solution to the *Indian Act*, while those women affected

[78] Bill C-31, an Act to Amend the Indian Act was passed in 1985. It was an attempt to remove the discrimination from the Indian Act. The full text may be found at: http://www.johnco.com/nativel/bill_c31.html

[79] Jo-Anne Fiske. "Political Status of Native Indian Women." In In the Days of Our Grandmothers, A Reader in Aboriginal Women's History in Canada, edited by Mary – Ellen Kelm and Lorna Townsend (Toronto: University of Toronto Press, 2006) 341.

[80] "1. The term "band" means any tribe, band or body of Indians who own or are interested in a reserve or in Indian lands in common, of which the legal title is vested in the Crown, or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible; the term "the band" means the band to which the context relates; and the term "band," when action is being taken by the band as such, means the band in council." This definition is taken from the Indian Act where it was first defined. It is a colonial term not an Indigenous one. It may be found at: http://www.tidridge.com/uploads/3/8/4/1/3841927/1876indianact.pdf

by the loss of their status could now pass it on to their children, they could not pass it on to their grandchildren.

Bill C – 31 opened up a new arena for the federal government to interfere in Aboriginal women's lives, namely in the area of reproduction. It expanded the ways in which the federal government's interests in where, when, and with whom women form personal relations and rear their children.[81] Under the amendment, Indigenous women must name the father of their children. This forces them into an uneasy relationship to determine paternity. If they do not establish paternity, the federal government assumes that the father is non status and thus the children cannot gain status under the *Indian Act.*[82] Indigenous women who regained their Indian status under this amendment could not pass it on to their children. Effectively, the Government of Canada is still trying to control Indigenous women's reproductive and sexual rights by limiting with whom they can procreate and still retain a Canadian legal identity.[83] It is legally mandated racialization and Bill C- 31 supported and bolstered the patriarchal system that began with colonialism. Children of reinstated women could not do so unless they married registered status Indians and it prevented reinstated females born out of wedlock to status fathers and on – Indian mothers from transferring status, while permitting their brothers born in the same manner to do so.[84] Indigenous children legally categorized as status Indians that were "born out of wedlock" (further legally entrenching foreign religious and cultural mores and attempting to supplant Indigenous traditions) were also

[81] (Fiske, 2006, 341)
[82] http://www.laa.gov.nl.ca/laa/naws/pdf/nwac-billc-31.pdf, p.2
[83] (Fiske, 2006, 341)
[84] (Fiske, 2006, 350)

unable to transfer status to any future generations unless their mothers can prove that their fathers were status Indians.[85] The most recent legislation introduced is Bill C-3 (2010)[86] which will entitle grandchildren of Bill C-31 women the right to be status Indians under the Indian Act. There are no further amendments to address the problems that this will cause for the next generation of Indigenous children.

Indigenous Women's Roles and History

While it is important to examine the effects of legislation on Indigenous peoples, it is equally important to ground the discussion of gender and governance in the worldviews of Indigenous peoples. The history of Indigenous peoples was not recorded in writing by Indigenous peoples, it was also not recorded by Indigenous women: it was recorded by the priests, missionaries, fur traders, bureaucrats and academics, all of whom had a vested interest in their own gains, material, financial or otherwise.[87] Women were/are the centre of the family and that of the community.[88] They were/are seen as the keepers of culture and the first teachers of their children regarding Indigenous teachings and cultural values. It was through these relationships that children internalized Indigenous conceptualizations of power, leadership, decision making, and relationships with the land and the spirit world.[89]

[85] (Fiske, 2006, 350)
[86] The full text of Bill C-3 "An Act to promote gender equity in Indian registration by responding to the Court of Appeal for British Columbia decision in McIvor v. Canada (Registrar of Indian and Northern Affairs)" may be found here: http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=4901865&File=4
[87] (Simpson, 2005, 32)
[88] (Simpson, 2005, 32)
[89] (Simpson, 2005, 32)

The legislative history governing Indigenous women is complex .and directly related to Indigenous women and sexual assault cases. Indigenous women have experienced all forms of violence, including physical, spiritual, or mental – and Canadian legislation has detrimentally impacted all of these aspects of many Indigenous women's existences. Indigenous women's identities are not considered when an Indigenous woman has been harmed/victimized/the harmed party in a sexual assault; there is a disregard for her physical/spiritual and mental well being. The victim is not the person that charges her alleged assailant; it is the Crown that brings charges against an alleged perpetrator. The woman's whole being is examined in her role in the court room as a witness. Her power is taken away and she is reduced to being a ward of the court. She can listen, but she cannot question her alleged perpetrator. She must put her trust in a prosecutor who has no vested interest in her, who does not know her history of colonial or legislative violence, and who does not know her culture and the repercussions she faces in her community (sometimes as a result of the internalization of colonial standards and/or the perpetuation of colonial violence).

The focus of the trial focuses on the physical sexual assault and the alleged perpetrator's past. It does not address the assault on her body or psyche as a woman or as an Indigenous woman. There is an ownership of a female's body, an understanding constructed or perpetuated in many court rooms, that Indigenous women's bodies can be destroyed or used for whatever purpose that the perpetrator intends. Her flesh becomes property, she no longer maintains her own identity, she becomes a victim of the judicial system. In the Pamela George trial, she ceases to be a

person; she is a hooker and is referred to as such. In the trial of the twelve year old girl, she becomes an aggressive sexual being; she ceases to be a child.

There is a transformation of self that continues long after the assault. This transformation continues in the judicial system separation the person within from the physical form of her/his body with no remedy to connect them back once the hearing is over. In some cases, the offender is convicted and removed from the community. In order to understand the impact of sexual assault on an Indigenous female, you must be able to recognize and name how colonialism has impacted Indigenous life. How having your life defined in legal terms from birth, to have it recorded and to be assigned a registration number dehumanizes you and your relatives. You need to understand the impact of legislation on your gender, because you were born an Indigenous female, you do not have the same rights as non Indigenous females. You are doubly disadvantaged. All of this colonial violence is entrenched in the systems, understandings and laws that inform and impact Indigenous women. This is more than demeaning. It is a continuum of violence.

Language

Language is an effective tool in the attempted subjugation of Indigenous women. European colonizers replicated a system of governance that they were accustomed to and they put this in place early in colonization therefore asserting their patriarchal system upon the Indigenous population. Treaty negotiations were held in the English language with chosen interpreters present for the First Nations translations. There was

a lack of interpretative consistency with the translation of the First Nations' concepts and that of the Europeans. According to First Nations Elders, the treaties must be examined using oral evidence and oral history of the Treaty First Nations; this was one of four points that should be considered to gain the true understanding of the treaties. [90] The Supreme Court of Canada listed eights guidelines for interpreting treaties. Point four states that:

> "4. …The treaties, as written documents, recorded an agreement that had already been reached orally and they did not always record the full extent of the oral agreement. The treaties were drafted in English by representatives of the Canadian government who, it should be assumed, were familiar with common-law doctrines. Yet, the treaties were not translated in written form into the languages of the various Indian nations who were signatories. …".[91]

There are terms in Indigenous languages that do not have an English equivalency. As a result of the negotiations and ongoing colonial agenda, various versions of legislations were introduced to assimilate First Nations people; from the 1857 *Gradual Civilization Act* [92] to the current form of the *Indian Act* a common denominator in the various amended Indian Acts is the created issue of Indigenous women. Indigenous women were the most affected by the e entrenchment of a language of domination, in a foreign language on their lives. It violated and attempted to dominate every aspect of their lives, there was an implicit understanding that all relationships were heterosexual and that marital unions were sanctioned by the federal government in order to maintain legal

[90] Harold Cardinal, Walter Hildebrandt. Our Dream Is that Our Peoples Will One Day Be Clearly Recognized as Nations. Calgary, Alberta: University of Calgary Press, 2000. p.50
[91] (Cardinal and Hildebrandt, 2000, 51)
[92] "An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Law respecting Indians." 1857.

identity. The Europeans, in an attempt to erase Indians from Canada targeted Indigenous women through legislation to control procreation.

The language used to describe sexual offences was examined in detail in a random sample of Western Canadian trial judgments by Linda Coates, Janet Beavin Bavelas and James Gibson in 1994. The researchers determined that there were five themes occurring in the examination of the trial judgments' language used to describe sexual assaults:

> a) erotic/affectionate characterization of sexual assault; b) sexual assault as distinct from violence; c) appropriate resistance by the victim; d) the good character of the offender; and e) grammatically omitting the agent of the assault.[93]

The study raises the issue of the use of language in the definition of consensus and sexual assault in trials. The vocabulary used in sexual assault is more apt to be defined as consensual sex implying a sexual gratification rather than vocabulary more suited to a violent assault with power and control issues.[94] The study found that violent acts were treated as a lesser degree by using terms that implied sex rather than a sexual assault and thus were considered part of normal sex. The terminology erased all references to resistance. When describing what the victim did in terms of resistance, the terminology used was from man to man combat or fighting between men which did not give an accurate portrayal of the victim of a sexual assault.[95] The victim's past sexual

[93] Linda Coates, Janet Beavin Bavelas and James Gibson. Anomalous Language in Sexual Assault Trial Judgments. Discourse and Society, London, Thousand Oaks, CA and New Dehli. Vol. 5 (2), 1994, pp. 189-206.
[94] Janet Bavelas and Linda Coates, Is it Sex or Assault? Erotic versus Violent Language in Sexual Assault Trial Judgments. Journal of Social Distress and the Homeless, Vol. 10, No. 1, 2001. 38.
[95] (Coates, et al., 1994, 195)

experiences were examined in the court room and whether or not she was of good moral character.[96]

Similar results were found in the second study of Western Canadian trial judgments by Bavelas and Coates.[97] The question of what is considered consensual sex was also examined. When both parties agree to participate in sexual activity then their actions can be regarded as consensual.[98] The researchers determined that with respect to the language used in these cases, mutuality and consent were implied in trials rather than language depicting force and violence.[99] Sexualized descriptions minimized the inherent violence of sexual assaults and hide the survivors' experience.[100] There is a tendency to characterize sexual assaults as consensual sex not as an assaultive or aggressive act.[101]

"Sexual assault" is sometimes understood to mean "sex" in the courtroom thus the violence that is part of the act is disregarded. The judicial language used in the court room further alienates Aboriginal females in sexual assault cases. Often, the language used to describe a sexual assault is sexual in nature because the crime involves a sexual act but it does not take into account the consensus of the alleged victim. There are two arguments against this line of thinking. The first is that we should question the initial assumption that the perpetrator's motivation is in fact sexual rather

[96] (Coates, et al., 1994, 196)
[97] (Bavelas & Linda Coates, 2001, 30)
[98] (Bavelas & Coates, 2001, 31)
[99] (Bavelas & Coates, 2001, 31)
[100] Janet Bavelas and Linda Coates, Is it Sex or Assault? Erotic versus Violent Language in Sexual Assault Trial Judgments. Journal of Social Distress and the Homeless, Vol. 10, No. 1, 2001. 30.
[101] Either prove it with examples or with reference to the study that determined this.

than one of power, control or violence.[102] The second is that if it is sexual (or if power and violence were sexually arousing to some individuals), it would be irrelevant.[103] The judicial system does not take this into consideration the distinctions between the two; it is all regarded as sex with an underlying implied consent. This disregard of language begins with the initial reporting of the crime. Law enforcement questions the idea of a 'real victim' or a 'real rape.'[104] This is a judgment call from first responders on the scene, police officers, who in many cases do not have Indigenous knowledge training.[105] Women who sustained physical injuries and who had been physically coerced (ripped clothes, violent action) were more likely to contact the police.[106] There is no question when physical evidence is present on whether the sexual assault was consensual.[107] This is regarded as something real that can be proven in a court room. If there is alcohol involved then this action becomes questionable within the justice system.

Intersectionality and Racism

The Canadian judicial system is an active participant in the destruction of Indigenous women's identity. The court is a terrain where sexual violence, racism and

[102] (Bavelas and Coates, 2001,31)
[103] (Bavelas and Coates, 2001,31)
[104] Janice Du Mont, Karen Lee Miller and Terri L. Myhr. *The Role of "Real Rape" and the "Real Victim" Stereotypes in the Police Reporting Practices of Sexually Assaulted Women*. Violence Against Women, Vol. 9, No. 4, April 2003, p. 466.
[105] (Du Mont et al, 2003, 479)
[106] (Du Mont et al, 2003, 479)
[107] (Du Mont et al, 2003, 479)

sexism interact in such a way to produce profound marginalization.[108] A women's race has an effect on the outcome of the trial and the way in which she is perceived in the judiciary.[109] It is noted that white [Caucasian] women are more often considered to be innocent and worthy than racialized women and that racialized women's cases are taken less seriously. [110] Aboriginal peoples in the courtroom have a long history of marginalization and oppression stemming from the expropriation of the land and culture by European colonialists.[111] This dispossession from land and culture led to social dislocation and a higher crime rate for Aboriginal people in the justice system.[112]

The idea of erasing a persons' identity can be seen in legal cases whereby a victim's dignity and character are put on trial. In legal cases, such as, *R.v.Mills*[113] there is a precedent set whereby third parties cannot gain access to a victims' sexual history. We see in cases, such as; *R. v. Edmondson, R. v. Brown, R.v. Ternowetsky, R.v. Kummerfield*, that this precedent is not maintained. In fact, the judge in the Edmondson case, allows testimony from a pediatrician who has treated the victim, she testifies that on the condition of the victim's hymen and the indicators of sexual activity.[114] The fact that a pediatrician is the doctor treating the victim is not examined; by definition she treats babies and children. This child that she is treating has been referred to a "sexual

[108] Sherene Razack. What Is to Be Gained by Looking White People in the Eye? Signs, Vol. 19, No. 4, Feminism and the Law (Summer, 1994), pp. 894-923, Published by: The University of Chicago Press 896.
[109] (Razack, 1994, 899)
[110] (Razack, 1994, 891)
[111] (Dylan et al., 2008,679)
[112] (Dylan et al., 2008, 679)
[113] R. v. Mills, 1999 CanLII 637 (SCC), [1999] 3 SCR 668, <http://canlii.ca/t/1fqkl> This case involved a twelve year old girl and a twenty nine year old man on trial for sexual assault. This was a landmark decision in the protection of rights of the sexual assault victim.
[114] http://www.canlii.org/en/sk/skqb/doc/2003/2003canlii52806/2003canlii52806.pdf, p.5

aggressor."[115] In the cases of Edmondson and Brown, the twelve year old girl is further victimized when there are allegations that abuse is taking place in her home.[116] This implies that she is familiar with abuse and is used to it therefore the psychological damage may not be as great as a child who has no dysfunction in the home. From this, we see a disregard on the impact of the sexual assault on the Indigenous child.

Racism is systemic in the Canadian judicial system. It is another institution where Aboriginal people are subjected to foreign concepts. To enter into a courtroom, an Aboriginal person must face the ultimate form of colonization. This is the ultimate authority where decisions based on their lives will be judged by people who are not from their Nation, culture or community in a legal language that they will not understand. How is it that many police enforcement agencies, judicial systems and their players all have a similar perspective when it comes to Indigenous peoples? It is a combination of racism, colonialism and discrimination. It is based on historical dealings with Indigenous people and the rendering of aspects of Indigenous culture as illegal. Negative stereotypes are created and perpetuated within institutional settings and used against Indigenous people, these stereotypes are also applied to children. In the case of *R.v. Edmondson,* it takes courage to be that twelve year old girl who reports an alleged sexual assault by three non - Indigenous males and endures three trials. It takes courage for a fourteen year old to bring her alleged rapist to trial thirty years later in *R. v. Ramsay.*

[115] (Bonokoski, 2007, 8)
[116] http://www.canlii.org/en/sk/skqb/doc/2003/2003canlii52806/2003canlii52806.pdf, pp.5-6

Changing the Landscape and Meaningful Reform

The construction of a destructive space in the judicial system where Indigenous females are victimized exists. Canadian interpretations of violence tend to isolate sexual acts and their impact. Canadian judiciary officials do not or cannot measure the spiritual or emotional aspects of a sexual assault on women and, in particular, on Indigenous women. The issue of what constitutes rape needs to be re-examined, is it just a physical act with no psychological implications? In all of the trials discussed in this paper, there is a similarity in the way the cases are prosecuted; the defendant's actions are put on trial and not her assailants, his background is examined as to why he committed the act. The Indigenous victim is left without a voice and her identity is erased. She is reduced to actions and behaviours (i.e. sexually aggressive) and reduced to names and externalized conceptualizations of worth (i.e. prostitute or living outside of what is considered acceptable to a normal society). These negative understandings can serve to further reduce her worth in society and make her susceptible to discrimination and exploitation. You cannot separate culture and language from a physical act that assaults a person's spiritual being. Doing so compounds the violence and requires judicial mythmaking in order to support some notion of fairness (to say nothing of justice). When you separate an Indigenous woman's physical and spiritual being from the act of sexual assault, violence is done again. Andrea Smith, equates this to patriarchal thinking in terms that only a body that is 'pure' can be violated, Indian bodies are considered 'dirty' thus they are considered

sexually violable and 'rapable.'[117] It is in this same line of thinking that the victim, Pamela George, was considered to belong to, a place where violence is normal, where physical violence is normal, where sexual violence is to be expected when you are living in this space. Her killers did not live in this space therefore they could not be accountable in such a space where sexual violence is normal; they were only doing what was expected. Sherene Razack provides a detailed analysis of how colonization, race and spatialized justice intersect in a court room when an Aboriginal victim is murdered by two non-Aboriginal privileged youth in Saskatchewan.[118] From her analysis, we see that for Aboriginal victims - who are dispossessed from their land, culture and language - there is a pronounced susceptibility to discrimination, racism and sexism. An Indigenous woman is raped and beaten to death, her accusers are convicted of common assault and sexual assault is not addressed in the Pamela George trial. The subsequent prosecution was riddled with racism, and gender and class bias.[119] Indigenous women in this and other cases are seen to be and understood as expendable.

Conclusion

With trepidation, I completed this part of my work on sexual violence and Aboriginal women in Canada. The question that people want answered is why does this happen to Aboriginal women in Canada? This is a complex question of which I do not

[117] (Smith, 2003, 73)
[118] Sherene Razack. Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George. Canadian Journal of Law and Society, 2000, Volume 15, no. 2, pp. 91-130.
[119] Backhouse, Constance. Carnal Crimes – Sexual Assault Law in Canada, 1900 – 1975, Toronto, Ontario: The Osgoode Society for Canadian Legal History, 2008. P. 296.

have an answer for but I hope that this sheds some light on the issues that face Indigenous women and children.

The issue of sexual violence and Aboriginal women is a complex one that can be traced back to the first wave of colonialism. Indigenous women possessed an equal role in Indigenous societies, their roles were defined and they were not subject to being the property of their husbands nor the responsibility of their sons. The role of women changed drastically with the first wave of settlers. They were not valued nor were their rights recognized in the legislation that followed the colonizers. How is this going to change? It starts to change with just one person whether it is the twelve year old survivor or the forty four year old survivor. It may also be Indigenous woman who have jumped through all the hoops and who recognize the privileges that it affords her and the voice that comes with it. We need to ask ourselves the question - Is there not a basic human right for all women whether they engage in prostitution or not? Do they not have the same rights as any other woman?

The cases I chose to present in this thesis are not by coincidence, I chose them because I have lived in those places, and I am familiar with their spaces. I know that I could be anyone of the females in these trials. I think that is the myth that we live behind, that these cases are rare and that these girls and women put themselves in dangerous spaces where sexual violence is normalized. This is what colonialism has achieved; it has made us, as Indigenous and non - Indigenous women, think that it is normal. We need to reject this line of thinking, we need to recognize that the court system, as it exists, is foreign and is conducted in such a way as to alienate the survivor from the process. In order to relate to an Indigenous survivor, we need to recognize

that colonialism had an effect on the evolution of Indigenous women. Part of that recognition is learning what it is like to live a legislated life, to have every aspect of your livelihood subjected to scrutiny by the federal government.

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