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# Indigenous Overrepresentation in the Canadian Criminal Justice System

**LITERATURE REVIEW 2018**

Final Report Draft

# Section #1: Distinction of Different Canadian Indigenous Groups and Cultures

Many of the publications on the topic of Indigenous overrepresentation in Canada lumped together many of the different Indigenous groups as if they are one. While the latter portion of this literature review will discuss Indigenous overrepresentation on a national level – thereby generalizing the differing cultures into the single category of Indigenous peoples, it is important first to recognize the different Indigenous groups across Canada. This section will provide an overview of the variety of Indigenous groups, and how they may vary across provinces and territories. It will also serve to provide a brief description of some of the factors that are unique to the Indigenous populations in those provinces. This is done by providing a general overview of three Indigenous groups in Canada: First Nations, Métis, and Inuit. It is then followed by a breakdown by province which will indicate which groups are occupying certain provinces. This will serve to provide a more comprehensive understanding of the Indigenous cultures within Canada, and will – if only in this section – allow for individual recognition of culture. It will also discuss the proportions of Indigenous populations of each province.

### 1.1. First Nations, Métis, and Inuit Populations

"'Aboriginal ancestry' refers to whether a person has ancestry associated with the Aboriginal peoples of Canada, that is, First Nations (North American Indian), Métis, and Inuit. Aboriginal peoples of Canada are defined in the Constitution Act, 1982, Section 35 (2) as including the Indian, Inuit and Métis peoples of Canada" (Statistics Canada, 2017c). The 2016 Census saw that more than 1.6 million Indigenous persons were living in Canada, accounting for 4.9% of the Canadian population. First Nations persons accounted for 2.8% of the population of Canada, Metis persons accounted for 1.7% of the population of Canada, and Inuit persons accounted for 0.2% of the population of Canada.

### 1.2. Provincial Demographics

The 2016 Census surveyed Canadians to find those of 'Aboriginal Identity,' which is defined as a person who identified with the Aboriginal people of Canada (Statistics Canada, 2017a). This includes individuals who identify with being First Nations, Métis, Inuk (Inuit), or those who are Registered Indians or Treaty Indians under the Indian Act, or those who are band members. See Charts at the end of this section.

#### 1.2.1. British Columbia

British Columbia has an approximate population of 4,560,240 (Statistics Canada, 2017a), with approximately 5.9% being Indigenous. First Nations persons accounted for 3.8% of the provincial population, Metis persons accounted for 2.0% of the provincial population, and the Inuk population represents less than 0.1% of the provincial population.

#### 1.2.2.Alberta

Alberta has an approximate population of 3,978,145 (Statistics Canada, 2017a), with or 6.5% being Indigenous. First Nations persons accounted for 3.4% of the provincial population, Metis persons accounted for 2.9% of the provincial population, and Inuk persons accounted for 0.1% of the provincial population.

### 1.2.3. Saskatchewan

Saskatchewan has an approximate population of 1,070,560 (Statistics Canada, 2017a), with 16.3% being Indigenous. First Nations persons accounted for 10.7% of the provincial population, Metis persons accounted for 5.4% of the provincial population, and the Inuk population represents less than 0.1% of the provincial population.

### 1.2.4. Manitoba

Manitoba has an approximate population of 1,240,695 (Statistics Canada, 2017a), with 18% being Indigenous. First Nations persons accounted for 10.5% of the provincial population, Metis persons accounted for 7.4% of the provincial population, and the Inuk population represents less than 0.1% of the provincial population.

### 1.2.5. Ontario

Ontario has an approximate population of 13,242,160 (Statistics Canada, 2017a), with 2.8% being Indigenous. First Nations persons accounted for 1.8% of the provincial population, Metis persons accounted for 0.9% of the provincial population, and the Inuk population represents less than 0.1% of the provincial population.

### 1.2.6. Quebec

Quebec has an approximate population of 7,965,450 (Statistics Canada, 2017a), with 2.3% being Indigenous. First Nations persons accounted for 1.2% of the provincial population, Metis persons accounted for 0.9% of the provincial population, and Inuk persons accounted for 0.2% of the provincial population.

### 1.2.7. Newfoundland and Labrador

Newfoundland and Labrador has an approximate population of 512,250 (Statistics Canada, 2017a), with 8.9% being Indigenous. First Nations persons accounted for 5.5% of the provincial population, Metis persons accounted for 1.5% of the provincial population, and Inuk persons accounted for 1.3% of the provincial population.

### 1.2.8. New Brunswick

New Brunswick has an approximate population of 730,705 (Statistics Canada, 2017a), with 4% being Indigenous. First Nations persons accounted for 2.4% of the provincial population, Metis persons accounted for 1.4% of the provincial population, and Inuk persons accounted for 0.1% of the provincial population.

### 1.2.9. Nova Scotia

Nova Scotia has an approximate population of 908,340 (Statistics Canada, 2017a), with 5.7% being Indigenous. First Nations persons accounted for 2.8% of the provincial population, Metis persons accounted for 2.6% of the provincial population, and Inuk persons accounted for 0.1% of the provincial population.

### 1.2.10. Prince Edward Island

Prince Edward Island has an approximate population of 139,685 (Statistics Canada, 2017a), with 2% being Indigenous. First Nations persons accounted for 1.3% of the provincial population, Metis persons accounted for 0.5% of the provincial population, and Inuk persons accounted for 0.1% of the provincial population.

### 1.2.11. Yukon

Yukon has an approximate population of 35,110 (Statistics Canada, 2017a), with 23.3% being Indigenous. First Nations persons accounted for 19.1% of the territorial population, Metis persons accounted for 2.9% of the territorial population, and Inuk persons accounted for 0.6% of the territorial population.

### 1.2.12. Northwest Territories

Northwest Territories has an approximate population of 41,135 (Statistics Canada, 2017a), with 50.7% being Indigenous. First Nations persons accounted for 32.1% of the territorial population, Metis persons accounted for 8.2% of the territorial population, and Inuk persons accounted for 9.9% of the territorial population.

### 1.2.13. Nunavut

Nunavut has an approximate population of 35,580 (Statistics Canada, 2017a), with 85.9% being Indigenous. First Nations persons accounted for 0.5% of the territorial population, Metis persons accounted for 0.5% of the territorial population, and Inuk persons accounted for 84.7% of the territorial population.

| Province or Territory | Population | Indigenous (% of pop.) | First Nations (% of pop.) | Metis (% of pop.) | Inuk (% of pop.) |
|---|---|---|---|---|---|
| British Columbia | 4,560,240 | 5.9% | 3.8% | 2.0% | <0.1% |
| Alberta | 3,978,145 | 6.5% | 3.4% | 2.9% | 0.1% |
| Saskatchewan | 1,070,560 | 16.3% | 10.7% | 5.4% | <0.1% |
| Manitoba | 1,240,695 | 18.0% | 10.5% | 7.4% | <0.1% |
| Ontario | 13,242,160 | 2.8% | 1.8% | 0.9% | <0.1% |
| Quebec | 7,965,450 | 2.3% | 1.2% | 0.9% | 0.2% |
| Newfoundland and Labrador | 512,250 | 8.9% | 5.5% | 1.5% | 1.3% |
| New Brunswick | 730,705 | 4.0% | 2.4% | 1.4% | 0.1% |
| Nova Scotia | 908,340 | 5.7% | 2.8% | 2.6% | 0.1% |
| Prince Edward | 139,685 | 2.0% | 1.3% | 0.5% | 0.1% |
| Yukon | 35,110 | 23.3% | 19.1% | 2.9% | 0.6% |
| Northwest Territories | 41,135 | 50.7% | 32.1% | 8.2% | 9.9% |
| Nunavut | 35,580 | 85.9% | 0.5% | 0.5% | 84.7% |

| Province or Territory | Population | Indigenous (% of pop.) | Indigenous Admissions in Correctional Centres (% of pop.) | Indigenous Under Community Supervision (% of pop.) |
|---|---|---|---|---|
| British Columbia | 4,560,240 | 5.9% | 32.0% | 27.0% |
| Alberta | 3,978,145 | 6.5% | 42.0% | 27.0% |
| Saskatchewan | 1,070,560 | 16.3% | 76.0% | 73.0% |
| Manitoba | 1,240,695 | 18.0% | 74.0% | 58.0% |
| Ontario | 13,242,160 | 2.8% | 12.0% | 10.0% |
| Quebec | 7,965,450 | 2.3% | 5.0% | 7.0% |
| Newfoundland and Labrador | 512,250 | 8.9% | 25.0% | 23.0% |
| New Brunswick | 730,705 | 4.0% | 10.0% | 10.0% |
| Nova Scotia | 908,340 | 5.7% | 10.0% | 7.0% |
| Prince Edward Island | 139,685 | 2.0% | 3.0% | 5.0% |
| Yukon | 35,110 | 23.3% | 64.0% | 51.0% |
| Northwest Territories | 41,135 | 50.7% | 88.0% | 86.0% |
| Nunavut | 35,580 | 85.9% | 100.0% | 100.0% |

### 1.3. Federal Demographics

According to the 2016 Census, Indigenous persons account for 4.9% of the total population of Canada (Statistics Canada, 2017b). Over half of the Indigenous persons of Canada live in the western provinces of Canada. Indigenous persons in Canada have specific compelling differences from the non-Indigenous population. The two most significant differences between Indigenous persons and non-Indigenous persons in Canada are youth and growth. The Indigenous population is much younger than the non-Indigenous population (Statistics Canada, 2017b). Indigenous persons tend to have more children, and a large proportion of the Indigenous population is made up of youth. The median age of Indigenous persons is 32.1 compared to the median age of non-Indigenous persons of 40.9. Furthermore, in 2016, for the first time, non-Indigenous seniors outnumbered non-Indigenous children. However, youth still outnumber seniors significantly in Indigenous communities. Indigenous communities have experienced substantial growth as compared to non-Indigenous persons. First Nations populations grew 39.3% from 2006 to 2016. The Métis population had the most substantial increase of 51.2% from 2006 to 2016. The Inuit population grew 29.1% from 2006 to 2016. In total, the Indigenous population grew by 42.5% from 2006-2016. This rate was more than four times higher than the growth rate of non-Indigenous persons.

# Section #2: Indigenous Overrepresentation in the Criminal Justice System on a Global Scale

Indigenous overrepresentation in the Criminal Justice system is not a problem unique to Canada. For this literature review, the United States, Australia, and New Zealand will be examined alongside Canada, as these countries have similar histories of colonialization of Indigenous persons, as well as the fact that they are similar culturally to Canada. Examining other countries will provide a greater scope of the problem, as well as possible insights into how the issue of Indigenous overrepresentation has come to be.

## 2.1. Canada

Canada has struggled with Indigenous overrepresentation is the Criminal Justice system for several decades. There has been substantial research on the factors contributing to over-representation and many efforts in response to reduce the overrepresentation, as will be seen in the following sections. Despite the research and efforts, rates of Indigenous representation in remand centres, provincial institutions, and federal institutions continue to grow.

### 2.1.1. Provincial Corrections

A provincial or territorial sentence is a sentence of two years less one day (Correctional Services Canada, 2013b). Those offenders with provincial sentences will serve their custodial sentences within provincial institutions. The population numbers used in this section were obtained from the 2016 Census by Statistics Canada. The rates of provincial custody and community supervision obtained by the individual provincial or territorial government reports and from the 2015/2016 Adult Correctional Statistic in Canada report by Statistics Canada.

In every province or territory, Indigenous persons are significantly overrepresented in both custodial corrections and community corrections.

#### 2.1.1.1. British Columbia

British Columbia has an approximate population of 4,560,240 (Statistics Canada, 2017a), with approximately 5.9% being Indigenous. Despite accounting for only 5.9% of the provincial population, Indigenous persons account for roughly 32% of the population in provincial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 27% of the population under community supervision.

#### 2.1.1.2. Alberta

Alberta has an approximate population of 3,978,145 (Statistics Canada, 2017a), with or 6.5% being Indigenous. Despite accounting for only 6.5% of the provincial population, Indigenous persons account for roughly 42% of the population in provincial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 27% of the population under community supervision.

#### 2.1.1.3. Saskatchewan

Saskatchewan has an approximate population of 1,070,560 (Statistics Canada, 2017a), with 16.3% being Indigenous. Despite accounting for only 16.3% of the provincial population, Indigenous persons account for roughly 76% of the population in provincial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 73% of the population under community supervision.

#### 2.1.1.4. Manitoba

Manitoba has an approximate population of 1,240,695 (Statistics Canada, 2017a), with 18% being Indigenous. Despite accounting for only 18% of the provincial population, Indigenous persons account for roughly 74% of the population in provincial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 58% of the population under community supervision.

#### 2.1.1.5. Ontario

Ontario has an approximate population of 13,242,160 (Statistics Canada, 2017a), with 2.8% being Indigenous. Despite accounting for only 2.8% of the provincial population, Indigenous persons account for roughly 12% of the population in provincial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 10% of the population under community supervision.

#### 2.1.1.6. Quebec

Quebec has an approximate population of 7,965,450 (Statistics Canada, 2017a), with 2.3% being Indigenous. Despite accounting for only 2.3% of the provincial population, Indigenous persons account for roughly 5% of the population in provincial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 7% of the population under community supervision.

#### 2.1.1.7. Newfoundland and Labrador

Newfoundland and Labrador has an approximate population of 512,250 (Statistics Canada, 2017a), with 8.9% being Indigenous. Despite accounting for only 8.9% of the provincial population, Indigenous persons account for roughly 25% of the population in provincial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 23% of the population under community supervision.

#### 2.1.1.8. New Brunswick

New Brunswick has an approximate population of 730,705 (Statistics Canada, 2017a), with 4% being Indigenous. Despite accounting for only 4% of the provincial population, Indigenous persons account for roughly 10% of the population in provincial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 10% of the population under community supervision.

#### 2.1.1.9. Nova Scotia

Nova Scotia has an approximate population of 908,340 (Statistics Canada, 2017a), with 5.7% being Indigenous. Despite accounting for only 5.7% of the provincial population, Indigenous persons account for roughly 10% of the admissions into provincial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 7% of the population under community supervision.

#### 2.1.1.10. Prince Edward Island

Prince Edward Island has an approximate population of 139,685 (Statistics Canada, 2017a), with 2% being Indigenous. Despite accounting for only 2% of the provincial population, Indigenous persons account for roughly 3% of the admissions into provincial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 5% of the population under community supervision.

#### 2.1.1.11. Yukon

Yukon has an approximate population of 35,110 (Statistics Canada, 2017a), with 23.3% being Indigenous. Despite accounting for only 23.3% of the territorial population, Indigenous persons account for roughly 64% of the admissions into territorial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 51% of the population under community supervision.

#### 2.1.1.12. Northwest Territories

Northwest Territories has an approximate population of 41,135 (Statistics Canada, 2017a), with 50.7% being Indigenous. Despite accounting for only 50.7% of the territorial population, Indigenous persons account for roughly 88% of admissions into territorial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 86% of the population under community supervision.

#### 2.1.1.13. Nunavut

Nunavut has an approximate population of 35,580 (Statistics Canada, 2017a), with 85.9% being Indigenous. Despite accounting for only 85.9% of the territorial population, Indigenous persons account for roughly 100% of the admissions into territorial correctional centres (Malakieh, 2018a). Indigenous persons accounted for 100% of the population under community supervision.

### 2.1.2 Federal Corrections

Federal institutions house offenders with sentences of two years or more (Correctional Services Canada, 2013b). The most recent report released by Correctional Services Canada regarding 'Aboriginal Offender Statistics' was released for the 2001 inmate population. This report states that Aboriginal peoples account for 2.8% of the population but 18% of the federal inmate population (Correctional Services Canada, 2013a). The most recent JurisStat 2018 reports released by Statistics Canada indicates that Indigenous persons account for 27% of the admissions into federal custody (Malakieh, 2018a). Indigenous persons make up 26% of persons under federal community supervision.

## 2.2 United States

As of 2012, the U.S Department of Health and Human Services estimates that American Indians/Alaskan Natives account for 5.2 million – or 2% - of the population of the United States (Office of Minority Health - U.S Department of Health and Human Services , n.d.). 22% of American Indians and Alaskan Natives live on reserves, and 60% live in metropolitan areas – the lowest of any racial groups in the United States.

The United States boasts the largest prison population in the world, with roughly 1.5 million prisoners across both state and federal prisons (Carson, 2018). This number is increased even further by the populations that are remanded in jails. In the United States, the indigenous population is referred to as the 'America Indian,' 'Alaskan Native' or 'Native American' (Bureau of Justice Statistics, 2018). While the government operates state and federal institutions, there are also jails that are operated by tribal councils or by the Bureau of Indian affairs.

American Indians and Alaskan Natives have many similar risk factors to the Indigenous populations of Canada. In 2012, American Indians' median household income was 34% lower than their Caucasian counterparts (Office of Minority Health - U.S Department of Health and Human Services , n.d.). Furthermore, American Indians and Alaskan Natives have lower rates of educations completion. Of adults over 25, 85% have attained only a high school diploma – 10% lower than non-Hispanic Whites. With regards to post-secondary education, Indian Americans and Alaskan Natives receive bachelor's degrees (17%) and advanced degrees (6%) and nearly half the rate of non-Hispanic Whites (33% and 12%, respectively). American Indians and Alaskan Natives are also at significantly higher rates with regards to health problems, specifically with Native Americans and Alaskan Natives being twice as likely to have diabetes. There is also a high prevalence of mental health and suicide, obesity, substance abuse, Sudden Infant Death Syndrome, teenage pregnancy, liver disease, and Hepatitis. American Indians and Alaskan Natives also have an infant death rate 60% higher than Caucasians.

Reservation housing is also recognized as substandard. Forty percent of on-reservation housing is considered substandard (compared to 6 percent outside of Indian Country) and nearly one-third of homes on reservations are overcrowded. Less than half of the homes on reservations are connected to public sewer systems, and 16 percent lack indoor plumbing," "In some areas, up to 50 percent of Native homes are without phone service. Additionally, 23 percent of Native households pay 30 percent or more of household income for housing," (National Congress of American Indians, 2016 ). Many of these factors are highly comparable to Canadian Indigenous peoples, as are discussed in Section 3.

Over a fifteen-year period, American Indians and Alaskan Natives were the most rapidly growing locally jailed population in the United States, growing at a rate of 4.3% annually (Minton, 2017). This growth is tremendously significant, as for all other races the rate grew at an amount no higher than 1.4% a year. Additionally, the majority American Indians and Alaskan Natives offenders were sentenced to imprisonment (90.1%), which is slightly higher than the rate for all offenders in the fiscal year 2013 (86.9%), as opposed to sentencing that did not include imprisonment (United States Sentencing Commission, n.d.). Native American youth are also highly overrepresented in the American Criminal Justice system. Melina Healy has suggested that the educational institutions on reserves have created a school-to-prison pipeline for American Indian youth, as American Indian youth are highly discriminated against and are more likely to face harsher discipline in schools, lower academic support and achievement, and high rates of dropping out (Healey, 2013). A study of fifteen years' worth of tribal juvenile justice systems found that Native American youth incarceration was a central part of the systems (as opposed to alternative, diversion, or restorative practices), and that incarceration rates grew so significantly that dozens of youth facilities were built or upgraded to accommodate the demand (Rolnick, 2016). Furthermore, the study showed that secure confinement was significantly more commonly used on Native American youth. "Native youth who come into contact with the juvenile justice system are more likely to be locked in secure confinement than other youth, with disproportionality rates in some localities exceeding those experienced by Black and Latino youth."

Native Americans have also struggled with reintegration following their release from prison. Many of the challenges of re-entry into the community – such as securing stable housing, maintaining employment, and establishing pro-social relationships – are shared across all demographics; however, American Indian and Alaskan Native peoples also face unique challenges of re-entry (Wodahl & Adrienne, 2017). These unique challenges include discrimination because of their ethnicity, communities with high rates of poverty and substance abuse, and geographical isolation. Further, they lack access to sufficient community supports, treatment, and medical services. Unfortunately, American Indian and Alaskan Natives are more likely to return to jail than any other racial group. In 2011, approximately 8 in 10 adult American Indian and Alaskan Native jail inmates had been previously incarcerated, which is higher than the 7 in 10 adults for all other adult jail inmates (Minton, 2017).

### 2.3 New Zealand

In New Zealand, the Indigenous population is referred to as the Māori population. The Māori population has also experienced significant overrepresentation in corrections. New Zealand has a population of approximately 4,871,300 (Stats NZ, n.d.), with approximately 15% of the population being Maori (Stats NZ, 2017).

The Maori people experience several similar risk factors to the Indigenous population of Canada. Both populations have a lower median age than their non-indigenous counterparts (Statistics Canada, 2009) (Stats NZ, 2017). Furthermore, much of the Maori population does not live within metropolitan areas. The Maori population also reports higher rates of poverty and unemployment.

The indigenous population of New Zealand accounts for 51% of the total prison population of New Zealand. This demonstrates a clear overrepresentation in the prison population, though the problem is perhaps more severe in New Zealand because the Maori population represents the majority of those incarcerated. Furthermore, Maori men accounted for 51% of the male prison population, whereas Maori women accounted for 58% of the female prison population (Stats NZ, n.d.). This is a clear parallel with the Canadian correctional population, where Indigenous women occupy a significantly higher percentage of the female correctional population. Finally, Maori offenders were more likely to re-offend than non-indigenous offenders.

**2.4 Australia**

In Australia, the indigenous population is referred to as the Aboriginal and Torres Strait Islander population (Australian Bureau of Statistics, 2017). As of 2016, Aboriginal and Torres Strait Islanders accounted for 2.8% of the total Australian population of nearly twenty-five-million (Australian Bureau of Statistics, 2018a).

Aboriginal and Torres Strait Islanders parallel the Canadian Indigenous community in many compelling ways. The Aboriginal and Torres Strait Islander population is significantly younger than the non-indigenous population of Australia, with a median age of 23 (Australian Bureau of Statistics, 2017). Aboriginal and Torres Strait Islanders also experience many of the similar risk factors that indigenous groups across Canada, the United States, and New Zealand experience. These include increased rates of poverty, less education, and poorer health (Australia Bureau of Statistics, 2018b)

The Aboriginal and Torres Strait Islanders account for more than 27% of the prison population (Australian Bureau of Statistics, 2017). This is the closest comparison to Canadian figured. However, Aboriginal and Torres Strait Islanders account for less of the total population of Australia than do the Indigenous persons of Canada, the problem of Indigenous overrepresentation in corrections is more severe in Australia.

The Aboriginal and Torres Strait Islanders were more likely than non-indigenous populations to commit violent crimes. Furthermore, the indigenous population was more likely to receive longer sentences and commit recidivism (Australia Bureau of Statistics, 2018b).

# Section #3: Factors Contributing to Indigenous Overrepresentation in the Canadian Criminal Justice System

### 3.1 Societal Racism and Stigmatization

In general, racism, discrimination, and stigmatization of groups of people have negative consequences. "Otherness is the condition or quality of being different or "other," particularly if the differences in question are strange, bizarre, or exotic" (Miller, 2008). When othering occurs in a racial context, it may cause a particular group to feel disconnected from the larger community. Experiencing racism (and the othering that comes with it) can result in increased risk for criminal behaviour of the affected individual or group (Barkan & Rocque, 2018). This racism can work in tandem with social labeling theory. New research continues to support that when specific groups are believed to be criminal and are labeled as such by the public, those individuals may be at higher risk to commit crimes or crimes associated with their label (Denver, Pickett, & Bushway, 2017). This is to say that if a particular group is labeled as being violent, they may be more inclined to commit violent crimes. Indigenous persons still experience significant racism, discrimination, or stigmatization in Canada (The National Collaborating Centre for Aboriginal Health, 2018). These experiences may contribute to a higher involvement in criminal behaviour, thereby resulting in overrepresentation in the criminal justice system.

### 3.2 Structural Racism and Discrimination

#### 3.2.1. Policing

Indigenous persons have been subject to more scrutiny by policing agencies than non-Indigenous persons. Indigenous persons experience both harmful under-policing and harmful over-policing (Vijaykumar, 2018). Under policing occurs when police do not adequately investigate crimes reported by Indigenous persons or committed against Indigenous persons, or even when the Indigenous person reporting a crime as the victim is the one arrested. This topic will also be discussed more thoroughly in the section on Missing and Murdered Indigenous Women. Over-policing occurs when Indigenous persons experience increased police checks and higher rates of arrests and use of police force merely for the fact they are Indigenous.

In Edmonton, Alberta – the city with the second largest Indigenous population in Canada – Indigenous persons were stopped at rates significantly higher than non-Indigenous persons. "[in the year 2016] Aboriginal women were nearly ten times as likely to be checked as white women. The same year, Aboriginal people were six times more likely than white people to be stopped by Edmonton police." (Huncar, 2017). A study in British Columbia saw that Indigenous persons who used illicit drugs saw increased involvement with the police and poorer outcomes from these interactions, including the use of force by police officers (Pan, et al., 2013). Between 2000-2017, Indigenous persons accounted for 11 of the 19 persons killed in police force encounters (Annable, 2018). Multiple negative experiences with the police, coupled with the colonial history of Indigenous persons, has resulted in negative relationships between Indigenous persons/communities and police forces. In addition to the reason expressed above, this is significant as Indigenous persons are less likely to seek police assistance in a time of need.

Furthermore, Indigenous persons (as well as other visible minorities) are significantly underrepresented on all police forces across Canada. As of 2016, 5.4% of police officers across Canada reported Indigenous identity, a small increase from 2011 at 4.7% (Conor, 2018a). While this number is higher than the national figured for Indigenous persons across Canada in 2016 (4.9%), it remains in some ways problematic. The provinces/territories of Alberta, Manitoba, and Nunavut saw a

decrease in their Indigenous police officers. Furthermore provinces/territories with high proportions of Indigenous persons (British Columbia, Alberta, Saskatchewan, Manitoba, Yukon, Northwest Territories, and Nunavut) saw that Indigenous persons were underrepresented in the police forces (Conor, 2018b). This underrepresentation is incredibly problematic, as the places where Indigenous representation on the police force is most needed (considering provincial/territorial Indigenous percentage) are the places that lack sufficient representation.

### 3.2.2. Sentencing

Sentencing occurs after an offender has been convicted of a crime to determine the amount of custody (or alternative sentences, e.g., restitution) that must be served (Justice Canada, 2016). One of the calls to action released by the Truth and Reconciliation Commission of Canada seeks to end mandatory minimum sentences (Truth and Reconciliation Commission of Canada, 2015). Mandatory minimums are where offenders convicted of an offence must serve a minimum amount of time for the offence, regardless of mitigating factors. Mandatory minimums are a problematic approach when dealing with Indigenous offenders as it fails to consider their Indigenous social history as a mitigating factor for their offence (Rudin, 2013). Mandatory minimums also make it challenges to pursue all possible alternatives to incarceration.

An additional call to action by the Truth and Reconciliation Commission of Canada was to allow for an Indigenous justice system (Truth and Reconciliation Commission of Canada, 2015). This would include courts and sentences that are more in keeping with traditional Indigenous culture. This would also include initiatives like restorative justice and more community-based corrections. At this time, Indigenous persons are entering a justice system that is vastly different from their own culture.

#### 3.2.2.1. First Time Offenders

Indigenous offenders tend to serve longer offences than non-Indigenous persons (Vijaykumar, 2018). This may be because many Indigenous offenders have violent offences. In the 2015-2016 year, 64% of Indigenous offenders in federal institutions were convicted of violent offences (Office of the Auditor General of Canada, 2017). Violent offences typically disqualify potential candidates from participating in alternative measures programs and diversion programs, such as drug or mental health courts (Provincial Court of Alberta, n.d.). “The [Drug Court] program is intended to break the cycle of criminal behaviour driven by drug addiction, by offering participants a chance to avoid prison and complete a drug treatment program in the case of non-violent offences.” This underrepresentation in alternative measures and diversion programs is causing Indigenous persons to spend more time in prison than non-Indigenous persons.

#### 3.2.2.2. Repeat Offenders

Because of ineffective rehabilitation and reintegration of Indigenous persons (which will be further discussed in the following subsections), rates of recidivism in Indigenous persons are high (Wormith, Hogg, & Guzzo, 2015). In the 2015-2016 year, it was discovered that 35% of Indigenous persons in federal custody had served previous sentences (Office of the Auditor General of Canada, 2017). This report also identified issues with the correctional programming and with conditional release. If Indigenous persons are insufficiently rehabilitated, coupled with the other factors addressed in this section, it is unsurprising that there also experience a high rate of recidivism.

#### 3.2.2.3. Gladue Reports

The Gladue principles exist to consider Indigenous social history as a mitigating factor for offences and to guide all other available measures for Indigenous persons before incarceration if possible (Fetal Alcohol Spectrum Disorder Justice, n.d.). Gladue reports are comprehensive pre-sentencing reports on an Indigenous person's cultural and social history. This is done to help to inform the judge of the colonial trauma in an Indigenous person's past and provide consideration for sentencing (Justice Education Society, 2016). The courts must take into account the colonial trauma as experienced by Indigenous persons, with the ultimate goal of reducing sentence time and including the option of restorative justice wherever possible. While this service is technically available to all persons of Indigenous identity, in practice many Indigenous persons are not provided a Gladue report before their sentencing (Hebert, 2017). Considering the service exists for Indigenous persons, it is a fundamental flaw that not all Indigenous persons receive access to this service. Herbert states "Gladue reports should be offered and made available to all Indigenous offenders who may be imprisoned in Canada. Such a measure would be a meaningful first step towards ensuring that Indigenous offenders uniformly benefit from section 718.2(e) of the Criminal Code stressing principles of restorative justice and proportionality in sentencing."

### 3.2.3. Corrections

"A prison system that warehouses people with deeply rooted, systemic behaviour problems passed down through the generations, rather than seeking to eliminate those causes, amounts to structural violence against a class of people" (Chrismas, 2012). This subsection will examine the problematic aspects of life in custody faced by Indigenous persons incarcerated in remand centers, provincial institutions, federal institutions, and community corrections.

#### 3.2.3.1. Remand

Remand centers are provincially operated institutions where those who are charged with offences – but not yet convicted or sentenced – reside. Indigenous persons have experienced significant challenges in navigating the remand process. Considering that those who are remanded make up a greater portion of the incarcerated population of Canada than those who have been sentenced (Malakieh, Adult and youth correctional statistics in Canada, 2016/2017, 2018a), there is a significant portion of Indigenous persons who are legally innocent that are incarcerated.

Remand centers across Canada are currently housing 1.5 times the number of offenders in provincial institutions (Statistics Canada, 2018b). The provinces and territories with the largest Indigenous populations (Alberta, Saskatchewan, Manitoba, and Yukon, Northwest Territories, Nunavut) are also the provinces and territories where the rates of persons in remand per 100,000 people are the highest (Statistics Canda, 2017b).

For the 2016/2017 year, 72% of the persons in Alberta that were incarcerated were in remand facilities, the highest of all of Canada (Malakieh, Adult and youth correctional statistics in Canada, 2016/2017, 2018a). Indigenous persons accounted for 45.9% of the daily inmate count for the provinces largest remand center: Edmonton Remand Centre (Alberta Justice and Solicitor General, 2018). While the problem of overrepresentation of Indigenous persons in remand centers is most significant in Alberta, similar trends exist across Canada.

Recognizing the consequences of Indigenous persons being remanded is essential. Considering a large number of Indigenous persons living in rural areas (Statistics Canada, 2015), it can become challenging to Indigenous persons to have proper communications with their families. Remand centers are typically within metropolitan areas and are difficult to access for persons who do not live in those areas.

#### 3.2.3.2. Provincial Institutions

Provincial institutions are designated for offenders serving sentences of less than two years. Each province has their own methods of handling provincial institutions. However, in every province, Indigenous persons are underrepresented in community supervision relative to their population in custodial institutions (Statistics Canada, 2018a). In every province/territory excluding Prince Edward Island and Nunavut, Indigenous women are even more significantly overrepresented than non-Indigenous persons.

#### 3.2.3.3. Federal Institutions

Federal institutions are designated for offenders serving sentences of two years or more. While most institutions offer correctional programming, federal institutions have the most opportunities for significant, long-term correctional programming. This is because the inmates are within the institution for longer, and therefore have more time and opportunities to complete more programming. Federal institutions also allow for Indigenous, culturally-significant programming for the offenders to participate in " (Correctional Services Canada, 2014a). This traditional healing path incorporates the use of community Elders, smudging, sweats, drumming, and more in addition to regular correctional programming. While this is a fantastic resource for Indigenous persons within institutions (though it is available to any inmate – regardless of ethnicity or culture), it is an under-resourced option.

A report by the Office of the Auditor General of Canada saw that Indigenous persons who were trying to participate in culturally-significant correctional programming had significantly longer waits to participate (Office of the Auditor General of Canada, 2017). Only 20% of Indigenous offenders serving short sentences were able to complete their programming. The delay in accessing meaningful programming for Indigenous persons resulted in two significant adverse consequences. The first was that delaying the access to correctional programming resulted in not fulfilling requirements for parole. As a result, Indigenous persons were underprepared for their parole hearings. This will be discussed further below. The second consequence was that Indigenous persons chose to participate in the non-Indigenous programming to fulfill their requirements for parole more quickly. This is a situation where Indigenous offenders are backed into a corner. Either they can wait to receive programming that may be more meaningful to them, delaying their potential success for parole, or they can participate in programming that may be less meaningful to them (thereby being less significant to their overall rehabilitation) but sooner preparing them for their parole hearing.

##### 3.2.3.3.1. Security Classification

Federal institutions have three levels of security classifications: minimum, medium, and maximum (Correctional Services Canada, 2013d). The security classifications are determined based on the level of intervention required by staff to manage the offender and their needs (Correctional Services Canada, 2018). The majority of offenders are housed in medium security. Indigenous persons in custody are overrepresented in medium and maximum security and underrepresented in minimum security (Office of the Auditor General of Canada, 2017). 79% of Indigenous persons released on statutory release are released from medium-security or maximum-security institutions. This is significantly higher than for non-Indigenous persons. Furthermore, the minimum-security institutions allow the offenders more responsibility and freedom. This is done to help the offenders prepare to be reintegrated into the community. Without these opportunities for reintegration, Indigenous offenders may be more susceptible to institutionalization – a phenomenon where offenders become so accustomed to the life and society within institutions that they struggle returning to the general community of Canada (Ricciardelli & Memarpour, 2016).

#### 3.2.3.3.2. Parole

In federal custody, offenders qualify for parole once they serve on third of their sentence. In order to be granted parole, offenders participate in a hearing with members of the Parole Board of Canada (Correctional Services Canada, 2017). PBC members assess the rehabilitation of the offender and potential risks they might provide to the community. Overwhelmingly 83% of Indigenous offenders delayed their parole hearing once they became eligible (Office of the Auditor General of Canada, 2017). This was owing mainly to the fact that they were unprepared for the hearing, with only 12% of offenders having their case prepared at first eligibility. The result was that 31% of Indigenous offenders awarded conditional release were released on parole, compared to 48% of non-Indigenous offenders.

#### 3.2.3.3.3. Statutory Release

Offenders are granted statutory release (unless – in rare cases – a detention order is placed on the offender) once they have served two-thirds of their sentence if they are serving a fixed sentence (Office of the Auditor General of Canada, 2017). In the 2015/2016 year, 69% of Indigenous offenders released on conditional released were through statutory release. This rate is absurdly high, especially when compared to the rate of 52% for non-Indigenous offenders. Indigenous persons are not experiencing gradual reintegration from institutions into the community at a rate that is realistic for reducing recidivism.

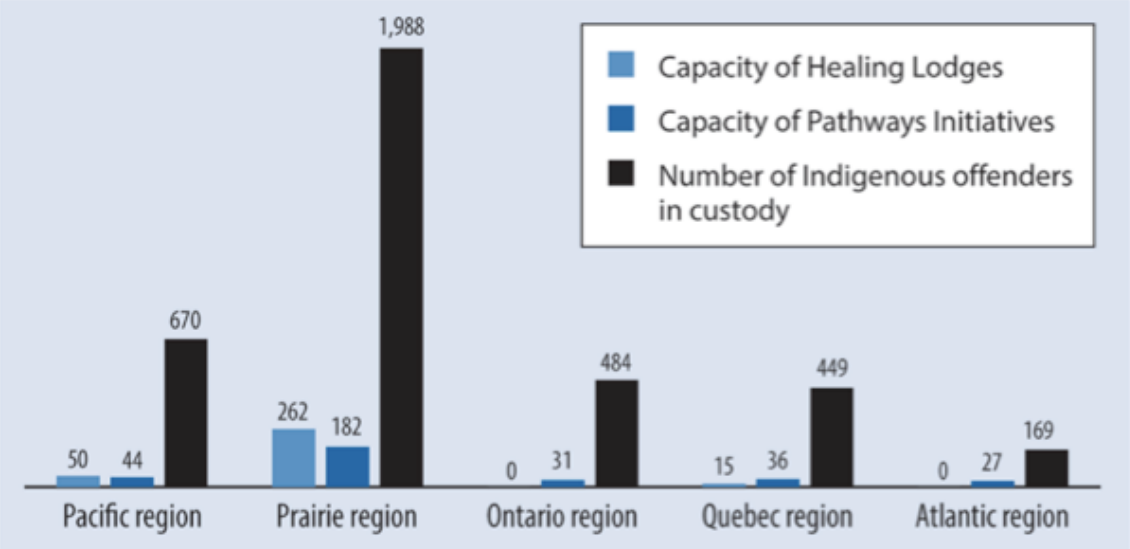
#### 3.2.3.3.4. Indigenous Healing Centers and Pathways

Indigenous Healing Lodges fulfill the Section 81 obligation for immersive Indigenous culture and reintegration within Canadian corrections (Correctional Services Canada, 2013c). In 2015, the federal government committed to removing the barriers that were delaying or preventing the creation of more Healing Lodges as per one of the calls for action in the Truth and Reconciliation Commission (Office of the Auditor General of Canada, 2017). However, recent reports are still finding that Indigenous inmates have minimal access and long wait times for healing centers.

Pathways housing is housing within regular institutions that follow traditional Indigenous healing and cultural pathways (Office of the Auditor General of Canada, 2017). This kind of initiative is put in place to allow Indigenous inmates to be more wholly immersed in their culture within custody. Much like healing lodges, pathways housing initiatives have tremendous wait times and insufficient space to accommodate all Indigenous offenders in custody.

Below is a graph provided by the Office of the Auditor General of Canada in their report on Indigenous persons and conditional release. It demonstrates how many Indigenous offenders there were in the 2015-2016 year, by region. The graph indicates that while specific programs catered to Indigenous persons exist, they are so incredibly insufficient in their availability to the entire Indigenous population in federal corrections.

**Exhibit 3.7—In the 2015–16 fiscal year, the number of Indigenous offenders in custody greatly exceeded the capacities of Healing Lodges and Pathways Initiatives**




▸ Exhibit 3.7—text version

(Office of the Auditor General of Canada, 2017)

### 3.3 Indigenous Social History

Indigenous social history provides context for the lives and experiences of Indigenous persons (Fetal Alcohol Spectrum Disorder Justice, n.d.). Indigenous social history is a factor often considered in the sentencing of an Indigenous person and used as a mitigating factor (Justice Education Society, 2016). However, Indigenous social history – while considered – is perhaps undervalued when regarding an Individual. Though Indigenous social history has to do with the entire history of Indigenous persons, two significant events occurred that resulted in adverse outcomes for Indigenous persons: residential schools and the Sixties Scoop.

#### 3.3.1. Residential Schools

The legacy of residential schools is perhaps the most infamous in Canadian history. Residential schools served as an institution of isolation and cultural destruction. "Two primary objectives of the residential school system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal" (Indigenous Foundations, 2018). Unspeakable horrors and trauma were endured by persons and communities that had their children removed and sent to residential schools and by the persons who were forced to live in residential schools. Additionally, the trauma of residential schools extends to the decedents of residential school survivors and is known as the intergenerational trauma of residential schools. The intergenerational trauma of residential schools has contributed either directly or indirectly to much of the current suffering of Indigenous persons (Bombay, Matheson, & Anisman, 2014). This suffering includes (but is not limited to) the destruction of culture, poorer mental and physical health, poverty and lower socioeconomic status, and overrepresentation in jails and prisons.

### 3.3.2. Sixties Scoop

The Sixties Scoop was another dark spot on Canada's history. In the 1960s, Indigenous children were removed from their families by social services (Indigenous Foundations, n.d.). Indigenous families were found to be unfit providers to their children. A significant failure of the child and family services was the failure to consider that not all Indigenous families raise their children in the traditional westerns fashion. It was not uncommon for many members of the same family to all help raise a child. Grandparents, uncles, aunts, cousins, and more distant family were regularly involved in the rearing of a child (Statistics Canada, 2015). The Indigenous method differs significantly from that traditional western method where either one or both of the parents of the children raise them. This difference in child rearing, coupled with systematic racism against Indigenous persons, resulted in many Indigenous children being removed from their families. The Sixties Scoop parallel residential school in that children were taken from their families and homes and placed in a new place that did not understand or accept their culture. This renewed colonialism effort was traumatic to both the families and communities that had children removed and the children who were removed from their families.

### 3.4. Poverty

Indigenous persons experience poverty at a much higher rate than non-Indigenous persons. This is likely related to the fact that Indigenous persons have overall lower amounts of completed education and lower employment rates (Statistics Canada, 2015). Lower employment rates may also be influenced by the overall poorer self-reported health of Indigenous persons, isolation from employment opportunities, and societal and structural racism endured by Indigenous persons. Poverty has been linked with criminal behaviour. Crime is seen either as an opportunity to gain money and status or as a survival strategy for those living in poverty (Edelman, 2018). Those living in poverty experience increased the risk of victimization (Weinrath, 2000) – another risk factor for criminal behaviour. Considering Indigenous persons experience poverty at a higher rate than non-Indigenous persons, it is, therefore, reasonable that they engage in more criminal behaviour.

### 3.5. Health

Even though poor health is not a visible contributor to criminalization, there is a strong correlation between health concerns and criminal involvement. Indigenous persons self-report poorer mental and physical health than non-Indigenous persons (Statistics Canada, 2015). Furthermore, Indigenous persons self-report high rates of addictions. As a result, Indigenous persons in Canada experience higher morbidity and lower overall life expectancy than non-Indigenous persons.

Indigenous communities suffer from adverse health conditions like diabetes and respiratory problems. Indigenous persons have diabetes at a significantly higher rate than non-Indigenous persons (Leung, 2016) (Iwasaki, Bartlett, & O'Neil, 2004). Additionally, Indigenous persons tend to live more remotely, and as a result, have reduced access to health care programs to help manage their health, and many First Nations persons have stated that the health care they received was not culturally appropriate (Beckett, Rotondi, Firestone, Smylie, & McKnight, 2018).

There is a strong relationship between addictions and criminal behaviour (Grant, 2009). In a study conducted on offenders who were having their addictions managed through methadone treatment, Individuals who are successfully managing or treating their addictions are less likely to engage in crimes – both violent and non-violent (Russolillo, Moniruzzaman, McCandless, Patterson, & Somers, 2018). Like many of the other factors reported in this piece, addictions can be connected to the colonial trauma experienced by Indigenous persons (Poundmakers Lodge Treatment Centres 1973, n.d.). Considering Indigenous persons report higher rates of addictions than non-Indigenous persons, addictions experienced by Indigenous persons can be considered a factor that contributes to Indigenous overrepresentation in corrections.

Furthermore, many studies have linked mental health concerns with criminal behaviours (Ferrazzi & Krupa, 2016) (Michalski, 2017). Considering Indigenous persons self-report that their mental health is poor much more frequently than non-Indigenous persons, it is reasonable to consider their overall poor mental health as a factor contributing to their overrepresentation in corrections.

### 3.6. Reserves

Reservations are defined as follows: "tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band" (Government of Canada, 2017). Many Canadian reserves are in appalling states. This includes communities being under boil water advisories, living in dwellings that require repair or are unfit for human habitation, or communities living in extreme poverty (Minsky, 2017) (Commisso, 2013). This is important to consider, as 49.3% of registered or treaty Indians live on reserves (Statistics Canada, 2018d). This is a significant amount of the Indigenous community living in substandard conditions. The fact that the Canadian community – especially the governments of Canada – are allowing this to continue demonstrates a fundamental lack of equality towards Indigenous communities.

### 3.7. Victimization

In 2014 28% of Indigenous persons reported being the victim of a crime in the previous twelve months in the General Social Survey on victimization (Boyce, 2016). This is significantly higher than the 18% of non-Indigenous persons who reported victimization in the previous twelve months.

Shockingly, Indigenous persons report spousal violence at a rate near double (9%) to non-Indigenous (4%) persons. These high rates of victimization have not been attributed only to Indigenous ethnicity, but rather the high rates of additional risk factors in Indigenous communities (Boyce, 2016). These risk factors include drug use, child maltreatment, experiencing homelessness, and having fair-poor self-rated mental health.

Victimization and criminalization have been identified as working on a continuum (Balfour, 2013), and victimization can be seen as a risk factor for criminalization. As a result, Indigenous persons disproportionate rates of victimization can be considered as factors that have contributed to their committing crimes, and therefore their overrepresentation in the criminal justice system and corrections.

### 3.8. Indigenous Youth

Indigenous youth face many barriers to succeeding in Canada. Indigenous youth are less likely to complete high school than non-Indigenous youth (Omand, 2018). They are also less likely to be raised by either one or both parents than non-Indigenous youth and are overrepresented in the foster care system (Turner, 2016). These factors are considered potential risk factors for involvement in the criminal justice system.

In 2016/2017, Indigenous youth accounted for 46% of the incarcerated youth population while only accounting for 8% of the youth population of Canada (Malakieh, 2018a). Juvenile delinquency and criminal behaviour have been found to be predictors of adult criminal behaviour (White, Temple, & Reynolds, 2010). As a result, considering that Indigenous youth are engaging in higher rates of crime, this could be a contributing factor to the overrepresentation of Indigenous persons in corrections.

### 3.9. Indigenous Women

#### *3.9.1. Sex Discrimination*

Indigenous women have not only been forced to live through the colonial history faced by Indigenous persons, but they also faced additional problems because of their sex. At its inception, the Indian Act was inherently discriminatory. Indigenous women faced overwhelming disenfranchisement compared to Indigenous men. When an Indigenous married with a non-Indigenous man, she lost her Indian status, and any children had with a non-Indigenous partner also lost or did not receive Indian status (Native Women's Association of Canada, 2018) (Barker, 2008). The same was not true when Indigenous men married and had children with non-Indigenous women.

Indigenous women are also more likely to experience random police check than non-Indigenous women. In Edmonton, Alberta, Indigenous women were ten times more likely to be checked by the police than non-Indigenous women (Huncar, 2017). This is compared to the fact that Indigenous persons were six times more likely to be checked by the police than non-Indigenous persons. This prejudice faced by Indigenous women has damaged the relationship between Indigenous women and law enforcement, with Indigenous women being less likely to report a crime committed against them to the police (Boyce, 2016). Across Saskatchewan, Indigenous women reported harassment or neglect by the police, and even that they did not feel safe interacting with the police (Human Rights Watch, 2017). Some Indigenous women had even reported being the victims of over-policing where when they called to report a crime committed against them they were the ones arrested. Not only are Indigenous women underserved by law enforcement, but it is putting them at risk.

In every province/territory Indigenous women are more significantly overrepresented (by percentage of women incarcerated) in corrections, excluding Prince Edward Island and Nunavut where the percentage ration of men to women is equal (Malakieh, 2018a). This makes Indigenous women the most overrepresented population in Canadian corrections. This is likely because they are subject to all the other factors described above in addition to the gendered discrimination.

#### 3.9.2. Missing and Murdered Indigenous Women

Indigenous women experience the highest rate of victimization in Canada compared to any other population group (Boyce, 2016). Indigenous women are at least 4.5 times more likely to be murdered than non-Indigenous women across the country. Of these documented cases, only 54 percent have led to a homicide charge in instances where the victim was an Aboriginal woman, compared to the national indictment rate of 84 percent (Walsh, 2017). As of 2014, over 1200 Indigenous women or girls have been murdered or gone missing (Royal Canadian Mounted Police, 2014), though the Native Women's Council reports the number is much higher and has itself identified more than 500 additional women (Native Women's Association of Canada, n.d.). The tremendous lack of justice provided to Indigenous women continues to divide Indigenous communities from the Government of Canada and the rest of Canada's population.

### 3.10 Summary of Risk Factors

The colonial history and trauma faced by an Indigenous person, coupled with modern racial discrimination, has predisposed Indigenous persons to unfortunate circumstances. This includes poverty, poor health, and substandard living conditions. These things have been linked in multiple Canadian studies as risk factors for victimization and involvement in the criminal justice system. This is not to say that all Indigenous persons fit the bill for every risk factor for involvement in engaging in criminal behaviour, but merely that there are more challenges that Indigenous persons may face that may result in involvement in the criminal justice system.

Once Indigenous persons are involved in the criminal justice system, they face longer sentences and reduced opportunities for meaningful, culturally significant correctional programming, and as a result, reduced rates of parole. The lack of meaningful rehabilitation and reintegration has had the unfortunate consequence for higher rates of recidivism. The current system for dealing with Indigenous persons is not adequately helping them.

# Section #4: Additional Government Organization Impact

### 4.1. Education

There is a strong relationship between education and criminality/the types of crimes committed (Hronec, Mikušová, & Hroncová, 2014). Education can be used as a means of reducing crime (Dylan Matthews, 2012). Persons with more education are less likely to commit crimes (excluding white collar crimes), specifically violent crime (Lochner & Moretti, 2004) (Machin, Marie, & Vujić, 2011). Considering Indigenous persons in Canada have less educational attainment at every level (besides trades tickets) compared to non-Indigenous persons (Statistics Canada, 2015) (Statistics Canada, 2018f), improving the educational opportunities for Indigenous persons may result in lower rates of crime by Indigenous persons. Currently, the education for Indigenous communities is substandard when compared with the education provided to non-Indigenous communities – particularly on reserves (Omand, 2018) (Tasker, 2016). It is therefore in the interest of both the provincial and federal governments to investigate in Indigenous education as a prevention measure.

### 4.2. Social Services

Social services have a complicated relationship with offenders. It is possible for offenders to have contact with social services before the time of their incarceration, during incarceration, and post-incarceration.

The Sixties Scoop was an example of how significant government interventions can be in Indigenous communities. Unfortunately, social services ultimately did an extreme disservice to Indigenous communities. Indigenous children were removed from their families at alarming rates as their parents were seen as unfit to care for them (Indigenous Foundations, n.d.). "An alarmingly disproportionate number of Aboriginal children were apprehended from the 1960s onward. By the 1970s, roughly one third of all children in care were Aboriginal." Removing children from unfit parents or homes itself is not wholly problematic, but the criteria of being unfit were problematic. Social services did not consider the differences between western culture and Indigenous cultures. In Indigenous cultures, it is commonplace for the extended family and - on a larger scale - the community to assist in raising a child. Therefore, when parents were not providing what was deemed adequate care for their children, the children were often removed from the community and it was difficult for members of the extended family to obtain care. Furthermore, information was not easily accessible or freely provided to the Indigenous persons who became involved with social services. Indigenous people were not made aware of their rights nor were they given instructions on navigating the system to have their children returned to them.

As seen in the case of the Sixties Scoop, social services have tremendous influences on the Indigenous community. As a result of the removal of their children, many Indigenous persons experienced depression, substance abuse, and a mistrust of government systems (Obomsawin, 1986). These factors may contribute to involvement in criminal behaviour. Moreover, Indigenous persons with children have to substantial interact with social services during and after a sentence as well to ensure their children are well cared for and in the event the children are permitted to return to the incarcerated person upon their release.

There is a tremendous benefit to social services if few Indigenous persons are incarcerated. Early and culturally significant intervention could ultimately result in fewer incarcerated Indigenous persons, which results in reducing a caseload for social services that are often overextended.

# Section #5: Efforts that Have Already Been Made to Address Indigenous Overrepresentation in the Canadian Criminal Justice System

### 5.1. Office of the Correctional Investigator

A significant government effort has been the focus of the Office of the Correctional Investigator of Canada on Indigenous persons in federal corrections. The annual report by the office includes a specific section detailing the state of corrections for Indigenous persons (The Correctional Investigator of Canada, 2017). Multiple problems have been identified, the most significant of which being insufficient access to Indigenous programming and reduced rates of parole. In the 2016/2017 annual report, the recommendation is made that Indigenous persons have improved and timely access to Indigenous programming and that there be more rehabilitation and reintegration through parole. The specific focus on Indigenous persons by the Office of the Correctional Investigator is a fantastic initiative that demonstrates real interest and action towards helping Indigenous persons in corrections.

### 5.2. Office of the Auditor General

#### *5.2.1. Preparing Indigenous Offenders for Conditional Release*

As was discussed in Section 3, the Office of the Auditor general was able to discover enormous gaps in the execution of Indigenous correctional programming and preparation for parole hearings. As a result, Indigenous offenders were underprepared for parole hearings. Furthermore, they were more likely to be released for their statutory release than for parole. Finally, Indigenous offenders were more likely to experience detention than non-Indigenous offenders. This report by the Office of the Auditor General was a significant step by the federal government in addressing the significant shortcomings of their staff and systems. By identifying so many areas of near and sharing it with the general public of Canada, the federal government demonstrated heretofore unseen accountability and transparency regarding Indigenous overrepresentation in corrections.

### 5.3. Truth and Reconciliation Commission

In 2015, the Truth and Reconciliation Commission of Canada (TRC) released a multi-volume report detailing the history of residential schools in Canada (Truth and Reconcilliation Commission of Canada, n.d.). The report deems the actions that took place in residential schools to be a cultural genocide. The TRC also released 94 calls to action for the Canadian government to help right the wrongs committed against Indigenous persons and move forward (Truth and Reconciliation Commission of Canada, 2015). In 2015, the government committed to implementing all these calls to action (Office of the Auditor General of Canada, 2017). Some of these calls to action specifically addressed Indigenous overrepresentation within corrections.

The call to action best that is most obviously demonstrated by the government regarding corrections is the annual report by the Office of the Correctional Investigator of Canada. Each annual report includes a specific section on Indigenous corrections. Most unfortunately, however, since the release of the calls to action, Indigenous representation within corrections has continued to grow. The 2016/2017 JusiStat report saw continued growth of Indigenous persons in corrections. Furthermore, there are still tremendous barriers for Indigenous persons to be accepted into healing lodges. Additionally, there has been insufficient implementation across Canada of an Indigenous justice system in coherence with Indigenous culture and tradition.

The calls to action also made suggestions that would put greater emphasis on reducing some of the factors that contribute to Indigenous crimes, like Indigenous victimization, Missing and Murdered Indigenous women, and Fetal Alcohol Spectrum Disorder (FASD) within Indigenous communities.

> The calls to action regarding Indigenous corrections are as follows:
> 30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.
>
> 31. We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.
>
> 32. We call upon the federal government to amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.
>
> 35. We call upon the federal government to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system.
>
> 36. We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.
>
> 37. We call upon the federal government to provide more supports for Aboriginal programming in halfway houses and parole services.
>
> 38. We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.
>
> 42. We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the Constitution Act, 1982, and the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by Canada in November 2012.

### 5.4. Bill S-3

Bill S-3 was an act passed in 2017 with the goal of addressing six sex-based discriminating registration provisions laid in place by the Indian Act (Native Women's Association of Canada, 2018). The implementation of this act was designed to address some of the historical discrimination of Indigenous women, as was discussed in Section 3. The bill is primarily focused on returning Indian status to disenfranchised women and their decedents and eliminating the hierarchy of genders in Indigenous communities. This effort is a positive step by the government that acknowledges and addresses the fact that Indigenous women experienced even more discrimination and colonial trauma than other Indigenous persons. Most importantly, the phases of this bill are done with consultation from Indigenous groups and Indigenous women to ensure that it is handled in a culturally significant and appropriate way.

# Section #6: Most Important Factors to Address to Reduce Indigenous Overrepresentation in the Canadian Criminal Justice System

### 6.1 Decolonialization

"Colonization left an indelible legacy on Canadian [Indigenous peoples]. Creation of the reserve system, residential schools and mass adoption policies, while intended to assimilate Aboriginal peoples with settler society, only compounded the effects of racial segregation" (Chrismas, 2012). Decolonialization is efforts that are done with the goal of reversing or resolving the harm done to Indigenous persons as a result of colonialization. "Decolonization can be an act of reversing the process of colonization, generally by raising the consciousness or awareness of the oppressive state in which First Nations peoples find themselves," (Aquash, 2013). Decolonization is crucial because it serves to repair some of the harm done to Indigenous communities and culture, thereby potentially reducing the contributing factors to their overrepresentation in the criminal justice system and corrections. The Truth and Reconciliation Commission of Canada has made decolonialization a broad goal in their calls to action (Truth and Reconciliation Commission of Canada, 2015). The government response to the calls to action will also better educate the general population of Canada about the consequences of colonialism and may result in better consideration of Indigenous social history. Decolonialization is the first step in both prevention and rehabilitation.

### 6.2 Prevention

One of the most crucial efforts in reducing the number of Indigenous persons involved in the criminal justice system is prevention. Efforts addressing the risk factors discussed in Section #3 would be the most ideal. Programs that are culturally significant to Indigenous communities would likely hold the most merit.

#### 6.2.1. Treatment Programs

As was discussed in Section 3, many persons in the Indigenous community have struggled with addictions and substance abuse. Considering the strong correlation between substance abuse and crime (Grant, 2009), a robust initiative would be to address substance abuse within these communities. Much like correctional programming, it is essential for this treatment to be culturally significant for it to be more meaningful to Indigenous groups. Some organizations have already arisen to treat substance abuse while following the traditional Indigenous healing path. Poundmakers Lodge in Alberta is a prime example of this (Poundmakers Lodge Treatment Centres 1973, n.d.). It is a program with a focus on Indigenous culture, though anyone is welcome to attend. The program offers rehabilitation programs at a length of either 40 days or 92 days. The lodge also offers mental health support services. There are two significant challenges to access this service. What is prohibitive about this program is the substantial cost of $40 per day. The lodge has a capacity, which sometimes means that it cannot accept new intakes.

A possible solution to better address Indigenous substance abuse and mental health concerns would be improved access to more services like Poundmaker's Lodge. This would include making the services more widely available, having more services to address the demand, and additional services in place to help alleviate the burden of cost. Treating the substance abuse and mental health concerns of Indigenous persons could serve as a way to reduce the crime being committed.

Management of addictions has also been associated with reduced crime rates. Harm reduction strategies like the administration of methadone and suboxone to long-term addicts may be another way to better address addictions in Indigenous communities. In a Canadian study on methadone maintenance, rates of violent and non-violent crime were reduced when subjects were administered methadone (Russolillo, Moniruzzaman, McCandless, Patterson, & Somers, 2018). While these programs already exist in Canada, improved education and access to these programs may allow more people within Indigenous communities to reap their benefits.

### 6.3. Applying Indigenous Culture to Corrections

As indicated in the previous section, many government initiatives have been instated to reduce the overrepresentation of Indigenous persons in corrections. Despite these efforts, the proportion of Indigenous person in corrections is still steadily rising. Across all jurisdictions (including sentenced custody and remand facilities) the percentage of Indigenous persons in corrections rose from 20% in 2006/2007 to 28% in 2016-2017 (Statistics Canada, 2018a). Considering the overwhelming number of Indigenous persons in corrections, there is tremendous incentive to facilitate Indigenous cultural traditions and practices better.

#### 6.3.1. Restorative Justice and Diversion Programs

Restorative Justice practices follow many of the same principles of Indigenous justice. This would include a focus on accountability, addressing the harm caused, and restoration of the harm caused. Restorative justice serves as a real option as it has been found to reduce recidivism, as well as allow for feelings of justice served, healing, and wellbeing (Rossi & Cario, 2016).

Diversion programs work by providing alternative programs to custodial institutions. The most common example of such is Drug Courts and Mental Health Courts. These programs manage those convicted of crimes within the community with the goal of addressing the causes of their criminal behaviour. This is beneficial to Indigenous offenders as it allows them opportunities to treat the causes of their criminal behaviour without becoming institutionalized within a prison.

#### 6.3.2. Healing Lodges and Indigenous Custodial Programming

Once Indigenous persons are actually in the justice system Healing Lodges become a viable option to rehabilitate offenders best. As stated in Section #5, those in custody have the choice between the traditional Indigenous healing pathway or standard correctional programming. While this choice has been available to Indigenous persons in custody for many years, the wait times are incredibly prohibitive. By waiting for culturally significant programming, it takes those persons longer to achieve conditional release, which is an essential factor in reintegration. For those that forego the wait and participate in the standard correctional programming, they sometimes receive programming that is not culturally significant and are therefore insufficiently rehabilitated. Either way, Indigenous persons lose. It is vital that more resources be allocated to Indigenous programming so that those who which to participate in it do not face these unfortunate consequences. This is also to be said for pathways initiatives and healing lodges. Even worse, many of these options are not standard across provincial institutions and remand facilities. Indigenous persons across all forms of custody require timely access to programming that meets their needs and culture. Finally, healing lodges need to be available to offenders at all levels of security, so that structural racism and biases cannot impact the ability to benefit from these services.

### 6.4. Rebuilding Trust with the Criminal Justice System

Indigenous representation as agents of the criminal justice system is a positive step towards having Indigenous persons feel heard and understood. Having Indigenous persons working in the criminal justice system could provide less of a divide among Indigenous communities and the agents of the justice system with whom they are interacting. Furthermore, this representation serves as an additional tool for educating all agents of the justice system to learn more about Indigenous culture and the colonial impacts on Indigenous persons.

Trust in the justice system can also be rebuilt by improved communication and transparency between the system and those Indigenous persons who interact with the system in any capacity (e.g., victims, offenders). Furthermore, Chrismas encourages community engagement and restorative justice programs as initiatives that could inspire trust from Indigenous communities (Chrismas, 2012). Building trust is an essentials step in helping improve the relationships between Indigenous communities and the governments/justice system.

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