Access to Justice - Aboriginal Peoples of Canada:

An Annotated List of Research Materials

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Statistics

Population

"Aboriginal Peoples in Canada: First Nations People, Metis and Inuit" (2013) National Household Survey, 2011 Statistics Canada, Catalogue No 99-011-X2011001.

Summary: This survey provides population statistics and breakdowns for the Canadian aboriginal population. There are 1.4 million people of Aboriginal identity in Canada, representing 4.3% of the total Canadian population. This population is comprised of three distinct cultural groups: First Nations people (851,561); Métis (451,795); and Inuit (59,445).

- The median age of the First Nations population is 26; for Metis, 31 and for the Inuit population, 23. Aboriginal children aged 14 and under comprise 28% of the total Aboriginal population, compared to 16.5% in the non-Aboriginal population. Aboriginal Youth between the ages of 15-24 comprise 18.2% of the total Aboriginal population, compared to 12.9% in the non-Aboriginal population. Senior citizens (65 years and older) comprise only 6% of the total Aboriginal population, compared to 14.2% in the non-Aboriginal population.
- Eight in ten Aboriginal people live in either Ontario or the Western provinces, and Aboriginal people represent the majority of the population of Nunavut and the Northwest Territories.
- The largest First Nations populations are in Ontario (201,100), British Columbia (155,020) and Alberta (116,670).
- 75% of First Nations people have registered Indian status, and of those, nearly half (49.3%) live on an Indian reserve or Indian settlement. The largest shares of the total population represented by First Nations people are in the Northwest Territories (approx. 33%), the Yukon (approx. 20%), Manitoba (approx. 10%) and Saskatchewan (approx. 10%)
- 84.9% of all Metis live in the western provinces and Ontario. The largest Metis populations are in Alberta (96,865), Ontario (86,015), Manitoba (78,830), British Columbia (69,475) and Saskatchewan (52,450).
- Inuit have a unique culture, core knowledge and beliefs. Many live within their distinct homeland. 73.1% of Inuit live in Inuit Nunangat, which stretches from Labrador to the Northwest Territories and includes Nunatsiavut (northern Labrador), Nunavik (Northern Quebec), Nunavut and the Inuvialuit (NWT). 37.5% of Inuit live outside of a large urban population centre.

Social and Economic Indicators

***R v Fleury*, [1998] Si No 538, 1998 CanLII 13847, at para 17.**

Summary: This case asked whether or not it was appropriate for Defence counsel to question potential jurors about racial bias. In reaching the decision that it was appropriate, the Court reviewed social and economic indicators from the Saskatchewan Indian Justice Review Committee. These indicators revealed that, two-thirds of Aboriginal homes on reserves lack central heating; the unemployment rate among Aboriginal peoples was four times that of non-Aboriginals, three of four registered Aboriginals on the reserves received social assistance; the suicide rate on reserves was three times that for the provincial population as a whole; and an estimated 30 to 40% of the Aboriginal population is involved in alcohol abuse, as compared to an estimated 6% of the general population province.

Aboriginal Peoples as Victims of Crime and Sexual Assault

Shannon Brennan, "Violent victimization of Aboriginal people in the Canadian Provinces, 2009" (17 May 2011), component of *Juristat*, Statistics Canada Catalogue No 85-002-X.

Summary: In 2009, Aboriginal people were more likely to report being a victim of a crime (37%), compared to non-Aboriginal people (26%). Violent crimes with an Aboriginal victim were more likely to be related to alcohol or illegal drug use by the perpetrator, but less likely to involve a weapon. Aboriginal people ages 15-24 were the victims in 47% of violent incidents reported by Aboriginal people. Sexual assaults accounted for more than one-third of violent incidents with an Aboriginal victim. Aboriginal women were three times more likely to have been recently assaulted by a spouse in the past 5 years. Aboriginal victims of spousal violence were also more likely to report that they have feared for their life or that they had been injured as a result of the violence.

Shannon Brennan, "Violent victimization of Aboriginal women in the Canadian Provinces, 2009" (17 May 2011), component of *Juristat*, Statistics Canada Catalogue No 85-002-X.

Summary: In 2009, approximately 67,000 Aboriginal women aged 15 or older reported being a victim of violence in the past 12 months in the 10 Canadian provinces. This rate of self-reported violent victimization among Aboriginal women was almost three times higher than the rate of self-reported victimization among non-Aboriginal women. 63% of Aboriginal female victims were between the ages of 15 and 34. This age group represents 47% of the total female Aboriginal population aged 15 and older in the 10 Canadian provinces.

Distribution of the Aboriginal Population within Canada

Total Aboriginal population: 1,400,685 (*NHS* 2011)

Province	**Population**
Ontario	21.5% (301,425)
British Columbia	16.6% (232,290)
Alberta	15.8% (220,695)
Manitoba	14% (195,900)
Saskatchewan	11.3% (157,740)
Québec	10.1% (141,915)
Newfoundland and Labrador	2.6% (35,800)
Nova Scotia	2.4% (33,485)
Nunavut	2.0% (27,360)
New Brunswick	1.6% (22,615)
Northwest Territories	1.5% (21,160)
Yukon	0.6% (7,705%)
Prince Edward Island	0.2% (2,230)

Additional Statistics

Additional statistics can be found under the following subheadings (click to follow):

- Statistics: Aboriginal Peoples in the Prison System

Statistics: Aboriginal Women in the Prison System

Case Law and Constitutional Issues

General Overview of Aboriginal Law

John Borrows and Leonard Rotman, *Aboriginal Legal Issues: Cases, Materials and Commentary, 4th edition* (Markham: LexisNexis Canada, 2012).

Summary: This is a comprehensive reader of fundamental Aboriginal Law issues. It outlines many foundational issues that arise when studying aboriginal law, including the *Indian Act,* aboriginal title, and notions of justice within the aboriginal community. Some key facts taken from the text are outlined below:

- **Lack of Aboriginal Courts**: Aboriginal peoples have nowhere to turn to voice their grievances — taking them to court means accepting an alien system. Doing nothing has only meant continued oppression and an implosion of violence and social upheaval in communities.
- **The *Indian Act*:** "Historically the Indian Act has thoroughly brainwashed us. Since 1869 Indian women already were legislated as to who she should be. Six times the Indian Act changed on women. But each time she lost a little bit of her rights as an Indian". See *Report of the Commission on Aboriginal Peoples*: *Perspectives and Realities, vol 4* (1996). Online: Christian Aboriginal Infrastructure Development: <**http://caid.ca/Vol_4_RepRoyCommAborigPple.html**>.
- **Aboriginal Rights and Title**: *R v Van der Peet*, [1996] 2 SCR 507 at para 30: "the doctrine of Aboriginal right exists, and is recognized and affirmed by s. 35(1) because of one simple fact: when Europeans arrived in North America, Aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they had done for centuries."
- *What is Aboriginal title?* — Aboriginal title is a right in land, as such, as more than the right to engage in special activities which may themselves be Aboriginal rights. Rather, it confers the right to use land for a variety of activities, not all of which need be aspects of practices, customs and traditions which are integral to the distinctive cultures of Aboriginal societies.

University of British Columbia Faculty of Law, *Primer: Canadian Law on Aboriginal and Treaty Rights* (Vancouver: University of British Columbia, 2009). Online: University of British Columbia <http://www.law.ubc.ca/files/pdf/enlaw/primer_complete_05_10_09.pdf>.

Summary: This primer provides background and a general framework for examining questions of Canadian Aboriginal rights and treaty rights**.** It reviews the history of Aboriginal/Government relations, including the treatment of "Indians" by way of legislation, treaties and rights. Key legislation, interpretive cases and legal tests are explained.

- A framework for Aboriginal legal analysis is developed, which asks:
  - (1) Does the Crown have a duty of consult?
  - (2) If so, what is the appropriate scope of consultation?
  - (3) If so, was the duty to consult reasonably fulfilled?
  - (4) If not, what is the appropriate remedy in this situation?
- Current up to 2009.

Specific Areas and Recent Cases in Aboriginal Law

Bankes, Nigel, "The Manitoba Métis Case and the Honour of the Crown" in *ABlawg* (April 29, 2013). Online: <http://ablawg.ca/2013/04/09/the-manitoba-metis-case-and-the-honour-of-the-crown>.

Summary: In *Manitoba Metis Federation Inc v Canada (Attorney General),* 2013 SCC 14, the majority of the Supreme Court of Canada held that section 31 of the *Manitoba Act, 1870* expresses a constitutional obligation to the Metis people of Manitoba to provide Metis children with allotments of land. The *Manitoba Act, 1870* is part of the Constitution of Canada, as it is listed in Schedule I to the *Constitution Act, 1982* (item #2). Section 31 of the *Manitoba Act* provides that with the extinguishment of Indian Title to the lands of the Province, 1,400,000 acres of land shall be apportioned to the children of the half-breed heads of families residing in Manitoba at the time of the transfer. Canada was found to have failed in three of four alleged duties to the Metis people:

1. By its delay because of a "persistent pattern of inattention (para 108) in distributing the s.31 lands
1. (2. The process of random selection for land distribution was found not to have violated the honour of the Crown).
2. By its conduct in conducting sales to speculators in terms of not ensuring that grant recipients were not taken advantage of. The delays perpetuated situations where Metis children sold their entitlements before the land selection was known, thus receiving artificially diminished value for their land grants.
3. The Crown's decision to use scrip (a voucher-like document) to make up for the fact that the original 1.4M acre allotment was inadequate for the number for eligible children was not a breach of the honour of the Crown. However, the delayed issuance of scrip "further demonstrates the persistent pattern of inattention inconsistent with the honour of the Crown that typified the s.31 grants" (para 123).

Nigel Bankes was of the view that the impact of this decision on future cases may come in terms of:

- the interpretation of other similar statutes in "big historical cases";
- ongoing and future litigation involving the timely implementation of modern land claim agreements; and
- reinforcing the argument that the Crown owes a justiciable duty to engage in good faith negotiations to achieve the objective of reconciling the prior normative order of indigenous peoples with the Crown's unilateral assertion of sovereignty.

***Radek v Henderson Development (Canada) Ltd. (No. 3),* 2005 BCHRT 302. Online: British Columbia Human Rights Tribunal <http://www.bchrt.bc.ca/decisions/2005/pdf/Radek_v_Henderson_Development_%28Canada%29_and_Securiguard_Services_%28No_3%29_2005_BCHRT_302.pdf>.**

Summary: This case examines the intersectionality of multiple grounds of discrimination, including Aboriginality, are implicated in a human rights complaint. The complainant (an Aboriginal woman) alleged that she was denied access to a service customarily available to the public (a shopping mall) based on her race, colour, ancestry and disability.

In agreeing with the complainant, the Tribunal examined the larger pattern of systemic discrimination by the shopping mall. It found that discrimination on the basis of race, colour, ancestry and disability was rooted in attitudes and policies, and in how those policies were enforced.

Constitutional Recognition of the Aboriginal Right to Self-Government

***Shaping Canada's Future Together: Proposals* (Ottawa: Minister of Supply and Services Canada, 1991), Catalogue No CP22-24/1991E.**

Summary: This publication reviews the historical context of why the Aboriginal right to self-government should be recognized (page 6-7). Its various proposals sought to:

- Ensure that Aboriginal peoples must be included in constitutional reforms relating to Aboriginal affairs (page 6);
- amend the Constitution to include a general justiciable right to aboriginal self-government (page 7);
- aid the transition to Aboriginal self-government;
- amend the Constitution to include a requirement to deal with all outstanding Aboriginal issues within an appropriate time (page 8); and
- guarantee Aboriginal representation in the Senate (page 8-9).

Unfortunately, these proposals were not adopted as such, but they do provide a possible framework for future attempts to implement the Aboriginal right to self-government.

The Constitutional Reform Process

The Royal Commission on Aboriginal Peoples, *People to people, nation to nation: Highlights from the report of the Royal Commission on Aboriginal Peoples* (1996). Online: Aboriginal Affairs and Northern Development Canada <https://www.aadnc-aandc.gc.ca/eng/1307458586498/1307458751962>.

Summary: The Royal Commission consulted with 96 Aboriginal groups with one main question in mind: What are the foundations of a fair and honourable relationship between the Aboriginal and non-Aboriginal people of Canada?

The Commission's final report was divided into five volumes. Each volume presents the Commission's thoughts and recommendations on a range of interconnected issues. Chapters are devoted to major topics such as treaties, economic development, health, housing, Métis perspectives, and the North. Volume 5 draws all the recommendations together in an integrated agenda for change.

- The final report has been archived by Library and Archives Canada at: <http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html>.

"The Beaudoin-Edwards Report" Gerald Beaudoin and Jim Edwards, *The Process for Amending the Constitution of Canada: Report of the Special Joint Committee of the Senate and the House of Commons* (1991). Online: Solon.org <http://www.solon.org/Constitutions/Canada/English/Committees/Beaudoin-Edwards/cons-process-for-amending-the-cons-of-canada-beaudoin-edwards-1991-06-21.pdf>.

Summary: A special joint committee of members from the Senate and House of Commons discusses the constitutional process to be followed in order to amend the Constitution of Canada.
At the time, it was anticipated that the Constitution would be amended to allow Quebec separation. This movement ultimately failed, but the constitutional amendment process could be applied to amending the Constitution to allow Aboriginal sovereignty and/or self-government.

International Law

United Nations Documents

***The United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007). Online: United Nations <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf>.**
Summary: The United Nations Declaration on the Rights of Indigenous Peoples is a comprehensive statement addressing the human rights of indigenous peoples. It was drafted and formally debated for over twenty years prior to being adopted by the General Assembly on 13 September 2007. The document emphasizes the rights of indigenous peoples to live in dignity, to maintain and strengthen their own institutions, cultures and traditions and to pursue their self-determined development, in keeping with their own needs and aspirations.

The Declaration was adopted by a majority of the General Assembly in New York on 13 September 2007, with 144 countries voting in support, 4 voting against and 11 abstaining. The countries who voted against the Declaration were Canada, the United States, Australia and New Zealand Four years later, on November 12, 2010, Canada reversed its position and endorsed the Declaration.

- Ministry of Aboriginal Affairs and Northern Development Canada, “Canada’s Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples” (12 November 2010). Online: Aboriginal Affairs and Northern Development Canada <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>.

Observer Documents/Shadow Reports

Amnesty International, “UN Declaration on Rights of Indigenous Peoples: Canada must fully support vital human rights instrument” (21 November 2012). Online: Amnesty International Canada <http://www.amnesty.ca/get-involved/take-action-now/un-declaration-on-rights-of-indigenous-peoples-canada-must-fully-suppor>.
Summary: In its shadow report, Amnesty International demands that the Government of Canada live up to its commitment to the Declaration on Rights of Indigenous Peoples by addressing problematic areas of its laws and policies with respect to the rights and well-being of Canada’s Indigenous peoples.

Native Women’s Association of Canada, ”NWAC Shadow Report for the United Nations Committee on the Elimination of Racial Discrimination 80th Session 13 February - 9 March 2012 Geneva” (30 January 2012). Online Native Women’s Association of Canada

<http://www.nwac.ca/sites/default/files/imce/CERD%20-%20NWAC%20Submission%20-%20Final_0.pdf>.

Summary: NWAC makes comments and recommendations to the United Nations in regards to violence toward Aboriginal women, the First Nations child welfare system, federal-provincial disputes over jurisdiction for funding, First Nations education, the *Indian Act* and equality under the law, and criminal justice under *Bill C-10*.

Aboriginal Rights, Legislation and Policy

Property Rights and Aboriginal Title

Jennifer Dalton, "Aboriginal Title and Self-Government in Canada: What is the True Scope of Comprehensive Land Claims Agreements?" (2006) 22 *WRLSI* 29.

Summary: The author argues that there is currently insufficient recognition by the Canadian government of Aboriginal title and self-government as crucial components of comprehensive land claims agreements. While formal government recognition of Aboriginal self-government has occurred, for the most part, comprehensive agreements do not incorporate robust conceptions of self-government.

Tom Flannagan, Christopher Alcantara and Andre Le Dressay, *Beyond the Indian Act: Restoring Aboriginal Property Rights, Second Edition* (Montreal: McGiil-Queen's University Press, 2011).

Summary: This text discusses the history of Indian land claims and makes suggestions for restoring First Nations property-rights systems.

Indian Status and the Charter

Pamela D Palmater, *Beyond Blood: Rethinking Indigenous Identity* (Saskatoon: Purich Publishing Limited, 2011).

Summary: This piece reviews legislative definitions of Indian status and reviews recent court rulings involving Aboriginal rights and the *Charter.* It also reviews band membership codes and discrimination and makes suggestions for alternative ways to determine indigenous identity and citizenship.

Métis Policy

Government of Manitoba, *Manitoba Métis Policy* (Winnipeg: Government of Manitoba, September 2010). Online: Government of Manitoba <http://www.gov.mb.ca/ana/mbmetispolicy.html>.

Summary: The Manitoba Métis Policy is based on the findings of the Aboriginal Justice Inquiry (AJI) and the recommendation of the Aboriginal Justice Implementation Commission (AJIC) that, "the Government of Manitoba develop and adopt, with the full participation of the Manitoba Métis Federation, a comprehensive Métis Policy on matters within its jurisdiction." The policy builds on the cultural distinctness of the Métis as a defining feature of Manitoba's social fabric and the knowledge that enhancing Métis goals and prosperity strengthens Manitoba's social and economic vibrancy. The Métis Policy is made up of a series of principles and a framework:

- The Métis Policy principles guide the Government of Manitoba in the way it approaches Métis issues. The principles deal with recognition, partnership, a comprehensive approach, capacity and accountability.
- The Métis Policy framework provides the strategic approach for the Government of Manitoba in its relationships with Métis people and the Manitoba Métis Federation. The framework is made up of four elements: enhancing Métis people's participation, developing better understanding, following a distinctions-based approach and improving relationships.

Law Enforcement and Aboriginal Peoples

Law Enforcement and Racial Discrimination against Aboriginal Peoples

Justice Robert Allen Cawsey, "Review of the Blood Tribe Inquiry Report" in *Justice on Trial: Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta* (Edmonton: Alberta Justice and Solicitor General, 1991). Online: Alberta Justice and Solicitor General <http://justice.alberta.ca/programs_services/aboriginal/Documents/cawsey/Cawsey_I_12.pdf>.

Summary: In 1991, a public inquiry on the Blood Tribe was provided to the government of Alberta. It has three basic parts, dealing with the review of several cases of sudden deaths in Blood tribe, the Cardston Blockade of 1880 and the "Interface-Native Culture Federal and Provincial Policing Policies and Procedures." This piece is a review of the report by Justice Robert Cawsey.

- Justice Cawsey criticizes the Blood Tribe Inquiry Report in several ways:
  - The report focuses on recent interactions between the peoples of the Blood Tribe and the RCMP, but does not acknowledge the history of the relationship between them (page 12-2).
  - While both the Public Inquiry and the report of the Task Force acknowledge cultural insensitivity by people working in the criminal justice system, they differ on findings of racial bias: The Public Inquiry states that it found "no conscious bias or racial discrimination evidenced in the treatment of the Blood Indians by the Royal Canadian Mounted Police" (page 12-3). Conversely, the Task Force acknowledged that Aboriginal peoples were victims of racism and discrimination as well as systemic racialization in the criminal justice system and from society at large (page 12-3).

Mandy Cheema, "Aboriginal Deaths in Custody, Data Problems, and Racialized Policing" (2009) 14 *Appeal* 84-100.

Summary: The author argues that racialized stereotyping by individual police officers, as well as the broader systemic racialization prevalent in policing, have resulted in greater numbers of Aboriginal deaths in police custody compared to non-Aboriginal deaths. The contemporary practices of over-policing, under-protection and repression of Aboriginal peoples show that systemic failure in both policing and its governance continue to present real, live, and ever-present risks in complex unequal societies. Aboriginal deaths go largely unnoticed, unrecorded, and unaccounted for. To address the racial injustice prevalent in policing, the collection of race-based data is necessary to de-racialize policing practices and interactions that have resulted in disproportionate numbers of Aboriginal death in custody.

Ontario Human Rights Commission, *Paying the Price: The Human cost of Racial Profiling* (Toronto: Ontario Human Rights Commission, 2004) Online: Ontario Human Rights Commission <http://www.ohrc.on.ca/sites/default/files/attachments/Paying_the_price%3A_The_human_cost_of_racial_profiling.pdf>.

Summary: This report devotes a special section to outlining the impact of racial profiling on Aboriginal peoples and communities. Topics discussed include how racial profiling has negative effects on children, fosters a mistrust of institutions, causes changes in behaviour which has negative social costs to the community and causes a loss of dignity and self-esteem.

David Tanovich, *The Colour of Justice: Policing Race in Canada* (Toronto: Irwin Law, 2006).

Summary: This book discusses several cases of Aboriginal racial profiling by enforcement bodies**.** For example, it examines the Monkman case ("shopping while Aboriginal"), a store clerk refused to sell hairspray to an Aboriginal woman and her daughter because there was a perception that the mother would use it as an intoxicant. (p28)**.** In another case (Drybones), an individual was charged under the Criminal Code of Canada s.94 (b) "Being an Indian who was intoxicated off a reserve." This section singled out Aboriginals for disproportionate criminal surveillance and was eventually ruled as discriminatory by the Supreme Court of Canada. (p 53-56)**.** The book also discusses police abuse and neglect of Aboriginal persons in custody, over-policing of Aboriginal peoples, over-incarceration of Aboriginal peoples, and the tracking of Aboriginal gangs.

David Tanovich, "The Charter of Whiteness: Twenty-Five Years of Maintaining Racial Injustice in the Canadian Justice System" (2008) 40 *SCLR* 2d.

Summary: The author argues that the *Charter* has had very little impact on racial injustice in Canada. Canada continues to incarcerate Aboriginal and African Canadians at alarming rates, racial profiling at the borders and in the streets continues to flourish, and the federal government continues to propose legislation that will further entrench the problem.

David M. Tanovich, "Using the Charter to Stop Racial Profiling: The Development of an Equality-Based Conception of Arbitrary Detention" (2002) 40 *Osgoode Hall LJ* 145-187.

Summary: This article discusses racial profiling. It argues that race and crime play a part in creating a suspicion in the mind of the police officer that the individual has engaged in, or is currently engaging in, criminal activity. Even in circumstances where an officer can point to other conduct that raised his or her suspicions, when properly analyzed through a race-neutral lens, this conduct may actually turn out to be entirely innocuous.

Law Enforcement and Aboriginal Women

Amnesty International, *Stolen Sisters: a Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada* (2004). Online: Amnesty International Canada <http://www.amnesty.ca/sitesidefault/files/amr200032004enstolensisters.pdf>.

Summary: Amnesty International argues that the Canadian justice system has consistently failed to make adequate investigations into missing and murdered Indigenous women. The report examines four factors which have contributed to the high risk of violence facing Indigenous women in Canadian cities:

1. Indigenous women in Canada face social and economic marginalization, including government policies, which tear apart their families/communities and push them into situations of extreme poverty, homelessness and prostitution;
2. The police in Canada have failed to provide Indigenous women with an adequate standard of protection;
3. The resulting vulnerability of Indigenous women allows them to be exploited by Indigenous and non-Indigenous men, including acts of extreme brutality; and
4. The acts of violence faced by Indigenous women may be motivated by racism or carried out with the expectation that perpetrators will not face justice because of the societal indifference towards the welfare and safety of Indigenous women.

Violence against Indigenous women is a human rights concern as well as a criminal and social concern.
See also: **Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence Against Indigenous Women in Canada* (2009).**

Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence Against Indigenous Women in Canada* (2009). Online: Amnesty International Canada <http://www.amnesty.ca/sitesidefaultifilesiamr200122009enstolensistersupdate.pdf>.

Summary: Amnesty international argues that, since it published “Stolen Sisters” in 2004, government responses to the threats facing Indigenous women have been inadequate and piecemeal.
Indigenous women in Canada continue to face marginalization and inequality in 5 key areas:

- The role of racism and misogyny in perpetuating violence against Indigenous women;
- The sharp disparities in the fulfillment of Indigenous women’s economic, social, political and cultural rights;
- The continued disruption of Indigenous societies caused by the historic and ongoing mass removal of children from Indigenous families and communities;
- The disproportionately high number of Indigenous women in Canadian prisons, many of whom are themselves the victims of violence and abuse; and
- Inadequate police response to violence against Indigenous women as illustrated by the handling of missing persons cases.

See also:
Amnesty International, *Stolen Sisters: a Human Rights Response to Discrimination and Violence Against Indigenous Women in* Canada (2004).

Hedy Fry, Chair, *Interim Report - Call Into the Night: An Overview of Violence against Aboriginal Women* (Ottawa: Standing Committee on the Status of Women, March 2011). Online: House of Commons Canada <http://www.parl.gc.ca/content/hoc/Committee/403/FEWO/Reports/RP5056509/feworp14/feworp14-e.pdf>.

Summary: This is a report on violence against aboriginal women. The Committee interviewed 150 witnesses on the topic of violence against Aboriginal women in Canada. Among the topics discussed was the response of the justice system towards violence again Aboriginal women.

The report found that socio-economic conditions make Aboriginal women particularly susceptible to being victims of violence, and this problem is further compounded by the inadequate or inappropriate responses of the police, judicial and corrections systems. In law enforcement, police do not respond to complaints in a timely manner, and Aboriginal women who are victims of violence are often criminally charged alongside their attackers because of the racialized stereotype that all Aboriginal women are prostitutes.

In the judicial system, Aboriginal women often plead guilty to lesser offences they did not commit to avoid lengthy jail sentences and remote communities are not adequately served by circuit courts. Concerns were raised about using restorative and alternative justice methods to address domestic violence against Aboriginal women, as there is a risk of putting women back in danger of re-victimization. Aboriginal women are racialized and criminalized by stereotypes in the judicial system, resulting in criminal records which further marginalize them.

In the Corrections system, Aboriginal women are disproportionately represented in the prison system, with current statistics showing that they make up one-third of the female prison population. Aboriginal women are further marginalized by society when they exit prison and are offered little assistance with reintegration into society.

Human Rights Watch, *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada* (Toronto: Human Rights Watch, 2013), online: Human Rights Watch <http://www.hrw.org/sites/default/files/reports/canada0213webwcover.pdf>.

Summary: Human Rights Watch interviewed indigenous women, support workers and RCMP officers (in an unofficial capacity) about the RCMP's treatment of indigenous women in British Columbia. The failure of law enforcement authorities to deal effectively with the problem of missing and murdered indigenous women and girls in Canada is just one element of the dysfunctional relationship between the Canadian police and indigenous communities. For many indigenous women and girls, abuses and other indignities visited on them by the police have come to define their relationship with law enforcement. At times the physical abuse was accompanied by verbal racist or sexist abuse.

The report also discusses the shortcomings of available oversight mechanisms designed to provide accountability for police misconduct and failure to protect indigenous women and girls, and outlines Canada's obligations under International Law.

Wally T Oppal, *Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Report* (Vancouver: The Missing Women Commission of Inquiry, 2010). Online: <http://www.ag.gov.bc.ca/public_inquiries/docs/Forsaken-ES.pdf>.

Summary: Between 1997 and 2002, 67 women from Vancouver's Downtown East Side (DTES) went missing, many of whom were Aboriginal. Very little was done to protect them from serial predators which were known to police, and very little was done to investigate the disappearances of the missing women. The remains of many of the women were later discovered on Robert Pickton's pig farm in Coquitlam, which is on the outskirts of the Greater Vancouver Area. This Executive Summary provides a review of the findings made by the Missing Women Commission of Inquiry's Report. The summary is contained in four volumes.

- Volume I: The Women, Their Lives and the Framework of Inquiry: Setting the Context for Understanding and Change
    - The DTES community is often depicted as a place of chaos and criminality due to an open drug market, sex trade and poverty.
    - The marginalizing factors which caused the women to be more vulnerable to violence include: grossly inadequate housing, food insecurity, health inequities, extreme poverty, drug dependency, drug withdrawal, withdrawal as a risk to safety, and entrenchment in the DTES.
    - A disproportionate number of Aboriginal women make up the missing women. Of the 33 women found on Robert Picton's pig farm, 12 were Aboriginal. The overrepresentation of Aboriginal women must be understood within the larger context of colonialism in Canada, The history of assimilation, discriminatory policies against Aboriginal women and the legacy of residential schools has caused a great distrust of police and government by Aboriginal peoples.
    - It is also important to understand the survival sex trade, where sex is exchanged for money to meet basic substance needs. The missing women were caught in a cycle of distress, and were further marginalized by their involvement in the survival sex trade.
    - The social marginalization of the women is interconnected with individual vulnerability. It is wrong to attribute the women's fates with their "high-risk lifestyle." This narrow attitude allows us to accept that the women deserved what they got, even though the "lifestyle" cannot explain the disappearance of so many women over a sustained period of time.
- Volume II: Nobodies: How and Why We Failed the Missing and Murdered Women
    - This volume describes the Commission's findings with regards to the police investigations into the missing women's cases.
    - This section includes a discussion of the Anderson assault investigation and the decision to stay proceedings against Robert Pickton, a timeline and a critical analysis of police failures, and the causes behind police these police failures.
    - This section also examines the individual investigations for each missing woman, as well as the overarching investigations into missing persons in the DTES, the RCMP the investigation into Robert Pickton, and the "Project Evenhand" joint investigation between the RCMP and the Vancouver Police.
- Volume III: Gone, but not Forgotten: Building the Women's Legacy of Safety Together

    - This volume summarizes the information gathered by the commission's inquiries and sets out recommendations for reform, as framed by the conclusions from Volume II.
    - Overall, the Commissioner recommends:
        - 1. Funding should be immediately given to provide 24-hour emergency services for women in the sex trade in the DTES.
        - 2. An enhanced public transit system be developed and implemented to provide a safer travel to Northern B. C. communities from Vancouver (so that women will not be forced to hitchhike).
        - 3. Restorative measures
        - 4. Equality-promoting measures
        - 5. Measures to enhance the safety of vulnerable urban women
        - 6. Measures to prevent violence against Aboriginal and rural women
        - 7. Improved missing person policies and practices
        - 8. Enhanced police investigations be enhanced
        - 9. Regional police forces be enhanced
        - 10. More effective multi-jurisdictional policing
        - 11. Increased police accountability to communities
        - 12. Measures to assure the missing women's legacy
- Volume IV: The Commission's Process
    - This volume is a public record of the work process leading to the creation of this report
    - As it relates to the inquiry process and not the findings of inquiry itself, Volume IV is not included in the Executive Summary.

The Justice System and Aboriginal Peoples

Mistreatment of Aboriginal Peoples in the Justice System

Hadley Friedland, "Different Stories: Aboriginal Peoples, Order, and the Failure of the Criminal Justice System" (2009) 72 *Sask L Rev* 105-142.

Summary: The current criminal justice system creates disorder rather than order for Aboriginal peoples. The often over-looked cultural narratives that inform the Canadian justice system may actually be perpetuating disorder for Aboriginal people.

Alan Grant, *Report of the Osnaburgh/Windigo Tribal Council Justice Review Committee,* (Ontario: Attorney General (Ontario) and Minister Responsible for Native Affairs and the Solicitor General, 1990).

Summary: This report provides an overview of the historical background and current conditions of four Ontario First Nations communities: Osnaburgh, Cat Lake, New Slate Falls and New Saugeen (Savant Lake). It reviews issues related to land and economic development, health and well-being, culture and language, education and relations with non-native communities. The report also reviews the current conditions for the administration of justice in the four communities. This includes discussion on policing, conservation officers, courts, corrections, inquests and Aboriginal deaths, and justice issues for First Nations organizations. Finally, the report provides a summary of recommendations to improve the social and justice issues reviewed. Overall, the recommendations seek to ensure the health, strength and vibrancy of the four communities by recognition of:

- (a) sovereignty;
- (b) economic viable land bases; and
- (c) the development of aboriginal justice systems, whether traditional or otherwise

Patricia Hughes and Mary Jane Mossman, "Re-Thinking Access to Criminal Justice in Canada: A Critical Review of Needs and Responses (2002) 13 *WRLSI* 1.

Summary: Processes of restorative justice are often identified as aboriginal justice processes -- they involve circles which bring together the offender, the victim, their families and their communities with the objective of healing all of the participants. The Aboriginal justice approach recognizes the needs to address both past and future prevention measures.

H Archibald Kaiser, "The Criminal Code of Canada: A Review Based on the Minister's Reference," (Special Edition: Aboriginal Justice, 1992) 26 *UBC L Rev* 41-146.

Summary: This article reviews a number of key Aboriginal law cases developed in the context of the Criminal Code.

- *R v Marshall* (see discussion in the Royal Commission on the Donald Marshall Jr. Prosecution, *Digest of Findings and Recommendations* (Nova Scotia: Province of Nova Scotia, 1989). Online: Province of Nova Scotia, below).
- *R v Andrews*: The purpose of equality rights was said to include equality both in the formulation and application of law and also the promotion of a society where law recognized humans as being "equally deserving of concern, respect and consideration".
- *R v Turpin:* case equality was discussed from the perspective of citizens being equally subject to the demands and burdens of the law and suffering no disability in the substance and application of the law, an analysis consistent with the traditional rule of law.

    - Inequality: the disadvantages imposed by inequality are persuasive and they are also permanent, unless meaningful remedial measures are taken.
    - Access to justice is a powerful phrase, with access connoting the "approach, or the means or the power of approaching' justice itself.
    - "Native Canadians have a right to a justice system that they respect and which respect for them " See *Royal Commission on the Donald Marshall, Jr Prosecution, Commissioners Report: Findings and Recommendations* 1989, Volume 1, (Government of Nova Scotia: 1989) at 1623.
- *R v Sparrow*: recognition and affirmation requires sensitivity to respect the rights of aboriginal peoples on behalf of the government, court and all Canadians.
- Criminal law: Canadian criminal law has not contributed to the maintenance of a just, peaceful and safe society for Aboriginal peoples. Neither has it dealt fairly and appropriately with culpable conduct or, for that matter, even identified what behaviour threatens serious harm. This perspective causes one to think of ways in which Aboriginal peoples can be better treated by the criminal justice system and more broadly by the general social order, given that criminal law does not exist in isolation. It is an outlook which maintains social justice, as well as narrower concerns such as the reform of the law alone.
- The Marshall Commission and most other serious studies of the Aboriginal experiences with Canadian criminal justice seem to reach the same conclusion on the absolute necessity of dealing with the historically inequitable treatment of Aboriginal peoples by the dominant society. It is readily apparent that patterns of excessive involvement with the criminal justice system by Aboriginal people do not occur because of the predisposition to crime or rejection of mainstream values. People cannot be subject to a disastrous socio-economic situation generations and then be expected to behave in same way that they would have had they been treated fairly by the colonizing powers.

P A Monture-Oksnrr, ME Turpel, "Aboriginal Peoples and Canadian Criminal Law: Rethinking Justice" (1992) *UBCL Rev* 239-279.

Summary: Aboriginal law was conceptualized in a different way than the Western criminal justice system law model. In the Aboriginal conception, laws were not written because law needs to be accessible to everyone. In an oral system, the law is carried with each individual wherever he or she travels. Thus, a system in which laws are accessible only through lawyers and professionals seems very remote, unapproachable and not connected to the kinship structure of Aboriginal communities.

The role of a judge is compared to that of an elder in the Aboriginal community. The wisdom, knowledge and respect of an Aboriginal community are earned through one's experiences; therefore professionals who come into contact with Aboriginal people are not necessarily respected simply by virtue of their professional qualifications.

Meaningful participation and equitable treatment are pre-conditions to holding a sincere respect for any system, particularly a system of justice. Aboriginal people's views of conflict and its resolution have absolutely no voice in the current order. By meaningful participation the author suggests that Aboriginal people must be encouraged to participate in the system by defining the meaning, institutions and standards of justice in their own communities.

Integration is not desired; rather the Aboriginal goal is autonomy and respect for difference. Equal access framed in assimilation terms can be seen as inequitable when the position of Aboriginal peoples is viewed in a historical, cultural and linguistic perspective. Justice in the context of Aboriginal peoples must involve a

respect for, and toleration of, difference. Aboriginal justice requires a legally based commitment to cultural diversity and aboriginal collective rights to be determine our own destiny. Justice must allow us to resist structures that are imposed unjustly and it must comprehend a commitment to political arrangements negotiated with aboriginal peoples in good faith. Aboriginal criminal justice must mean justice as it understood by Aboriginal peoples for their communities and not only as conceptualized by non-aboriginal Canadians. In other words justice must encompass inclusion and not reinforce exclusion: it must include Aboriginal systems for Aboriginal communities and into ignore basis cultural differenced irrespective of where an Aboriginal person resides.

Royal Commission on the Donald Marshall Jr. Prosecution, *Digest of Findings and Recommendations* (Nova Scotia: Province of Nova Scotia, 1989). Online: Province of Nova Scotia <http://www.gov.ns.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf>.

Summary: Donald Marshall is an Aboriginal man who was wrongfully convicted of murder. The fact that he was aboriginal played a large factor in his wrongful conviction and subsequent imprisonment. The Commission found that the criminal justice system failed Donald Marshall Jr. at virtually every turn; from his arrest and conviction in 1971 up to and even beyond his acquittal by the Supreme Court of Nova Scotia in 1983. Marshall was denied justice because "Indians suffer adverse effects from the predominantly White criminal justice system, we need to find a way to change the system. Native Canadians have a right to a justice system they respect and which has respect for them, and which dispenses justice in a manner consistent with and sensitive to their history, culture and language." The Commission argued that the criminal justice system cannot be influenced by the colour of a person's skin. Many of the causes of discrimination are rooted in institutions and social structures outside the criminal justice system, and there should be specific steps that can and should be taken to reduce discrimination in the justice system itself: "There were and are serious shortcomings in the justice system. The recommendations are intended to remedy those shortcomings and to promote a system id administration of justice which response appropriately and fairly in all cases". The report suggests that a Native Criminal Court be established in Nova Scotia: "Native Canadians have a right to a justice system that they respect and which has respect for them, and which dispenses justice in a manner consistent with and sensitive to their history". According to <http://www.courts.ns.ca/provincial/index_pc.htm>, there are currently no native criminal courts established in Nova Scotia.

Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System (The Ipperwash Inquiry),* (Ontario, 2007). Online: Ontario Archives <http://www.archives.gov.on.ca/en/e_records/ipperwash/policy_part/research/pdf/Rudin.pdf>.

Summary: This report reviews the overrepresentation of Aboriginal peoples in the criminal justice system, with a particular focus on the situation in Ontario. Reasons for Aboriginal overrepresentation: 1) culture clash, 2) socio-economic, 3) colonialism. Historically, governments in Canada have used the police to pre-emptively resolve Aboriginal rights disputes by arresting those attempting to exercise the disputed rights prior to determining the validity of the claims. In addition, police have been used to further the objectives of the gov't in terms of cultural assimilation of Aboriginal people through apprehension of children in order to have them attend residential school, and later in support of welfare agencies. Police also were used to support many of the most egregious provisions of the Indian Act. Aboriginal peoples are not only overrepresented in the criminal justice system as accused persons, but they are also overrepresented as victims of crime and violence.

Judge Anthony Sarich, *Report on the Cariboo-Chilcotin Justice Inquiry* (British Columbia: Cariboo-Chilcotin Justice Inquiry, 1993). Online: Legislative Assembly of British Columbia <http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/149599/cariboochilcotinjustice.pdf>.

Summary: This report summarizes the findings of the Cariboo-Chilcotin Justice Inquiry which investigated complaints made by First Nations people about the justice system. The report describes the history of a tense relationship between natives and non-natives in British Colubmia, the "clash of cultures," and various descriptions of interactions between aboriginal populations and the justice system. The complaints expose systemic discrimination and abuse by RCMP/the justice system, and also reveal how non-Native authorities had been unrelenting in imposing their values onto native populations from the time of first contact with European colonists. Particular attention was given to addressing complaints about the residential school system. The report concludes by making recommendations for the conduct of government agencies, police, search and rescue, courts, legal aid, native court workers, and for the management of the Community Law Centre at Quesnel.

Judge Patricia Linn and Representatives of FSIN, Saskatchewan and Canada, *Report of the Saskatchewan Indian Justice Review Committee* (Regina: Saskatchewan Queen's Printer, 1992). Online: Saskatchewan Queen's Printer <http://www.qp.gov.sk.ca/documents/misc-publications/Indian_Justice_Review_Comm.pdf>.

Summary: This report examines the interactions between Saskatchewan Aboriginal peoples and the criminal justice system. Areas of focus include youth justice, policing, legal representation, sentencing alternatives, court services and corrections. The report also reviews overarching social issues affecting the Aboriginal population in Saskatchewan and makes suggestions for improving relations between Aboriginal peoples and the criminal justice system.

Michael Jackson, "Locking up Natives in Canada" in 23 *UBC Law Rev* 215 (1989) at 218. Online: Social Science Research Network <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1890909>.

Summary: "The native people of Canada have, over the course of the last two centuries, been moved to the margins of their own territories and of our "just" society. This process of dispossession and marginalization has carried with it enormous costs of which crime and alcoholism are by two items on a long list." (p218).
"The implication of a continuing failure by the federal and provincial governments to give constitutional and legal muscle to native self-determination is that the harsh reality underlying the social statistics regarding the condition and situation of native people will continue to get worse." (p220)
Two statements from *R v Williams* are referenced:

- "There is an equation of being drunk, Indian and in prison. Like many stereotypes, this has a dark underside. It reflects a view of native people as uncivilized and without a coherent social or moral order. The stereotype prevents us from seeing native people as equals."
- "If jurors are susceptible to stereotypes, there is no reason to believe that others involved in the justice system are any more immunes to this phenomenon."

This paper examines what lawyers can do beyond asking politicians to complete the unfinished constitutional business with Canada's native peoples, in terms of:

- Setting up an Aboriginal justice system in Canada
- Discussion of native courts in the US, Australia and Papua New Guinea
- The idea of an Aboriginal justice system is examined in the context of Canadian history and Aboriginal law
- Possible sentencing accommodations for Aboriginal persons within the existing structures of the Canadian justice system

- Aboriginal peoples within the Canadian prison system

Hon J David H Wright, *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild* (Regina: Saskatchewan Justice, October 2004). Online: Saskatchewan Justice <http://www.justice.gov.sk.ca/stonechild/finalreport/Stonechild.pdf>.

Summary: The Stonechild Inquiry was a government-led inquiry with the specific mandate of discovering the facts about the tragic freezing death of seventeen-year-old Neil Stonechild and the subsequent police investigation. Recommendations from the Stonechild Inquiry failed to adequately address the need for comprehensive monitoring systems to enforce compliance. Nonetheless, there were some useful recommendations, such as the proposal for the integration of police training with greater cultural sensitivity training and allowing for a better understanding of Aboriginal culture. Eighteen years after the death of Neil Stonechild, numerous inquiries, commissions, and reports have not reduced police violence in relation to Aboriginal people.

Aboriginal Justice Reform and Alternative Models for Aboriginal Justice

Aboriginal Justice Inquiry, *Report of the Aboriginal Justice Inquiry of Manitoba. Volume 1: The Justice System and Aboriginal People* (Winnipeg: Province of Manitoba, 1991). Online: The Aboriginal Justice Implementation Commission <http://www.ajic.mb.ca/volumel/toc.html>.

- Chapter 3: Justice is understood differently by Aboriginal and non-Aboriginal people. The commissioners inquiry traced the historic roots of the Canadian dominance of the Aboriginal people's justice systems and clearly saw the role of law-making bodies, the police and the courts in overcoming "any resistance which Aboriginal people might have expressed to the government's new policy" through "aggressive, coercive methods to bring about Aboriginal assimilation.
- Chapter 4: Aboriginal people are overrepresented in the criminal justice system in Manitoba. The over-representation of Aboriginal people occurs at virtually every step of the judicial process, from the charging of individuals to their sentencing.
- Two overlapping causes of Aboriginal overrepresentation are examined:
  - Aboriginal people are victims of a discriminatory justice system; and
  - Aboriginal people commit a disproportionate number of crimes. This is not to say that Aboriginal people are predisposed to criminal behaviour, but rather that Aboriginal criminal behaviour is rooted in a long history of discrimination and social inequality that has impoverished Aboriginal people and consigned them to the margins of Manitoban society.
- Chapter 7: The report recommends that the establishment of an entirely separate Aboriginal justice system is necessary to address the overrepresentation of Aboriginal people in the court and prison systems.
- Incremental changes to the current justice system cannot adequately address the problems that exist today, and that an Aboriginal justice system deal with legal matters affecting Aboriginal people in more appropriate ways.
- "[An Aboriginal justice system] offers the logic of redressing in a significant way the wrongs inflicted on Aboriginal people by a foreign, unknowledgeable and insensitive system."

Advisory Committee on the Administration of Justice in Aboriginal Communities, *Justice For and By the Aboriginals: Report and Recommendations of the Advisory Committee on the Administration of Justice in Aboriginal Communities* (Quebec: Justice Quebec, 1995).

Summary: This study sought to consult with Aboriginal communities in Québec to devise a model of justice specific to Aboriginal communities that can respond to the needs of the community and be respectful and inclusive of Aboriginal traditions, customs, and socio-cultural values. The suggestions presented in this study are the result of extensive consultations with Aboriginal communities in Québec and are intended to represent community-specific needs, and desires in the process of justice administration. The report presents suggestions for very specific areas of the justice system, including, mediation, diversion, sentencing, legal aid, judges, interpreters, youth, and local authorities. The primary conclusion reached by this report is that none of the suggested reforms will be effective without the full participation of the Aboriginal communities. A brief summary of the report can be found at: Justice Quebec <http://www.justice.gouv.qc.ca/english/publications/rapports/coutu-f-a.htm>.

John Borrows, *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010).

Summary: This article examines the history and structure of both Western and Indigenous legal traditions, including examples of Indigenous law. It discusses how the judicial system could be reformed to recognize Indigenous legal traditions and allow develop Aboriginal justice as a self-supported institution.

Canadian Bar Association*, Report of the Canadian Bar Association Committee on Aboriginal Rights in Canada: An Agenda for Action* (Ottawa: Canadian Bar Association, 1988).

Summary: The professional authority of the Canadian justice system lacks legitimacy from the aboriginal perspective. For First Nations, Métis, and Inuit peoples, the courts, police, prisons and lawyers represent elements of a foreign system. The values represented by basic tenets of general private and public law do not reflect the values of Aboriginal peoples. The emphasis on individuals and on personal rights as against the interest of the community is not shared by many Aboriginal peoples living in Canada. The legal system is not viewed as a protector of what Aboriginal peoples hold dear, but, rather as a way to impose non-Aboriginal law upon them. With the exception of some parts of the Northwest Territories, Aboriginal people are not judged by juries of their peers. The current court system does not generate a belief among Aboriginal peoples that the criminal justice system is impartial to the skin colour of the accused.

Justice Robert Allan Cawsey, "The Cawsey Trial" in *Justice on Trial: Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta* (Edmonton: Alberta Justice and Solicitor General, 1991). Online: Alberta Justice and Solicitor General <http://justice.alberta.ca/programs_services/aboriginal/Publications%20Library%20%20Aboriginal%20Justice/CawseyReportVolumeI.aspx/DispForm.aspx?ID=15>.

Summary: The justice system: In general, many of the problems that Aboriginal peoples have with the criminal justice system are a result of the implicit values of Western society which are embodied in Canadian law. The end result is a clash of two cultures. For the Aboriginal peoples of Alberta, this results in nonfulfillment and frustration of expectations, because the criminal justice system does not reflect their conception of life and existence. Until the implicit convictions of Indian and Métis people are included in the underlying premises of Canadian law, Aboriginal people will continue to have "run-ins" with the law because of their differences of ethos.

The Indian justice model: The Aboriginal concept of justice is different from the Western concept of justice. The aim of an Aboriginal dispute resolution system is to find a practical resolution, restore co-operative co-

existence and eliminate bad feelings. Having realized that the Western system does not aspire to the same goals as the traditional system, Aboriginal peoples propose to dismiss the Western system from their communities so they can revert back to a justice system using Aboriginal values.
What is the solution?: To consider alternative methods of dealing with First Nations and Métis people involved with the criminal justice system, it is necessary to take into account First Nations and Métis cultures, languages and special needs. The Canadian justice system must work together with Aboriginal peoples to recommend changes which will bring substantive equity into to the existing system by appreciating culture, languages and special needs of Indian and Métis people, particularly First Nations and Métis youth.

See also: **Justice Robert Allan Cawsey, *An Aboriginal Perspective on Justice* (Edmonton: Alberta Justice and Solicitor General, 1991). Online: Alberta Justice and Solicitor General <http://justice.alberta.ca/programs_services/aboriginal/Documents/cawsey/Cawsey_I_9.pdf>.**

Curt Griffiths, "Sanctioning and healing: Restorative justice in Canadian aboriginal communities" (1996) 20 *International Journal of Comparative and Applied Criminal Justice* 195-208.
Summary: The article focuses on the emergence of alternative justice programs and forums in Aboriginal communities that incorporate elements of traditional cultural practice. The initiatives premised on a restorative model of justice, address the needs of victims, offenders and the community in a holistic framework.

Michael Jackson, "Special Edition: In Search of the Pathways to Justice: Alternative Dispute Resolution in Aboriginal Communities" (1992) *UBCL Rev* 147-238.
Summary: Jackson explores the assumptions, values and processes underlying Aboriginal justice systems as well as alternative dispute resolution based on restorative justice principles. The right of Aboriginal peoples to develop their own systems of justice must be recognized and not seen as a symbol of failure, but rather an integral part of the completion of Confederation that includes all of Canada's founding nations.

Law Reform Commission of Canada, Aboriginal Peoples and Criminal Justice: Equality, Respect and the Search for Justice, Report No. 34 (Ottawa, 1991).
Summary: This report reviews and makes recommendations on Aboriginal access to justice issues, including:

- The Aboriginal perspective on criminal justice
- The meaning of equal access to justice
- The desirability of Aboriginal justice systems
- Fostering understanding and building bridges with Aboriginal communities
- Changing roles and reforming the justice process, including the roles of police, prosecutors, defence counsel, the courts, bail, sentencing and the corrections system
- How to ensure progress is achieved.

Willie Littlechild (Chair), *Legacy of Hope: An Agenda for Change – Final Report of the Commission on First Nations and Metis Peoples and Justice Reform.* (Saskatchewan: Commission on First Nations and Métis Peoples and Justice Reform, 21 June 2004). Online: Saskatchewan Justice <http://www.justice.gov.sk.ca/justicereform/>.

Summary: This Commission considered all components of the criminal justice system as it related to aboriginal communities in Canada including, but not limited to: policing, courts, prosecutions, alternative measures, access to legal counsel, corrections including community corrections, youth justice, community justice processes, and victims services (page 1). It found that aboriginal issues and reasons for conflicts with the law "are rooted in failures in the areas of education, health and economic development" (page 1). The Commission proposed both short and long-term strategies to address the issues outlined in its mandate, in hopes of aiding the return of responsibility for justice to the Aboriginal community in Saskatchewan. The following areas were examined:

- Empowering First Nations and Métis Leadership
- Creative Healthy, Just, Prosperous and Safe Communities in Saskatchewan
- Violence & Victimization
- Restorative Justice: Restoring Justice in Saskatchewan
- Policing
- Justice Institutions
- Eliminating Racism: Creating Healthy Relationships in Saskatchewan
- Children and Youth: Realizing Potential
- Aboriginal Justice in Saskatchewan 2002-2021: The Benefits of Change
- Implementation - A blueprint for Returning Justice to the Community
- Summary of Final Report Recommendations
- Summary of Recommendations from Previous Reports
- Response to Interim Report Working Together - Recommendation 3-1
- Justice Reform Commission Process

Wanda D McCaslin, ed, *Justice as Healing Indigenous Ways* (St. Paul, Minnesota: Living Justice Press, 2005).

Summary: This is a collection of writings on Aboriginal justice in Canada, the United States and other countries. The papers are divided into parts of the Healing Process:

- Part I: Speaking the Truth
- Part II: Being a Good Relative
- Part III: Relying on Our Own Ways

Writings of particular interest include:

- Wanda D McCaslin, "Saskatchewan Holds Court in Cree" (347).
- Judge L S Tony Mandamin, "Peacemaking and the Tsuu T'ina Court" (349).

Bruce Granville Miller, *Oral History on Trial: Recognizing Aboriginal Narratives in the Courts* (Vancouver: University of British Columbia Press, 2011).

Summary: The author critiques the Crown's use of Aboriginal oral histories as evidence in the Canadian court system and discusses how oral histories might be better incorporated into the justice system.

Rupert Ross, "Restorative Justice: Exploring the Aboriginal Paradigm" (1995) 59 *Sask L Rev* 431 at 432.

Summary: The author questions the Aboriginal need for the Western justice system. "If one follows respect, the conclusion is that no justice system is more valid than the other. But the Euro-Canadian validity is forced upon our ways. The Euro-Canadians are breaking our laws day in and day out, as they accuse us of breaking their laws" -An Ojibway Elder. Restorative justice principles and processes are the most widely advocated way to increase access to criminal justice for Aboriginal peoples.

Beverly Spencer, "A Different Kind of Justice" 20 *The Canadian Bar Association: National* 5 (July-August 2011) 18-28. Online: Canadian Bar Association National Magazine <http://cbanational.rogers.dgtlpub.com/2011/2011-08-31/pdf/A_different_kind_of_justice.pdf.>

Summary: Fetal Alcohol Spectrum Disorder (FASD) is an umbrella term for a complex range of brain injuries in children and adults whose mothers abused alcohol during pregnancy. FASD is not a problem that is exclusive to northern Canada or to Aboriginal peoples. However, a large number Aboriginal people and communities in the North are impacted by FASD. As well, most of the Canadian legal cases citing FASD as a factor have involved Aboriginal peoples. The Canadian criminal justice system is based on assumptions which are contrary to the realities of FASD, because the accused is assumed to be able to make informed and voluntary choices with respect to the exercise of their rights. The accused is presumed to be fit to stand trial and not to suffer from a mental disorder which would exempt them from criminal responsibility. Exemptions are only made for extreme cognitive impairments which would prevent the accused from understanding proceedings or appreciating the consequences or wrongfulness of their actions. Accused persons with FASD do not fall within the narrow exemption, yet they may not appreciate the consequences of their choices. Thus, crimes committed by accused persons with FASD must be understood in the context of their cognitive brain damage.

The criminal justice system also assumes that mental disorders can be treated such that an accused could be rehabilitated to the point where they could be fit to stand trial or be safe to release because they no longer represent a danger to the public. This is contrary to the realities of FASD, since the brain damage is permanent. Fia Jampolsky, a lawyer in Whitehorse, describes one of her FASD clients as a "lost soul" who "couldn't spend more than three weeks out of the (criminal justice) system ... I don't think his behaviour is necessarily criminal … he's a victim more often than he's an offender and he lacks the services and resources that may have been able to stabilize him." Because he has no physical symptoms, she notes that "it is hard for people to see him as anything less than willfully disregarding the law."

Whitehorse's Community Wellness Court is a therapeutic court focusing on rehabilitation and reconciliation. This type of court is based on assumption that an integrated program of intense supervision, treatment, therapeutic support and skills development will produce better results for the offender, the victims and the community. One of the most important roles of the Yukon wellness court is getting a proper diagnosis for offenders with suspected FASD. Once the individual is found to be a suitable candidate for the programs, the judge can order a formal FASD assessment. The assessments help the court develop a wellness plan for each individual. The diagnosis is accompanies by an assessment if individual skills and abilities and recommendations on how to deal with them in the justice system. The goal is to create an environment and structure that allows them to function in a way that keeps them from coming into conflict with the law.

Judge Karen Ruddy says" We have to ask ourselves in each case, "Do we have what this person needs to be able to help them?" and the sad reality is sometime we don't." In regards to the FASD clients she says "the nature of the disorder differs from person to person... It helps you clearly understand what you can expect from a particular individual in terms of what they can do and what they can't do." Judge Ruddy explains that "the nature of FASD means that their (the accused's) behaviour is not going to improve over time. The goal is to create an environment and structure that allows them to function in a way that keeps them from coming into conflict with the law.

Wendy Stewart, Audrey Huntley and Fay Blaney, *The Implications of Restorative Justice for Aboriginal Women and Children Survivors of Violence: A Comparative Overview of Five Communities in British Columbia* (Ottawa: Law Commission of Canada, 2001) at 32-33.

Summary: A focus group was conducted regarding the impact of the justice system on aboriginal women and children. Stories of police brutality and disillusionment with the criminal justice system are "all too common." In many cases, police attitudes and responses were cited as the biggest deterrent in seeking support or reporting violence. Generally, the report found the police discriminate against Aboriginal peoples and often fail to respond when called. In cases of domestic violence, the lack of response by officials can exacerbate existing power imbalances between victims and police, thus placing victims (who are mostly women) at a higher risk of violence. "I am forced to conclude that being identifiable as Aboriginal in Canada means that calling for help is a crapshoot." If the justice system does not deliver to certain individuals the benefits that its claim to coercive force promises, the use of this force on those individuals must be seen as oppression.

Aboriginal Peoples in the Prison System

Statistics: Aboriginal Peoples in the Prison System

Samuel Perreault, "The incarceration of Aboriginal people in adult correctional services" (July 2009) 29:3 *Juristat* 5, Statistics Canada Catalogue No 85-002-X, vol 29, no 3.
Summary: Aboriginal adults in Canada have a higher representation in state custody as compared to non-Aboriginal adults. In 2007/2008, Aboriginal adults accounted for 22% of the admissions to sentenced custody, while representing 3% of the general Canadian population. Factors such as demographic (age) profiles and employment/education levels of young Aboriginal adults can only partially explain why the Aboriginal population is overrepresented in the correctional services program. Among the provinces, the representation of Aboriginal adults in custody was higher in western provinces. For example, in Saskatchewan, 81% of admissions into provincial sentenced custody are Aboriginal adults, while Aboriginal adults only represent 11% of the general population.

Howard Sapers, *Annual Report of the Office of the Correctional Investigator 2011-2012*, (Ottawa: Office of the Correctional Investigator, 2012) at 39-40, Catalogue No PS100-2012E-PDF. Online: <http://www.oci-bec.gc.ca>.
Summary: As of 2012, Aboriginal peoples represent 21.4% of the federal population although Aboriginal peoples represent only 4% of the general population. Over the last 10 years, the non-Aboriginal inmate population has increased by 2.4%, while the Aboriginal inmate population has increased by 37.3%. Aboriginal offenders are much more likely to have their parole revoked, less likely to be granted day or full parole and most often released on statutory release or held until warrant expiry date. Aboriginal offenders return to the correctional system custody at a higher rate of post-warrant expiry than non-Aboriginal persons. Aboriginal male inmates are twice as likely to be affiliated with a gang. Aboriginal inmates are disproportionately more involved in self-harm incidents. The Office of the Correctional Investigator predicts that the proportion of Aboriginal inmates will reach one-in-four in the near future.

Reports: Aboriginal Peoples in the Prison System

Howard Sapers, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*, (Ottawa: Office of the Correctional Investigator, October 22, 2012), Catalogue No PS104-6/2013E-PDF. Online: <http://www.oci-bec.gc.ca>.
Summary: Over-representation of Aboriginal people in federal corrections is pervasive and growing:

- Today, 23% of the federal incarcerated population is Aboriginal.
- Since 2005-06, there has been a 43% increase in the Aboriginal inmate population.
- One in three federally sentenced women offenders are Aboriginal.
- Highest concentration in the Prairie Region.
- Recent growth in correctional populations is primarily attributable to rising number of Aboriginal admissions and readmissions.

The high incarceration rates for Aboriginal people are linked to social, economic and historical factors (*R v Gladue*). Aboriginal inmates are:

- Classified as higher risk and higher need in categories such as employment, community reintegration, substance abuse and family supports.
- Released later in their sentence (lower parole grant rates), most at Statutory Release (2/3) or Warrant Expiry dates.
- Over-represented in segregation and maximum security populations.

- Disproportionately involved in use of force interventions, prison self-injury and segregation placements.
- More likely to return to prison on revocation of parole.
- More likely to be gang-affiliated.

The Corrections and Conditional Release Act (CCRA) has been in force since 1992, and contains two Aboriginal-specific provisions to enhance Aboriginal community involvement in corrections and address chronic over-representation of Aboriginal people in federal corrections. Section 81 allows for the Minister to enter into agreements with Aboriginal communities to transfer care and custody of Aboriginal offenders who would otherwise be held in a CSC facility. Section 84 provides for Aboriginal community involvement in release planning of an Aboriginal offender returning to their community.

Correctional Service Canada (CSC) has failed to meet Parliament's intent for section 81 and 84. The Office of the Correctional Investigator has made recommendations to rectify this situation, including the appointment of a Deputy Commissioner for Aboriginal Corrections, securing appropriate funding for initiatives, staff training in Gladue principles and resolving issues relating to Elder services.

Aboriginal Women in the Prison System

Statistics: Aboriginal Women in the Prison System

Mandy Wesley, Marginalized: The Aboriginal Women's Experience in Federal Corrections, (Ottawa: Public Safety Canada, 2012). Online: <http://www.publicsafety.gc.ca>.

Summary: One out of every three women federally incarcerated is of Aboriginal descent. Aboriginal women represent the fastest growing offender population, having increased by nearly 90% over the last 10 years Aboriginal women in federal penitentiaries tend to be younger than their non-Aboriginal counterparts, with the average age of a female Aboriginal inmate being 34 years old. Aboriginal women offenders are generally not married. Generally, Aboriginal women are incarcerated for serious offences

- Aboriginal female offenders tend to have a low level of education
- Aboriginal female offenders have low employment levels
- Aboriginal women in federal penitentiaries have a more extensive criminal history including youth convictions, previous adult convictions (provincial and/or federal) and previous community supervisions
- Aboriginal female offenders tend to have a history of past breaches and failures to comply with conditional release terms and/or community sanctions

Reports: Aboriginal Women in the Prison System

Correctional Service Canada, Creating Choices: Report of the Task Force on Federally Sentenced Women (Ottawa: Correctional Service Canada, 1990). Online: <http://www.csc-scc.gc.ca/text/prgrm/fsw/choices/toce-eng.shtml>.

Summary: As quoted by an aboriginal parolee: "The critical difference is racism. We are born to it and spend our lives facing it. Racism lies at the root of our life experiences. The effect is violence, violence against use, and in turn own violence. The solution is healing: healing though traditional ceremonies, support, understanding and the compassion that will empower Aboriginal women to the betterment of ourselves, our families and our communities." (Aboriginal Parolee, Member of the Task Force Steering Committee and Member of the Aboriginal Women's Caucus, Chapter 1).

See also: **Meredith Robeson Barrett, Kim Allenby and Kelly Taylor, Twenty years later: Revisiting the Task Force on Federally Sentenced Women (Ottawa: Correctional Service Canada, 2010).**

Meredith Robeson Barrett, Kim Allenby and Kelly Taylor, Twenty years later: Revisiting the Task Force on Federally Sentenced Women (Ottawa: Correctional Service Canada, 2010). Online: Correctional Service Canada <http://www.csc-scc.gc.ca/text/rsrch/reports/r222/r222-eng.pdf>.

Summary: 20 years after the "Creating Choices" report, progress has been made in improving conditions for federally sentenced women by the Correctional Service Canada. There has been improvement in terms of options for Aboriginal women, with regard to programming, access to Elders, spiritual practices and housing options, as indicated by many of the Aboriginal women's experiences. While women's correctional practices in Canada have improved greatly since the initial survey, some areas remain where further development would be beneficial.

See also:

Correctional Service Canada, Creating Choices: Report of the Task Force on Federally Sentenced Women (Ottawa: Correctional Service Canada, 1990).

Access to Legal Information

Yedida Zalik, *Aboriginal Peoples and Access to Legal Information* (Toronto: Community Legal Education Ontario, 2006).

Summary: There is a need for information on the criminal process and family law process. There is a consensus that clients require more information about their rights at every stage of the criminal process, including pre-charge, post-charge and on different forms of release.

Aboriginal people need more information on their rights to hunt and fish. Residential schools claims are another area of concern, there is a lack of information for claimants on how the process works for resolution of claims.

This report also highlights the channels in which the information can be communicated to the Aboriginal communities seeking the information.

Legal Aid

Legal Aid Ontario, “New brochure addresses access to justice issues” (Toronto: Legal Aid Ontario, 12 May 2009). Online: <http://www.legalaid.on.ca/en/news/newsarchive/0905-12_aboriginalbrochure.asp>.

Summary: Legal Aid Ontario has published a brochure entitled “Why it is important to tell your lawyer you are Aboriginal?” (Download at <http://legalaid.on.ca/en/getting/downloads/aboriginalbrochure.pdf>). It explains why it is important for Aboriginal people to self-identify themselves to their lawyers so that all legal options can be explored in an effort to address the problems of overrepresentation in the prison system and to explore alternatives and areas of law concerning Aboriginal circumstances and rights.

Some examples given are:

- The use of the *Gladue* courts;
- The potential to be referred to other Aboriginal-specific justice programs;
- Whether any *Indian Act* provisions have implications on the legal matter (i.e. family law and matrimonial property on-reserve);
- What landlord and tenant law issues may be involved when living on-reserve; and
- The *Child and Family Services Act (CFSA)* also has special provisions for Aboriginal culture.

Roland Penner, “Access to Justice: “An Aboriginal Odyssey”“ (2001) 19 *Windsor YB Access Just* 341.

Summary: The author discusses his interactions with Aboriginal peoples growing up in Manitoba and how the Aboriginal population was “politically, socially and culturally invisible.” As a practicing lawyer in Manitoba, the author notes that his knowledge of Aboriginal people, Aboriginal organizations, Aboriginal history, Aboriginal aspirations, Aboriginal poverty and exploitation with the residential school was normal and distant at best. He describes how his experiences changed as he had the opportunity to work with Elijah Harper to prepare a position paper for a conference after the *Constitution Act 1982* came into force.

Sociological and Background Information

Sociological Perspectives on Aboriginal Peoples and the Justice System

Martin J. Cannon and Lina Sunseri , eds, *Racism, Colonialism and Indigeneity in Canada: A Reader* (Toronto: Oxford University Press, 2011).

- Essays by scholars and Aboriginal writers illustrate how racism and colonialism have shaped the lives of Aboriginal peoples in Canada.
- Topics include family relations, human rights, citizenship, matrimonial property, territorial rights, education and criminal justice.
- Discusses socially constructed power dynamics such as decolonization, gender discrimination, racialization and “othering,” marginalization and criminalization.

Sherene H Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George” in *Race, Space, and the Law: Unmapping a White Settler Society,* Sherene H Razack, ed (Toronto:

Between the Lines Press, 2002) at 121. Online: University of Victoria, Department of Women's Studies <http://web.uvic.ca/~ayh/104%20Razack%20WS104.PDF>.

Summary: This text introduces the concept of racialized space. This concept is demonstrated in examining how Aboriginal women have been put into spaces of poverty, violence, and prostitution by the white settler society.

As an example of this concept, the Pamela George case is examined. Pamela George was an Aboriginal woman working as a prostitute who was severely beaten and killed by two young white men. Instead of being seen as violent and remorseless murderers, the lens of white privilege portrayed the killers were seen as innocent "college boys" who had "a bright future ahead of them" who should not be tarnished by their "mistake." Much research was done into the boys' background stories, such as their depiction as promising college students innocently trying to celebrate the end of their school term on Easter weekend. This characterization of the two men served to remove their culpability for their acts, leading to a verdict of manslaughter instead of murder.

The lens of white privilege did not see Pamela George as a victim of violence, but rather as a dehumanized object of little value. The attitude was that she was a "dirty native" who was "asking for it" and that both her past and her future were perceived as being unimportant in the context of the trial. In this context, Pamela George's untimely death at the hands of the college boys seems pre-determined and unavoidable; as if they are puppets playing out the roles written for them by Canada's colonial past. The courts made little effort to research Pamela George's background beyond the fact that she was originally from a reserve on the outskirts of town and worked on weekends as a prostitute. Consequently, Pamela George's life was considered to be of little value, especially compared to her killers' bright futures.

Aboriginal peoples have become synonymous with certain spaces of poverty, such as downtown East-side Vancouver, or the inner-city area of Regina where Pamela George had met her killers. Razack argues that it is race, not class, which is the major determining factor that allows certain bodies in specific places to be found undeserving of full personhood. The act of prostitution itself (i.e. enabling men to dominate and dehumanize others), as well as the importance that the law places on contracts, both serve to sustain the colonial social order.

The systemic racialization of Aboriginal women is intrinsically woven into today's society, where the dominant power continues to reside in bodies who are white, male and have Christian-enlightenment values.The circumstances of systemic racialization set the stage for incidents such as Pamela George's murder, making the acts of the players inevitable. Aboriginal women have and will continue to face violence at the hands of white men until this power structure is deconstructed.

Stormy Ogden, "The Prison Industrial Complex in Indigenous California" in Julia Sudbury, ed, *Global Lockdown: Race, Gender and the Prison-Industrial Complex* (New York: Routledge, 2005). Online: Women and Prison: A Site for Resistance <http://womenandprison.org/prison-industrial-complex/view/the_prison_industrial_complex_in_indigenous_california/>.

Summary: Stormy Ogden, a Native American woman, speaks of her experiences and how they fit within the Prison Industrial Complex (as theorized by Angela Davis). Aboriginal women are over-represented in the

prison system and their numbers are growing very quickly. Ogden theorizes that Aborginal peoples are incarcerated to keep them “out of sight, out of mind” and as a method of social control by the United States government. While in prison, almost all Aboriginal women are forced to take heavy doses of psychotropic drugs “to calm them down.” This overmedication compounds any existing issues they may face from drug or alcohol addiction, making recovery next to impossible.

Ogden then outlines the history of how the United States government imposed the American criminal justice system onto Native peoples. Finally, Ogden outlines the “prisonification of the native people” as a method of asserting control and dominance by the “foreign” United States government. While Ogden writes from an American perspective, her analysis is applicable to racialized systemic attitudes toward Aboriginal women in a Canadian context.

Grace Li Xiu Woo, *Ghost Dancing with Colonialism, Decolonizing and Indigenous Rights at the Supreme Court of Canada* (Vancouver: University of British Columbia Press, 2011).

Summary: During the twentieth century, international law formally rejected the conquest model. However, despite the best intentions of lawyers and judges, the beliefs and practices of the colonial age continue to haunt Supreme Court of Canada rulings concerning Indigenous rights. Woo's binary analysis casts explanatory light on ongoing tensions between Canada and Indigenous peoples, suggesting new ways to bridge the cultural divide and arrive at a truly postcolonial justice system.

Background Information on Aboriginal Peoples of Canada and the Justice System

CBC Canada, *8th Fire: Aboriginal Peoples, Canada & the Way Found*. (Canadian Broadcasting Corporation, 2012). Online: <http://www.cbc.ca/doczone/8thfire/index.html>.

Summary: Through television, radio and online interactive materials, Aboriginal storytellers discuss the state of Canada's Aboriginal peoples today and why Canada's 500 year-old relationship with Indigenous peoples needs to be fixed.

- *8th Fire* draws from an Anishinaabe prophecy that declares now is the time for Aboriginal peoples and the settler community to come together and build the '8th Fire' of justice and harmony. The television series is divided into four parts:
- EPISODE 1 Indigenous in the City: Meet the rich kaleidoscope of Aboriginal people who are fast joining the country's urban middle class and bringing their culture with them.
- EPISODE 2 It's Time!: Memorable people and stories from across the country illustrate why there's an economic, demographic and moral imperative to fix Canada's troubled 500-year relationship with Aboriginals.
- EPISODE 3 Whose Land Is It Anyway?: An evocative look at the role that land plays in the conflicted relationship with Aboriginal peoples and the rest of Canada.
- EPISODE 4 At the Crossroads: How the Aboriginal community's feisty and self-confident youth; the "Seventh Generation" who are taking new pride in their heritage and pointing the way forward to a new relationship.

CBC Radio One, "Brenda's Angel" produced for *The Sunday Edition* (originally broadcast 2 December 2012). Online: <http://www.cbc.ca/thesundayedition/documentaries/2013/07/07/a-daughter-a-mother-and-vancouvers-missing-women/>.

Summary: Brenda Wolfe, an Aboriginal woman suffering from mental health issues, disappeared from the streets of Vancouver in 1999. She was one of 67 women who were profiled by the 2010 Missing Women Inquiry, which challenged the Vancouver Police Department's inaction in protecting Aboriginal women as they continued to disappear between 1997 and 2002. Three years later, her remains were discovered on Robert Pickton's pig farm. Brenda's daughter, Angel, recounts her memories of her mother as well as her own experiences as she struggled with addiction, abuse and the foster care system, as she searched for answers after her mother's disappearance.

This documentary underlies the invisibility of Aboriginal peoples, particularly women, in Canadian society. The police did virtually nothing to investigate the disappearances, and there was very little media attention given to the missing women until Aboriginal peoples and allies began their protests. Even Angel's own treatment at the hands of authorities demonstrates the attitudes of apathy of authorities and society which marginalize Aboriginal peoples like her – that she was a wild child with no future, that her grief and anger

was best treated with prescription drugs that severely impaired her mental functioning, and that her strength and will to survive is considered miraculous instead of expected.

- See also: **Wally T Oppal, *Forsaken: The Report of the Missing Women Commission of Inquiry, Executive Report* (Vancouver: The Missing Women Commission of Inquiry, 2010).**

Gloria Galloway, "Attawapiskat's woes spark debate about what's wrong on Canada's reserves", *The Globe and Mail* (30 November 2011). Online: The Globe and Mail <http://www.theglobeandmail.com/news/politics/attawapiskats-woes-spark-debate-about-whats-wrong-on-canadas-reserves/article4179819/>.

Summary: This newspaper article was one of many which drew attention to the substandard living conditions of Canada's Aboriginal peoples in 2011, including those in the northern community of Attawapiskat.

Jules Koostachin, *Remembering Inninimowin*, 2010, Film. Can be ordered via V-Tape <http://vtape.org>.

Summary: This is a two-year long documentary film project on the personal journey of a Cree woman, Jules Koostachin, as she starts to remember her first language, Inninimowin (Cree). Koostachin describes the film as presenting "an alternative perspective crucial to comprehending the history of Canada's shameful treatment of its Indigenous population and the horrendous consequences that communities have been left to deal with." The film addresses the impacts of genocide on the Inninuwak, who have been systematically severed from their language and cultural practices. In addition, fewer people are using Inninimowin to communicate because of the strong English influence and changes in the environment, beliefs and customary practices have had a detrimental influence on Inninuwak urban and rural communities.

See also: **Jules Koostachin, "Remembering Inninimowin: The Language of the Human Beings" (2012) 27:1 *Can J L & Soc* 75-80.**

John Reilly, *Bad Medicine: A Judge's Struggle for Justice in a First Nations Community* (Calgary: Rocky Mountain Books, 2010).

Summary: Judge John Reilly of the Alberta Provincial Court shares his experiences as a judge dealing with Aboriginal offenders at the Stoney Indian reserve in Morley, Alberta.

Shirley Stirling, *My Name is Seepeetza* (Toronto: Groundwood Books, 1992).

Summary: In a series of recreated diary entries, Shirley Stirling shares her first-hand experiences of her childhood in an Indian Residential School.