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**Written Submissions of Aboriginal Legal Services
to the National Inquiry into
Missing and Murdered Indigenous Women and Girls**

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1. **Introduction**

a) Who we are

1. Aboriginal Legal Services (ALS) is a multi-service legal agency that acts on behalf of Indigenous people provincially, nationally, and internationally. Led by a community-based board, ALS' Anishnabemoin name - received by way of a traditional naming ceremony - is "Gaa kina gwii waabamaa debwewin" meaning "All those who seek the truth." One of the main reasons for ALS' incorporation was to assist Indigenous community members exercise control over the justice-related issues and factors that affect them.
2. For more than 25 years ALS has responded to systemic issues within Canadian legal and political systems. ALS provides services to self-identifying First Nation (status and non-status), Métis and Inuit people. Because it is based in urban environments (Toronto and 10 other Ontario cities), ALS is familiar with the consequences of the disconnection of Indigenous people from their home communities. The scope and content of ALS' services respond to the lived experience of clients' inter-generational trauma.
3. ALS represents a community who are directly affected by the subject matter of the National Inquiry. Our submissions are informed by our experience assisting families whose loved ones are missing or have been murdered and representing Indigenous women, girls, Trans and Two-spirited people¹ who are more likely to be the victims of these crimes. Our experience advocating for people who are mistreated by the police, within the criminal justice system, and by health and child welfare agencies provides a critical lens through which to understand the scope of the problem of violence against IWGTTS and is a rich source of community-based solutions.

b) Overview of ALS' submissions

¹ ALS will use "IWGTTS" throughout these submissions to refer to Indigenous women, girls, Trans and two-spirited people.

4. Our submissions will focus on the direction given through the Terms of Reference² which directed the Inquiry Commissioners to inquire into and to report:

- i. systemic causes of all forms of violence — including sexual violence — against Indigenous women and girls in Canada, including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of Indigenous women and girls in Canada, and
- ii. institutional policies and practices implemented in response to violence experienced by Indigenous women and girls in Canada, including the identification and examination of practices that have been effective in reducing violence and increasing safety

and the direction to the Commissioners to make recommendations on:

- i. concrete and effective action that can be taken to remove systemic causes of violence and to increase the safety of Indigenous women and girls in Canada.
5. In our submissions we will begin by examining the way the registration provisions of the *Indian Act* set the stage for the violence that Indigenous women and girls face in contemporary Canada. We then examine the institutions that we feel are responsible in many ways for the epidemic of murdered and missing IWGTTs. We do this not just to hold them to account but also to suggest what change is needed. We will then make submissions about how self-determination can be returned to Indigenous people, because true solutions will only be found when the state gives up its hold on power over Indigenous people.
6. An important aspect of ALS' submissions is our position that providing more resources to non-Indigenous led organizations, such as police and child welfare agencies, is not the way to address the crisis. Rather, solutions are found by listening to survivors themselves and supporting the agencies that are addressing their immediate and long-term needs.
- c) The Strength of Indigenous Women and Girls
7. In discussions that have taken place over the years on this issue Indigenous women and girls are often described as “vulnerable.” But Indigenous women and girls are anything but vulnerable – they are in fact, incredibly resilient and strong. As Dr. Barry Lavallee said in his testimony, “Indigenous women are not vulnerable. Indigenous women are targeted in secular

² Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Terms of Reference*, <http://www.mmiwg-ffada.ca/wp-content/uploads/2018/06/terms-of-reference.pdf> accessed 14 December, 2018.

society for violence.”³ Describing these women and girls as vulnerable makes it appear that the tragedies that befallen them and their families are somehow their fault – if only they could have been stronger perhaps they would not have suffered. In reality, if other people were not so determined to harm IWGTTS and if institutions had done their jobs to protect them, this Commission would not have had to hear months of heart-breaking testimony from the families left behind.

8. IWGTTS are repeatedly failed by the institutions that non-Indigenous Canadians trust are there for their benefit. The police, the court system, the health care system and the child welfare system have not been there for IWGTTS and this has led to them being more at risk. Imagine how hard it is to survive, much less thrive, when these core institutions of the state are not there for you – indeed, in many cases they are actively hostile. It is the state institutions that have failed IWGTTS.
9. The neglect and hostility IWGTTS experience from these central institutions are a result of acts of colonialism such as the reserve system, the residential school system and the 60s Scoop. But colonialism does not just leave a legacy: it is alive and well today and can be found in the federal government’s continued reluctance to address the harms caused by the sexist and exclusionary practices of the *Indian Act* that serve to marginalize Indigenous women and girls.
10. It is important to situate the causes of harm and the failures of institutions to be there for IWGTTS when they are needed. It is important because it shows that if we are interested in change we have to stop assuming that state and quasi-state actors somehow have the answers. Of course we have the right to expect that police forces will take reports of missing IWGTTS seriously; we should expect that the court system will treat IWGTTS with respect when they come before them as witnesses, complainants, accused or offenders; we should expect that health care providers would listen to the needs of those who come to them and provide them with the care they need; and we must hold child welfare authorities responsible for actually acting in the best interest of Indigenous children rather than simply mouthing those words as an excuse to apprehend them.

³ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part III, Volume IX, Tuesday June 12, 2018, transcript at 62.

11. These institutions, and others, must do better. But we need to stop expecting institutions that have repeatedly failed Indigenous people over the decades to suddenly be able to change. Instead, we need to empower Indigenous individuals and community organizations to deliver the services that IWGTTS require and to advocate for themselves and hold institutions accountable when they fail them.
12. Over 20 years ago the Royal Commission on Aboriginal Peoples (RCAP) advocated for the return of self-government to Indigenous nations. They concluded it was only through that process that Indigenous people could truly achieve self-determination and that self-determination was a prerequisite to ensuring Indigenous people had the support and resources they needed to thrive. Over the past twenty years there have been tentative baby steps in this area, but most of the energy has been misplaced in trying to reform existing institutions. If we are serious about addressing the root causes behind murdered and missing IWGTTS then we have to look beyond what is to what must be.

2. Setting the Stage for Violence: *The Indian Act*

13. In ALS' submission, central to an understanding of the experiences of Indigenous women and their families is the devastating impact of the registration provisions of the *Indian Act*⁴ (the "Act.")

a) The History of the Act

14. Like its precursor colonial legislation, the *Gradual Civilization Act* of 1857, the goal of the 1876 Act was the assimilation of First Nations people. This is made clear in the following statement by John A. Macdonald in 1887:

[T]he great aim of our legislation... has been to do away with the tribal system and assimilate the Indian people in all respects with the other inhabitants of the Dominion as speedily as they are fit to change.⁵

A key aspect of the *Act* was the determination of who was and was not an Indian and the definitions had a profound effect on First Nations women. Because the *Act* reflected European Victorian ideas of patriarchy, women's identities were tied to those of their

⁴ *Indian Act*, RSC 1985, c I-5.

⁵ Canada, Truth and Reconciliation Commission of Canada, *Canada's Residential Schools: The History, Part 1 Origins to 1939*, (Ottawa: Truth and Reconciliation Commission of Canada, 2015) at 126.

husbands. The imposition of the one-man one-vote system on First Nations took away the traditional role women had in many communities of choosing leadership.⁶ And by taking away this leadership role and giving power exclusively to men, it meant that First Nations themselves turned away from considering the impacts of their decisions on all members of the nation.

15. Then in 1951, registration provisions “with a strong emphasis on the male line of descent”⁷ replaced definitions based on Indian bloodlines. The consequence was that Status Indian women who “married out” lost their status. RCAP concluded that:

The issue of identity under the Indian Act has been and continues to be a source of personal pain and frustration for Indian women. Through its restrictive and sexist definition of 'Indian' and the selective application of the involuntary enfranchisement provisions, the Indian Act has created a legal fiction as to cultural identity. This has profoundly affected the rights of women of Indian ancestry, denying these rights entirely in the case of the thousands of women and their descendants who were subject, against their will, to loss of status and enfranchisement and to subsequent removal from their home communities because they married men without Indian status. Categories of aboriginality have been created through Canadian law as though Aboriginal identity and the rights that go with that identity could be chopped and channelled into ever more specific compartments or, in some cases, excised completely.⁸

16. Women who lost their Status often no longer had access to housing on their reserve and the federal government had no obligation to assist them. Dislocation from the protective forces of community and the social supports of family increased the risks women faced in the urban environments to which they were often forced to move. It also contributed to the poverty they experienced since they could not access housing, jobs or the other material benefits of remaining on their reserves. As was noted in Justice L’Heureux-Dubé’s decision in *Corbiere*⁹ at the Supreme Court of Canada, “residence off the reserve has often been forced upon them, or constitutes a choice made reluctantly or at high personal cost.”¹⁰

⁶ Canada, Royal Commission on Aboriginal Peoples, *Perspectives and Realities*, vol 4 (Ottawa: Canada Communications Group, 1996) at 22.

⁷ *Ibid* at 28.

⁸ *Ibid* at 22.

⁹ *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203, 1999 CanLII 687 (SCC), <<http://canlii.ca/t/1fqhc> accessed 14 December, 2018.

¹⁰ *Ibid* at para 62.

b) Attempts at reform and the resulting problems

17. Starting in 1970, the discriminatory impacts of the *Act* were challenged by First Nations women who had been denied status because they, or their mothers or grandmothers, married a person who was not a Status Indian. Jeannette Corbiere Lavell, Yvonne Bedard, and Sandra Lovelace all challenged the ‘marrying out’ provisions of the *Act* or its consequences. As a result of these challenges, Parliament amended the *Act* by enacting Bill C-31.
18. Bill C-31 resulted in the registration of more than 117,000 persons¹¹ who had lost their status because of discriminatory parts of the Act. One of the concerns raised by First Nation governments before Bill C-31 was passed was that it would lead to many people regaining their membership and their children becoming members. While this was not in and of itself a problem, the concern that was identified was that without additional funding these new members would create additional pressures on the limited funds that First Nations had available. The government promised that additional funding would be made available precisely so this situation would not arise. In his statement to the Standing Committee, respecting to Bill C-31, the Minister of Indian Affairs, the Honourable David Crombie stated that “the government is fully committed to ensuring that bands have adequate funding to enable new band members to be integrated with a minimum of disruption to community life.”¹²
19. However, as RCAP found, “the department of Indian Affairs had seriously underestimated the number of persons likely to seek reinstatement.”¹³ As a result, the government failed to follow through on this promise with the predictable consequence that when women and their children tried to rejoin their communities they found that the lack of funding led to further discrimination. In some cases women could not return because there simply was no housing on the First Nation. In other cases priority for funding was given to those living on reserve

¹¹ Canada, Indigenous and Northern Affairs Canada, *What is Indian Status?* (2018) <https://www.aadnc-aandc.gc.ca/eng/1100100032463/1100100032464> accessed 14 December, 2018,

¹² Canada, Indian and Northern Affairs Canada, Evaluation Directorate, *The Impacts of the 1985 Amendments to the Indian Act (Bill C-31), Impacts on Indian Bands: Individual Case Study Reports (Working Paper for Module 3)* December 1990, Volume II (Ottawa: Indian and Northern Affairs, 1990) at 54-55. <http://publications.gc.ca/collections/collection_2017/aanc-inac/R32-343-1990-2-eng.pdf> accessed 13 December, 2018.

¹³ Canada, Royal Commission on Aboriginal Peoples, *Perspectives and Realities*, vol 4 (Ottawa: Canada Communication Group, 1996) at 33.

which prevented these women and their families from actually being able to benefit from their membership. According to a report prepared for Indian and Northern Affairs Canada¹⁴:

In the 5 years since implementing Bill C-31, the government has not yet recognized its own estimated forecast in C-31 supplementary allocations for this Band. In addition, most respondents indicated that Bill C-31 has effectively disrupted community life because it has created rifts amongst family members and amongst community members. Those regular band members on the housing waiting don't understand the fairness of a situation that allows C-31 registrants who recently gained status to suddenly be given a home before they are. Reciprocally, C-31 registrants don't understand why it is unfair for them to get a house considering the discrimination they have suffered.¹⁵

20. These fiscal pressures also led to further discrimination against these women and their children. Bill C-31 women and their families were treated by some First Nation members as interlopers and second class citizens although they were the ones who were the victims of an overtly sexist government policy. This discrimination by First Nations members cannot be condoned or justified, but responsibility must also be placed on the federal government whose failure to follow through on their funding commitments sowed the seeds for this development.

c. Ongoing problems with the *Indian Act*

21. While Bill C-31 was touted as the government's response to eliminating discrimination in the *Indian Act*, it fell far short of the mark. As the cases of *McIvor*¹⁶ in 2009, *Deschenaux*¹⁷ in 2015 and *Gehl*¹⁸ in 2017 showed, discrimination continued. And much still remains to be done. There are two issues that must be addressed to remedy the discrimination that persists in the *Indian Act* and in its impact on First Nations women and their families. The first issue is to actually address the remaining discriminatory aspects of the *Act* and the second –which is equally important - is to require the federal government to provide First Nations with the funds they need to bring the victims of this sexist discrimination back to their communities.

¹⁴ *Ibid* at 55.

¹⁵ *Ibid*.

¹⁶ *McIvor v. Canada (Registrar of Indian and Northern Affairs)*, 2009 BCCA 153 (CanLII), <<http://canlii.ca/t/230zn>>, accessed 13 December, 2018

¹⁷ *Deschenaux c. Canada (Procureur Général)*, 2015 QCCS 3555 (CanLII) <<http://canlii.ca/t/gkfsx>>, accessed 13 December, 2018.

¹⁸ *Gehl v. Canada (Attorney General)*, 2017 ONCA 319 (CanLII), <<http://canlii.ca/t/h38cq>>, accessed 13 December, 2018.

22. Unfortunately successive federal governments of all political stripes have been reluctant to comprehensively address the discrimination in the *Act*. In fact, reluctant does not begin to describe the government's position in these cases – they have been actively opposed to change. ALS has first-hand experience facing the resources the government will devote in defence of the *Indian Act*. We represented Dr. Lynn Gehl after her application for Indian registration in 1994 was denied on the basis that the father of one of her relatives was unnamed on a birth certificate, and thus presumed under the “Unknown Paternity” policy to be a non-Indian. For 23 years, she was met with motion after motion by the federal government attempting to derail the case until, finally, the Ontario Court of Appeal delivered its judgment and found the Unstated Paternity policy to be what it always was: discriminatory. At para. 45, Sharpe J. wrote that the policy:

[F]alls well short of what is required to address the circumstances that I have just described making proof of paternity problematic for many women. This failure perpetuates the long history of disadvantage suffered by Indigenous women. As Parliament itself recognized in 1985, the historic practice of stripping and denying Indigenous women of status represented a significant disadvantage that was inconsistent with the Charter's promise of equality.¹⁹

We highlight the *Gehl* case because we are so familiar with it, but the federal government was equally determined to frustrate the changes sought in both *McIvor* and *Deschenaux*; changes that eventually had to be ordered by the courts. This is why we believe that this Inquiry must recommend that discrimination in the *Indian Act* be finally and completely ended.

23. On December 4, 2017, the House of Commons passed Bill S- 3 which made amendments to the *Indian Act* as required by the *Deschenaux* and *Gehl* decisions. What is missing from this legislation is the removal of the two-tiered system of registration that will always create inequities. This hierarchy is created by the “second generation cut-off rule” because the *Act* currently provides that after two generations of a status parent having children with a non-status parent, their descendants lose status. The first generation receives 6(1) status, while the following generation is bumped down to 6(2) and finally, the third generation loses access to registration entirely. This hierarchy continues to perpetuate the consequences of the historical gender discrimination within the *Act*.

¹⁹ *Ibid* at para 45.

24. A number of organizations – including ALS – made representations to the Senate seeking an amendment to eliminate these hierarchies. This amendment was referred to as “6(1)(a) All the Way.”²⁰ The House of Commons refused to include the amendment and deferred this question for further consultation.²¹

d.) Recommendations regarding the *Indian Act*

- Reform the *Indian Act* to extend full section 6(1)(a) status extend to all First Nations women and their children who have been discriminated against by exclusionary provisions of the *Indian Act* since 1869. This will remove the discriminatory 1951 amendment “cut-off” and is known as “6(1)(a) All the Way.”
- Ensure that these changes are accompanied by increased funding for First Nations. It is essential both that the federal government adequately fund First Nations to ensure that they can meet the needs of their newly-recognized community members and also that First Nation governments ensure that access to this funding is not administered in a discriminatory manner.

3. Understanding the Role of Key Institutions

25. As set out above, ALS will focus its submissions on four key institutions which have failed in their responsibility to keep Indigenous women, girls, Trans and 2-Spirited people safe from violence. These institutions are: the police; the criminal justice system; the healthcare system; and child welfare agencies.

a) Police

- i) Concern about the role of police agencies in this Inquiry

26. During Phases II and III of the Inquiry, which addressed systemic issues, 18 of the 83 expert witnesses the Commission called worked for police forces. This means that 22% of these witnesses were police. The Inquiry will also receive submissions from seven police parties. We are concerned that much of the evidence you have heard has focussed on police as the

²⁰ Canada, Parliament, Senate, Standing Committee on Aboriginal Peoples, *Proceedings*, 42nd Parl, 1st Sess, (16 May, 2017) <<https://sencanada.ca/en/Content/SEN/Committee/421/appa/22mn-53323-e>> accessed 13 December, 2018.

²¹ Canada, Indigenous and Northern Affairs Canada, *The Government of Canada’s Response to the Descheneaux Decision* (2018) <https://www.aadnc-aandc.gc.ca/eng/1467227680166/1467227697623> accessed 13 December, 2018.

solution to the problem of missing and murdered IWGTTS, rather than as part of the problem. We are also concerned that the over-representation of police parties in this process may result in recommendations aimed at directing resources to police rather than to agencies that work directly with Indigenous communities. This could be an unintended consequence of ranking recommendations based on the number of times they are mentioned by parties.

ii) Situating Indigenous People's relationship with police

27. For non-Indigenous people, particularly white people, the police are there to serve and protect, they are the ones to call when you are in need or someone has gone missing. But for Indigenous people, that just isn't the case. And it's not because Indigenous people are paranoid or irrational, it's because their concerns and their fears are well founded. They are based in history, in lived experiences and in day to day interactions with police. This reality is reflected in the results of the Statistics Canada General Social Survey, which found that Indigenous people rate police lower than non-Indigenous people, while Non-Indigenous people had higher probabilities of a positive perception of police's ability to be approachable and easy to talk to, promptly respond to calls, treat people fairly, and enforce the laws.²²

28. Families of IWGTTS are often rightly sceptical and fearful of police based on the role they have played in their communities. A report prepared for the Ipperwash Inquiry explored the role of the police within the distinct historical background of Indigenous communities:

While Aboriginal people are clearly over-policed today, over-policing has a particular history with regards to Aboriginal people. Governments in Canada have historically used the police to pre-emptively attempt to resolve Aboriginal rights disputes by arresting those attempting to exercise those rights prior to any determination as to the validity of the claims. In addition, police have been used to further the objectives of the government in terms of assimilation of Aboriginal people through apprehension of children in order to have them attend residential school, and later in support of child welfare agencies. Police also were used to support many of the most egregious provisions of the Indian Act.²³

²² Canada, Statistics Canada, *Spotlight on Canadians: Results from the General Social Survey, Public Confidence in Canadian Institutions*, (Ottawa: Statistics Canada, 2015) <<https://www150.statcan.gc.ca/n1/en/pub/89-652-x/89-652-x2015007-eng.pdf?st=7k8Oe5OF>> accessed December 13, 2018

²³ Ontario, Ipperwash Inquiry, *Aboriginal Peoples and the Criminal Justice System*, position paper by Jonathan Rudin (Toronto: Ipperwash Inquiry, 2005) at 1, <http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/Rudin.pdf> accessed 13 December, 2018.

29. This reality can give rise to a generalized distrust of police which can mean that families are often reluctant to report people missing. This reluctance is exemplified in the report by Justice David Wright into the disappearance of Neil Stonechild.²⁴ The testimony of Neil Stonechild's sister explaining why their family did not report his disappearance to the Saskatoon police speaks volumes. It was so significant to Justice Wright that he based his final comments in the report on her testimony.

Q. In general terms, can you explain to us why you say that, you don't go to the police?

A. In general terms. There was no trust established there at all, period. My mother tried to teach us children that under every circumstance that you need help, call the police. That's their job, that's what they're there for. When you have conflict with that, what you've been taught all your life, but you're experiencing a whole lot of other things that suggest otherwise, then I'm sorry – there was a few incidences in my personal life and our entire family's. And I'm talking – when I say my entire family I'm talking about my mother and my brothers, you know, my uncle, my cousin, whoever happened to be most in our home at the – at that time. They were never reported simply because there is no trust. And it didn't -- and it's not going to say that I'm slashing up the Saskatoon Police Force because, please, there is a lot of good people out there, I know that there is. But we can't ignore the fact that they're human, everybody's a human being.

...

A. We didn't have no trust for the City Police. If we had more trust for the City Police, my mother would have been reporting them left, right and centre, every time they went AWOL from somewhere, every time they were UAL from somewhere, or run away from their community home where she was trying so hard to help them, you know, understand their cycle of life, or whatever you want to call it, they're way of being and holding themselves.”²⁵

30. For Justice Wright, this testimony served as the strongest evidence of the two solitudes that exist, not just in Saskatoon, not just in Saskatchewan, but across the country with respect to attitudes towards the police. That a public inquiry was called to address the practice of “Starlight Tours,” where Indigenous men were abducted by police and left on the outskirts of Saskatoon in frigid temperatures, highlights yet another reason members of Indigenous communities wisely may not turn to police for assistance.

²⁴ Neil Stonechild was a young man from the Saulteaux First Nation who was abducted by police in 1990 and abandoned on the outskirts of Saskatoon where he died of hypothermia.

²⁵ Saskatchewan, Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild, *Report of the Commission of Inquiry*, (Regina: Publications Saskatchewan, 2004) at 209-10.

31. And for IWGTTS there are even more specific reasons why they may not report a loved one missing. First, they are often not believed when they report violence, especially people from marginalized communities like sex workers. The Oppal report found:

Systemic bias in the form of negative stereotyping based on the women's status of poverty, living in the DTES, engagement in the sex trade, and suffering from drug addictions had a pervasive impact on the missing women investigations. The VPD and the RCMP relied on preconceived notions rather than seeking out available information about the women and their lives. This stereotyping contributed to faulty risk assessment, which in turn delayed suspicion of foul play and that a serial killer was at work. It also directly contributed to the failure to warn women in the DTES of their heightened endangerment.²⁶

32. Second, too often violence against IWGTTS is seen only as a problem of intimate partner violence, despite the reality that Indigenous women are less likely than other Canadian women to be murdered by their domestic partners.²⁷

33. Finally, IWGTTS who are victims of violence themselves often have other practical reason not to call police. These include

- The way “zero tolerance” and “no drop” policies operate to eliminate a role for their wishes be factored in to the police response;
- That under “dual-charging” policies, they themselves may end up being charged;
- That they cannot count on being protected if they face retaliation for contacting the police;
- That calling police may involve child welfare in their lives;
- That if the person who is hurting them is Indigenous, that person will not benefit from discretion in the criminal justice system so may be over-charged, denied bail etc. meaning their family, relationship, finances may be disrupted more than other people's;
- That the offender may not have access to appropriate rehabilitative programs so when they return they may be more angry and more dangerous than when they went into the system; and
- That assumptions about them as victims may mean they are less likely to be believed by the police, courts, and juries.

²⁶ British Columbia, Missing Women Commission of Inquiry, *Forsaken, Report of the Missing Women Commission of Inquiry*, Vol IIb (Victoria: Library and Archives Canada, 2012) at 231.

²⁷ Canada, Royal Canadian Mounted Police, *Missing and Murdered Aboriginal Women: A National Operational Overview*, (2014) at 13 <http://www.rcmp-grc.gc.ca/en/missing-and-murdered-aboriginal-women-national-operational-overview> accessed 14 December, 2018.

34. These views are reinforced by the fact that, indeed, police have not cared about IWGTTS and reports of their going missing have been met by disinterest from the police. You have heard testimony from family members about these attitudes, they were detailed in the Stolen Sisters Report,²⁸ and of course the Report of Justice Oppal²⁹ into the failure of the Vancouver Police to look for the victims of Robert Pickton. All this evidence illustrates that Indigenous people are right to think that the police don't care and won't do anything if they report someone missing because Indigenous people are seen as less worthy victims.
35. To their credit, some police forces are taking responsibility for their negligence, their disinterest and their racism. Over the past few years, police forces such as the RCMP, the Vancouver Police and the Winnipeg Police at this inquiry have acknowledged their shortcomings, have apologized for their inaction and have promised to do better – and we very much hope that they do in fact do better – lives depend on it.
36. At the same time, many of these police forces insist that to do better they need more resources, which means more money – and that money is often sought from funds that are tied to initiatives such as addressing the crisis of missing and murdered IWGTTS. As we will address later in our submissions, we believe that new infusions of funding need to go to Indigenous organizations that are in a much better position to respond to the needs of Indigenous people. Police forces should not get money that is better directed to Indigenous organizations in order to do their job properly.
37. ALS is concerned that one outcome of this Inquiry will be a significant injection of funds to policing agencies. In its response to the Inquiry's Interim report, the federal government announced funding of \$9.6 million to the Royal Canadian Mounted Police's new National Investigative Standards and Practices Unit and \$1.25 million to “organizations with expertise in law enforcement and policing to lead a review of police policies and practices with regards to their relations with the Indigenous peoples they serve.”³⁰
38. We should expect our police forces to be able to use the funds that they have for their core operations to ensure that they serve all of those within their jurisdiction fairly and equally.

²⁸ Amnesty International, *Canada Stolen Sisters, A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada*, (Ottawa: Amnesty International Canada, 2004).

²⁹ British Columbia, Missing Women Commission of Inquiry, *Forsaken, Report of the Missing Women Commission of Inquiry*, Vol IIIb (Victoria: Library and Archives Canada, 2012).

³⁰ Canada, Crown-Indigenous Relations and Northern Affairs Canada, *Addressing the interim report* (2018) <https://www.rcaanc-cirnac.gc.ca/eng/1528205876642/1534529128496> accessed 14 December, 2018.

Meeting the needs of Indigenous victims and families who have lost loved ones must be part of the core business of the police. Requiring additional funds to “better be able to respond to the needs of Indigenous people” sends the message that it takes a special effort to provide policing service to Indigenous people. It shouldn’t. If the police can use their existing resources to find missing non-Indigenous women and girls then they can use those resources to find missing IWGTTs. If the police need better training to do their jobs then it should come from their training budget, not from special grants from one or another level of government. Grants that would be better placed allowing Indigenous organizations to do the work they do best with the people they know best.

39. Rather than providing additional funding to police, police should be required to dedicate their own resources to finding out why the policies and protocols they have in place to find missing white people aren’t followed when a report is received about a missing Indigenous person. To address the disparity in the services they are providing to different communities, police services may have to identify gaps in their services and strategies to address them and ways to measure their progress. In addition, programs aimed at crime prevention, community development etc., should not be facilitated through the police, but rather by Indigenous communities themselves.

iii) Recommendations concerning the Police

- Require the RCMP, urban, and provincial police forces to eliminate gaps in their services to Indigenous community members using the funds they are provided for core police services.
- Require the RCMP, urban, and provincial police forces to ensure that their services are provided in a way that does not perpetuate systemic racism and are culturally safe. This service requirement shall be provided using core training and service-delivery funding.
- That the Thunder Bay Police Service force adopt every recommendation made in the recent OIPRD report “Broken Trust: Indigenous People and the Thunder Bay Police Service.”³¹
- Ensure that every police force is subject to independent civilian oversight and that Indigenous communities are represented in the governance and operations of these oversight bodies.

³¹ Ontario, Office of the Independent Police Review Director, *Broken Trust, Indigenous People and the Thunder Bay Police Service*, <http://oiprd.on.ca/wp-content/uploads/OIPRD-BrokenTrust-Final-Accessible-E.pdf> accessed 14 December, 2018.

b) The Criminal Justice System

40. The Canadian criminal justice system has caused a great deal of harm to Indigenous people and Indigenous communities. It has been repeatedly identified as a system which discriminates against Indigenous people and from which Indigenous people are estranged.³² The Supreme Court has cited RCAP's conclusion about the "fundamentally different world views of Indigenous and non-Indigenous people with respect to such elemental issues as the substantive content of justice and the process of achieving justice."³³
41. The criminal justice system divides people into two categories: victims and offenders. The rights afforded to each class are proscribed and absolute. However, this fails to take into account the experiences of Indigenous communities which have been subjected to pervasive systemic and direct violence at institutions such as residential schools and foster homes where sexual and physical violence were and are acknowledged to be endemic. The scars caused by this violence often results in victims causing violence to others and the lines between victims and offenders overlapping and blurring.³⁴ In this way, victims become offenders and terrible cycles of violence are perpetuated. Similarly, some people who experienced the trauma of residential school, of family separation caused by the 60s scoop, childhood sexual violence or family violence turn to alcohol or drugs to numb the pain. This self-medication can also lead to coming into conflict with the criminal justice system. For these reasons, addressing the issue of violence against IWGTTS also requires reform of the criminal justice system.

i) *The Criminal Code*

42. The *Criminal Code*³⁵ contributes to the crisis of murdered and missing IWGTTS. While the purpose of particular provisions of the *Code* might not be explicitly to further endanger Indigenous women, girls, Trans and Two-Spirited people, the reality is that this is exactly what they do. And in some cases, these measures, enacted ostensibly to prevent such violence, end up doing exactly the opposite.

³² *R v Gladue* [1999] 1 SCR 688 at para 62.

³³ *R v Gladue* [1999] 1 SCR 688; *R v, Ipeelee* 2012 SCC 13; *Ewert v Canada* 2018 SCC 30.

³⁴ Canada, Truth and Reconciliation Commission of Canada, *The Survivors Speak; A Report of the Truth and Reconciliation Commission*, (Ottawa: Truth and Reconciliation Commission of Canada, 2015) at 166.

³⁵ *Criminal Code*, RSC 1985, c C-46, <<http://canlii.ca/t/53gxz>> accessed 14 December, 2018.

43. The continued persistence of many mandatory minimum sentences in the *Criminal Code* is one area that urgently requires reform. We know that mandatory minimums have a particular impact on Indigenous women and the federal government knows that too. The Minister of Justice herself has spoken eloquently on this issue. On September 29, 2017 she said this about mandatory minimum sentences:

There is absolutely no doubt that MMPs have a disproportionate effect on Indigenous people, as well as other vulnerable populations. The data are clear. The increased use of MMPs over the past decade has contributed to the overrepresentation in our prison system of Indigenous people, racialized communities and female offenders. Judges are well-equipped to assess the offender before them and ensure that the punishment fits the crime.³⁶

44. Mandatory minimum sentences put women who should not be in jail in jail. These women then become further enmeshed in the criminal justice system as a result of the traumas they have experienced and are then victimized by the system. And once they are released, they are even more marginalized, their lives more precarious, their abilities to overcome the challenges they face even more difficult. Mandatory minimum sentences make the lives of Indigenous women more difficult – and yet are still found throughout the *Criminal Code*.

45. And mandatory minimum sentences have an impact in another way – they can prevent communities from healing and from addressing the impacts of trauma. We know that in many Indigenous communities the epidemic of sexual abuse and victimization is tied to the inter-generational impacts of residential school. These offences are serious and must be dealt with seriously, but in the Canadian criminal justice system seriousness is measured only in sentence length. Governments have repeatedly justified introducing mandatory minimum sentences under the guise of taking crime seriously and protecting vulnerable groups.

46. The problem is that there are communities that want to deal with the impact of historic and current sexual abuse but one of the reasons that people are reluctant to report such abuse is that what they want is healing in the community not jail for perpetrators. If there are no options other than jail for perpetrators of abuse then matters will continue to stay in shadows and never be addressed. There are circumstances where the threat of jail silences people rather than encourages them to come forward.

³⁶ <https://www.theglobeandmail.com/news/national/case-of-indigenous-drug-smuggler-puts-mandatory-minimum-sentences-on-trial/article36558263/> accessed 14 December, 2018.

47. To be clear, we are not saying that no one should ever be jailed for crimes of sexual abuse.

We know in some cases that perpetrators seek to escape the consequences of their behaviour by relying on community sentiment that does not represent the wishes of the entire community but rather those in positions of power and with something to lose – men. But at the same time we have to acknowledge that the proliferation of mandatory minimum sentences has not had any measurable impact on making communities safer and preventing the abuse of IWGTTS. We need to be able to have serious discussions about options in the criminal justice system. We need to recognize that mandatory charging policies and mandatory minimums get in the way of community healing. Assuming that in every situation a mandatory minimum sentence has to be the response to particular forms of offending is simply counter-productive.

48. The TRC recommended in call to action 32 that the federal government repeal mandatory minimum sentences. Despite this call to action, despite the current government’s repeated statements that they would act on these calls to action, nothing has been done – we urge this Inquiry to add its voice to those demanding change in this area.

49. There are also those laws that are ostensibly passed to protect women but have the opposite impact. We have seen a number of examples of such legislation recently. For example, the criminalization of activities which IWGTTS use to survive, including sex work, increase rather than decrease risks to their safety. This is the case even when the laws are intended to help, such as the criminalization of the purchase of sex or of those who exploit vulnerable young people as “pimps” or “traffickers.” Unfortunately increasing policing and prosecution without steps to also address the forces that make these survival tactics necessary (housing, access to education, jobs, social assistance, mental health and addiction treatment) only makes these problems worse. As the Supreme Court held in *Bedford v. Canada*, laws which prevent sex workers from working in fixed indoor locations³⁷, hiring drivers and bodyguards³⁸ and screening clients and setting terms for their interactions³⁹ significantly increases the risks they face. Those most affected by the ongoing criminalization of some

³⁷ *Canada (Attorney General) v. Bedford*, [2013] 3 SCR 1101 at Para 64.

³⁸ *Canada (Attorney General) v. Bedford*, [2013] 3 SCR 1101 Para 67.

³⁹ *Canada (Attorney General) v. Bedford*, [2013] 3 SCR 1101 Para 71.

aspects of sex work have said that it continues to threaten their safety,⁴⁰ and we should listen to their voices.

50. Recently the federal government introduced Bill C-75 – an omnibus bill that makes many changes to the *Criminal Code*. One of the changes that was proposed, and has passed through the Committee stage and is thus likely to be found in the final version of the bill, is a reverse onus provision in bail applications brought by those with prior domestic violence convictions who are facing another such charge. The government argued for this amendment on the basis that it would protect women dealing with domestic violence in their life.
51. ALS takes the issue of domestic violence very seriously and is all too aware of the impact of this violence on IWGTTS. At the same time, we are also very aware that many well-meaning attempts to address the scourge of domestic violence not only fail, but they have unintended consequences that can be damaging to the very people they are supposed to help.
52. In this context we note that the phenomenon of dual charging, which occurs when a man charged with domestic assault insists that his partner “started it” and should be charged, has led to more and more women becoming enmeshed in the criminal justice system. There is evidence of the negative impact of dual charging practices on women.⁴¹ Police policies that grant no discretion to officers and require arrest whenever domestic violence is alleged contribute to the problem of dual charging.
53. One of the impacts of dual charging is that women end up with convictions for assault that they should never have had. The new provisions in the *Criminal Code* will mean that if the partner of a woman who has a domestic violence conviction once again alleges abuse then they may have trouble meeting the reverse onus. This means that they will be detained they will likely plead guilty and the cycle will continue and continue. Over 40% of women in custody today are Indigenous⁴² - this provision of the bill will make a shameful situation even worse.

⁴⁰ Brenda Belak and Darcie Bennett, *Evaluating Canada's Sex Work Laws: The Case For Repeal*, (Victoria: Pivot Legal Society, 2016) https://d3n8a8pro7v7hmx.cloudfront.net/pivotlegal/pages/1960/attachments/original/1480910826/PIVOT_Sex_workers_Report_FINAL_hires_ONLINE.pdf?1480910826 accessed 14 December, 2018.

⁴¹ Susan L. Miller, “The Paradox of Women Arrested for Domestic Violence: Criminal Justice Professionals and Service Providers Respond” 2001 *Violence Against Women* 7:12 at 1367-1368.

⁴² Canada, Canadian Centre for Justice Statistics, *Adult and youth correctional statistics in Canada, 2016/2017*, (Ottawa: Statistics Canada, 2018) at 5. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54972-eng.htm> accessed 14 December, 2018.

54. The problem of domestic violence is complicated and the unique experiences of Indigenous families must be the starting point every time bail is being considered. This will not happen with this “one size fits all” approach to this issue.
55. If someone has a prior conviction for domestic assault and they are charged again with a similar offence then, if there are concerns for public safety, whether for a particular individual or for the community at large, bail should be denied. There is no need to resort to a reverse onus that will not end up accomplishing what its proponents hope but will have dire consequences for many Indigenous women.

ii) Recommendations regarding the *Criminal Code*

- Repeal mandatory minimums and restrictions on conditional sentences
- Remove the reverse onus on bail in cases where domestic violence is alleged.
- Amend the *Criminal Code* to decriminalize sex work, including the purchase of sexual services, the employment of third parties for safety, and communication for the purpose of participating in the exchange of sexual services. Ensure that IWGTTS who engage in survival sex can work together to help each other, and openly communicate with others about security measures, consent and negotiation of sexual services in order to keep them safer.
- Support the creation of safe, clean indoor spaces for sex work to take place. Long term, sustained funding must be provided for Indigenous sex worker organizations to set up and run these indoor spaces.⁴³
- Support stable funding to Indigenous organizations to support those engaged in survival sex by providing counselling, access to traditional spiritual practices, job training, addiction and health services and income support. This will assist IWGTTS who wish to stop participating in sex work.

iii) Other aspects of the Criminal Justice System

56. The criminal justice system does not just consist of the laws found in the *Criminal Code*, it also includes the way in which people are treated by the major actors in the criminal justice system – judges, lawyers, victim service workers, etc. We know that the criminal justice system systemically discriminates against Indigenous people and this includes IWGTTS who

⁴³ An example of this was referred to as “Grandma’s House” in the evidence relied on by the Supreme Court in *Bedford. Canada (Attorney General) v. Bedford*, [2013] 3 SCR 1101 at para. 64.

are victims/survivors of violence. The most extreme - or perhaps public - examples of this discrimination are the cases of Helen Betty Osborne, Pamela George and Cindy Gladue.

57. While the tragedy of Helen Betty Osborne's mistreatment by the justice system began in the 1970s, the case of Cindy Gladue was argued just a few months ago at the Supreme Court of Canada and highlighted the failure of prosecutors to treat Ms. Gladue as a victim of crime deserving of dignity and respect. Instead, she was consistently referred to as "native" and a "prostitute" throughout the jury trial which ultimately resulted in the acquittal of the man who caused her death. Her past sexual activity was introduced into evidence by the crown in contravention of rules designed to ensure that such evidence is not introduced in ways that perpetuate myths and stereotypes about sexual assault victims.⁴⁴ Most shocking, the crown introduced her pelvis into evidence, putting her intimate body parts on display. All of this reflects an attitude that IWGTTS are less deserving of protection and fair treatment, when in fact their vulnerability should result in increased protections and measures to ensure fairness in the trial process.

58. Indigenous women continue to be subject to particular negative stereotypes about their sexuality. These stereotypes are a legacy of colonialism. As noted by Professor Lise Gotell:

Aboriginal women in Canada were rendered promiscuous and constructed as legitimate targets of sexual violence as part of the colonizing project. The portrayal of the Aboriginal woman as immoral and inherently sexualized helped to constitute and maintain the spatial and ideological boundaries between settlers and native peoples. As Sherene Razack has argued, from the nineteenth century, the almost universal conflation of the "squaw" with the prostitute placed Aboriginal women beyond the reach of law's protections.⁴⁵

59. This racist stereotype continues to inform how sexual violence against Indigenous women is understood in the criminal justice system today. In Part 1, Chapter 13 of the Report of the Aboriginal Justice Inquiry of Manitoba, the Commission cites with approval the work of Professor Emma Larocque which found that "The 'squaw' is the female counterpart to the

⁴⁴ *R v Barton*, 2017 ABCA 216 (CanLII), <<http://canlii.ca/t/h4120>> accessed 14 December, 2018.

⁴⁵ Lise Gotell, "When Privacy is Not Enough: Sexual Assault Complainants, Sexual History Evidence and the Disclosure of Personal Records" (2006) 43:3 *Alta L Rev* 743 at 749.

Indian male ‘savage’ and as such she has no human face; she is lustful, immoral, unfeeling and dirty.’⁴⁶

60. One of ways such stereotypes can lead to an improper inference about consent is the conclusion that Indigenous women who exchange sex for money are not only more likely to have consented, but also to have brought the violence they experience on themselves. In her essay “Symbolic and Discursive Violence in Media Representations of Aboriginal Missing and Murdered Women,” Professor Yasmin Jiwani studied seven years’ worth of articles about Indigenous women in the *Globe and Mail*. She found that:

The consistent mention of Aboriginal women as ‘drug-addicted prostitutes’ comes through most clearly in the stories concerning violence perpetrated by white men. In all of these instances, the men are identified and described in detail with their respect to their backgrounds and their actions. Yet, in each one of these cases ... the young women involved were constantly referenced as drug-addicted sex workers. Reiterating the identities of Aboriginal women victims of violence as fitting this profile makes them seem responsible for the violence they experience. It is a discursive strategy of blaming the victim.⁴⁷

This problem in the Canadian criminal justice system has drawn international attention:

Amnesty International has denounced discrimination against Aboriginal women victims of sexual assault in the justice system because of their perceived promiscuity, as a racist and sexist violation of the fundamental human rights. Such discrimination allows the victimization of Aboriginal women to become normalized, leaving them vulnerable to further sexual violence.⁴⁸

61. In 2015 there was a justifiable outcry when an Indigenous woman in Alberta, known by the pseudonym of Angela Cardinal, was jailed because it was assumed by the police and judicial authorities that she would not attend court to testify against her abuser. As set out in an

⁴⁶ Manitoba, The Aboriginal Justice Inquiry, *Report of the Aboriginal Justice Inquiry of Manitoba, Volume 1 Chapter 13 “Aboriginal Women”*, (Winnipeg: Manitoba Government, 1991) online: www.ajic.mb.ca/volumel/chapter13.html accessed 14 December, 2018.

⁴⁷ Yasmin Jiwani, “Symbolic and Discursive Violence in Media Representations of Aboriginal Missing and Murdered Women” (2009) at 8-9, online:

https://www.researchgate.net/profile/Yasmin_Jiwani/publication/239856449_Symbolic_and_Discursive_Violence_in_Media_Representations_of_Aboriginal_Missing_and_Murdered_Women/links/0046353302321c36f5000000.pdf

⁴⁸ Elizabeth Adjin-Tettey, “Protecting the Dignity and Autonomy of Women: Rethinking the Place of Constructive Consent in the Tort of Sexual Battery” (2006) 39:1 UBC L Rev 3 at 41.

independent report commissioned by the Alberta Department of Justice,⁴⁹ she was treated as a criminal rather than as a victim. This was despite the fact that she had attended court even without a subpoena and had given no indication that she would not attend. Despite being distraught, she was offered no victim support and was instead taken to jail at the end of the court day on Friday. To make a bad situation even more horrific, she was actually brought to court for the Monday hearing in handcuffs and shackles travelling in the same police transport van with her attacker. She was remanded at the end of court for two more days and spent most of her time in court in handcuffs.

62. At the time government and court officials were contrite and explained the situation was unique. But these situations are not unique. Indigenous women are held in custody on material witness warrants because they are not perceived as willing to testify against their accuser or are seen as likely not to attend court. While it should go without saying that Indigenous women who are victims of violence – physical or sexual – should not be jailed because the crown or judge does not think they are likely to testify, it does need to be said. And not only does it need to be said, the practice needs to stop.
63. Even those institutions set up expressly to assist victims in the court system continually fail them. The role of victim witness advocates is often to act as an adjunct of the crown's office. Their role is to prepare the Indigenous woman or girl for trial, with the result that the support offered is not victim-centered, but prosecution-centered. This can mean the needs of the victim are secondary and after a trial or sentencing is complete, the victim is left on their own with no resources or further assistance.
64. The reality is that victim witness advocates are not there to advocate for the needs and interests of victims. The attitude that they often take is that victims are not capable of making up their own minds about how matters should proceed through court and any victim who is not prepared to see the matter through to trial is somehow letting down the side. This paternalistic attitude prevents the voices of IWGTTS from being heard and discourages them from using these services.

⁴⁹ Alberta, Alberta Justice and Solicitor General, *Independent Report on the Incarceration of Angela Cardinal* (Edmonton: Alberta Justice and Solicitor General, 2018) <https://justice.alberta.ca/publications/Documents/IndependentReportIncarceration-AngelaCardinal.pdf> accessed 14 December, 2018.

65. The system needs to change so that it asks victims what they need to be safe and how they can be supported when they want to make changes in their relationships and life style rather than imposing “solutions” on them. ALS has had the experience of crown attorneys and victim witness assistance workers expressing frustration about Indigenous victims because their actions did not fit with what they thought was best for the victim. This fails to acknowledge that Indigenous women do not need to be “saved,” but instead to be supported. We have had to advocate for victims to ensure that their wishes are understood – rather than ignored.
66. Unlike in many provinces, the Ontario Criminal Injury Compensation Board can compensate victims whether or not there has been a prosecution or even if the matter has not been reported to the police.⁵⁰ This allows victims to be heard and to receive a small amount of compensation, funds for therapy or medical expenses. We recommend that other provincial compensations programs be expanded to be this broad.

iv) Recommendations regarding the Criminal Justice System

- Develop a comprehensive National Action Plan to prevent and address gender-based violence involving the federal government, provinces, territories, municipalities, and First Nations.
- Remove automatic “dual-charging” and other practices which eliminate the voice of survivors of violence from the process
- Broaden access to provincial compensations programs
- Facilitate victim services operated by Indigenous communities and community organizations
- Reform jury charges to address discrimination that occurs in jury trials

d.) Health Care System

67. The health care system should be a source of refuge and healing for Indigenous women dealing with violence, but it too, like so many other institutions, continually fails these women. As noted by Dr. Janet Smylie, who testified as an expert witness in these proceedings, “Research shows that racism against Indigenous peoples in the health care

⁵⁰ *Compensation for Victims of Crime Act*, R.S.O. 1990, c. C.24.

system is so pervasive that people strategize around anticipated racism before visiting the emergency department or, in some cases, avoid care altogether.”⁵¹ Again, the roots of the failure of a system that other Canadians rely on are deep.

68. In 1940s and 50s for the Inuit, medicine meant that people were taken from their home communities and moved to TB sanitariums, from which many never returned.⁵² Indian hospitals were used to segregate patients so that they didn’t infect white patients.⁵³ Students of residential schools were subjected to medical experiments in the name of nutrition research.⁵⁴ And Indigenous women suffered forced sterilization, a practice that operated within the scope of the law from the 1920s to the 1970s, and as noted by Dr. Karen Stote, “in the absence of formal legislation... by eugenically minded doctors in Ontario and Northern Canada, where Aboriginal women were the prime targets.”⁵⁵

69. All of these experiences justifiably made Indigenous people wary of medical practitioners. How can we expect an Indigenous woman or girl fleeing violence to be comfortable seeking assistance from the medical community when their experience of that community is grounded on hurts and injuries inflicted at the hands of doctors and nurses?

70. Systemic racism is deeply ingrained in medical facilities. The fact that many hospitals do not recognize traditional healers and make it difficult if not impossible for people to smudge and practice their traditions in the hospitals keeps people away. The stereotypes that medical

⁵¹ Allan, B. & Smylie, J. *First Peoples, Second Class Treatment: The Role of Racism in the Health and Well-Being of Indigenous Peoples in Canada*. (Toronto: The Well Living House Action Research Centre for Indigenous Infant, Child and Family Health and Wellbeing, 2015) at 2 <http://www.wellesleyinstitute.com/wp-content/uploads/2015/02/Summary-First-Peoples-Second-Class-Treatment-Final.pdf> accessed 14 December, 2018.

⁵² Canadian Public Health Association, *TB and Aboriginal People* <https://www.cpha.ca/tb-and-aboriginal-people> accessed 14 December, 2018.

⁵³ First Nations Health Authority, *Our History, Our Health*, <http://www.fnha.ca/wellness/our-history-our-health> accessed 14 December, 2018.

⁵⁴ Noni E MacDonald, Richard Stanwick and Andrew Lynk, “Canada’s shameful history of nutrition research on residential school children: The need for strong medical ethics in Aboriginal health research” *Paediatric Child Health* Vol 19 No 2 February 2014, <https://academic.oup.com/pch/article/19/2/64/2647158>; and Ian Mosby, “Administering Colonial Science: Nutrition Research and Human Biomedical Experimentation in Aboriginal Communities and Residential Schools, 1942-1952” *Histoire sociale/Social History* XLVI, 91 (Mai/May 2013), 615-642. [Republished in Mona Gleason and Tamara Meyers, eds. *The Difference Kids Make: Bringing Children and Childhood into Canadian History*. Toronto: UTP, 2016.]

⁵⁵ Karen Stote: *The Coercive Sterilization of Aboriginal Women in Canada*, *American Indian Culture and Research Journal* 36:3 (2012) at 117.

professionals have of Indigenous people also keeps IWGTTS away. Those stereotypes affect the care they receive, as Dr. Barry Lavalee said in his expert testimony, “Differential access for particular treatments as well as investigations are harnessed on stereotyping.”⁵⁶

71. But the problems with medical services for IWGTTS is not restricted to health care facilities in urban centres – the lack of adequate health care on reserves is a national shame. According to a Spring 2015 Auditor General’s report considering health care in remote communities in Manitoba and Ontario, Health Canada did not have reasonable assurance that eligible First Nations individuals had access to clinical, client care and medical transportation services. Echoing ALS’ concern that government agencies often do not consider what Indigenous people and communities say they need, the review found “Health Canada did not take into account the health needs of remote First Nations communities when allocating support.” Further, the report found that only one of 45 nurses in the group sampled by auditors finished all five mandatory Health Canada training courses and nurses sometimes work outside their legislated scope of practice.⁵⁷

72. In the context of violence against Indigenous women and girls, it is shocking that many nursing stations on reserve do not have sexual assault kits. The reason given for this gap in services is that nurses have not been trained in how to use those kits. As a result, Indigenous women and girls who are sexually assaulted and want the evidence that is in and on their bodies to be used to find and convict the perpetrators have to wait two or three days to wash themselves until after they have been transported to an urban centre where such kits are available. What sort of message do we send these women and girls when we require this of them? Non-Indigenous Canadians would never tolerate such neglect and no one should have to.

i) Recommendations concerning Health Care

- Ensure that Health Canada is providing services based on community’s needs

⁵⁶ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, Truth-Gathering Process Part III, Volume IX, Tuesday June 12, 2018, transcript at 38 - 39.

⁵⁷ Canada, Office of the Auditor General, *Report 4 – Access to Health Services for Remote First Nations Communities*, (Ottawa: Auditor General of Canada, 2015) http://www.oag-bvg.gc.ca/internet/English/parl_oag_201504_04_e_40350.html#hd4g accessed 14 December, 2018.

- Increase funding for on-reserve health care facilities and ensure that victims have access to sexual assault kits just as they would in urban centers
- Investigate allegations of forced or coerced sterilizations in Canada, with particular attention to cases involving Indigenous women and girls, ensuring justice and reparations to survivors and their families.
- Change government policies and practices to explicitly prohibit sterilization without free, full, and informed consent.
- Implement Truth and Reconciliation Commission Calls to Action 23 and 24 on increasing the number of Indigenous healthcare professionals and providing cultural competency training to all healthcare professionals.
- Ensure that bodies aimed at accountability and which can address systemic and direct racism, such as professional colleges and hospital patient committees, have significant Indigenous community representation in their governance and operation.

e.) Child Welfare system

73. Indigenous communities know best how to care for, nurture and support their children. As noted in a paper for a conference on reconciliation with child welfare:

For thousands of years, Indigenous communities successfully used traditional systems of care to ensure the safety and well-being of their children. Instead of affirming these Indigenous systems of care, the child welfare systems disregarded them and imposed a new way of ensuring child safety for Indigenous children and youth, which has not been successful. Indigenous children and youth continue to be removed from their families and communities at disproportionate rates, and alternate care provided by child welfare systems has not had positive results.⁵⁸

74. The child welfare system causes incredible harm to Indigenous families. This has happened ever since child welfare started, picking up from where residential schools left off and building on the colonial idea that European ideas about families and child-rearing were superior to Indigenous practices. The inter-generational consequences of the 60s Scoop continue today, and child welfare agencies continue to cause direct harm by removing children.

75. The reason Indigenous children end up in the child welfare system are rooted in the poverty faced by Indigenous people. When researchers with the *Canadian Incidence Study on*

⁵⁸ *Reconciliation in Child Welfare: Touchstones of Hope for Indigenous Children, Youth and Families*, Cindy Blackstock, Terry Cross, John George, Ivan Brown and Jocelyn Formsma. Co-published by the National Indian Child Welfare Association. Paper presented at the conference, Reconciliation: Looking Back, Reaching Forward--Indigenous Peoples and Child Welfare, held Oct. 26-28, 2005, in Niagara Falls, Canada. http://cwrp.ca/sites/default/files/publications/en/Touchstones_of_Hope.pdf accessed 14 December, 2018.

Reported Child Abuse and Neglect (CIS) examined the basis of an allegation of neglect, they found that:

[T]he only factors that accounted for the overrepresentation were caregiver poverty, poor housing and substance misuse” (Blackstock, 2007, p.75). This means that children were being removed not because “their families are putting them at greater risk, but rather *because their families are at greater risk, due to social exclusion, poverty and poor housing* (Blackstock, 2007, p.76, emphasis added).”⁵⁹

76. These families are also affected by the lack of social supports on reserves. As noted by Dr. Blackstock, an expert witness called twice by this Inquiry:

While funding is being cut to support services throughout Canada, the VS [Voluntary Sector] frequently steps up to fill the void. This safety net does not exist for people on reserve. Reserves seem to have become a no-mans land where there is little infrastructure to support the community in the face of government spending adjustments and/or reallocations.⁶⁰

77. Even in cases where there are legitimate child protection concerns, agencies fail to recognize the impact the removal of a child has on all members of the family. In our experience the crisis and grief that the removal of a child can cause for a family is intense and cannot be resolved without a great deal of non-judgemental support and time to recover. But too often, rather than allowing space and time for this, parents are penalized for being unable to respond immediately in the midst of that crisis and aren’t offered the supports they really need. The legal system which supports child apprehension marches on, leaving the family reeling. This cycle often continues into the next generation and also pushes children into the youth criminal justice system.

78. When Indigenous children are taken into care, they are denied access not only to their families and communities but also their culture. An article about Urban Indigenous youth in care concluded that, “...[M]ainstream society, specifically child protection agencies and

⁵⁹ Melisa Brittain and Cindy Blackstock, *First Nations Child Poverty: A Literature Review and Analysis* 2015 First Nations Children’s Action Research and Education Service <https://fncaringsociety.com/sites/default/files/First%20Nations%20Child%20Poverty%20-%20A%20Literature%20Review%20and%20Analysis%202015-3.pdf> accessed 14 December, 2018.

⁶⁰ Samantha Nadjiwan and Cindy Blackstock, *Caring Across the Boundaries: Promoting Access to Voluntary Sector Resources for First Nations Children and Families*, 2003 First Nations Child and Family Caring Society of Canada at 31 <https://philanthropyandaboriginalpeoples.files.wordpress.com/2011/01/vsifinalreportv2-copy.pdf> accessed 14 December, 2018.

workers, too often do not understand the significance of culture, or how to genuinely and authentically incorporate it into a child or youth's daily life.”⁶¹

79. The unceasing work of Dr. Blackstock has shown that the crisis of overrepresentation of Indigenous children in child welfare stems from chronic underfunding of services for First Nations children on reserve, but also from a mindset that sees child welfare authorities look at Indigenous parents and see neglect. The experience in Ontario with the reliance by child welfare on fundamentally flawed hair sample testing by the Motherisk lab had, not surprisingly, a disproportionate impact on Indigenous families.⁶² This blame-first approach has led to nearly 52.2% of children in care in this country being Indigenous, when they only account for 7% of all children in Canada.⁶³
80. Tina Fontaine is the most well-known example of a young girl being removed from a community because she was identified as being “at risk” and being moved into a situation where she was more vulnerable to violence and was eventually murdered. However, there are many more examples and there is a direct relationship between girls being taken into care and becoming missing or murdered.
81. The federal government, in a welcome and long awaited change of heart, has now signalled that they realize that there are serious institutional problems with the way child welfare services are imposed on Indigenous families. On November 30, 2018 Indigenous Services Minister Jane Philpott announced that the federal government will be proposing legislation that would truly make the apprehension of Indigenous children a last resort and would stop apprehensions where the root causes of the problem are poverty.⁶⁴
82. While the Minister deserves credit for finally acknowledging the dimension of the problem and for proposing steps to address the issue, we remain sceptical. The reality is that there is currently no legislation before the House of Commons and since there will be an election in the fall of 2019, there is a good chance that this legislation will not be passed. There is also

⁶¹ Stevens, Nancy; Charles, Rachel; and Snyder, Lorena. "Giidosendiwag (We Walk Together): Creating Culturally Based Supports for Urban Indigenous Youth in Care." *Journal of Law and Social Policy* 28. (2018): 101-131 at 106 <https://digitalcommons.osgoode.yorku.ca/jlsp/vol28/iss1/6> accessed 14 December, 2018

⁶² Ontario, Motherisk Commission, *Harmful Impacts: The Reliance on Hair Testing in Child Protection, Report of the Motherisk Commission* (Toronto: Motherisk Commission, 2018) at 42 <http://motheriskcommission.ca/wp-content/uploads/Report-of-the-Motherisk-Commission.pdf> accessed 14 December, 2018.

⁶³ Canada, Indigenous Services Canada, *Reducing the number of Indigenous children in care*, <https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851> accessed 14 December, 2018.

⁶⁴ CBC, 30 November, 2018, <https://www.cbc.ca/news/politics/tasker-ottawa-child-welfare-services-indigenous-1.4927104> accessed 14 December, 2018.

the question of whether the federal government can actually do anything substantive in this area. Child welfare is a provincial and territorial responsibility and while the federal government is responsible for these service on reserve, it has always delegated this work to others. There is no indication that the new legislation will see them take on that responsibility.

83. There is an urgent need for child advocates to be in place for Indigenous children in care. These advocates can assist Indigenous children who feel that their voices are not being heard. They can also be there to examine those tragic cases where an Indigenous child in care is seriously harmed or dies. This work is essential. It is also essential that people learn about why children suffer harm or death while in care. This is why we feel the Commission should recommend that all child advocates be able to release their reports to the public (with the necessary redactions) as this is not currently the case across the country.
84. Recently the Ontario provincial government, in the name of cost-savings, abolished the Child Advocate's office. We disagree with this decision. However, we do not think the answer to this issue is to resurrect the Child Advocate's office in its current form. Rather we think it is necessary to reconstitute these offices so that there are Indigenous-specific children's advocates at both the provincial and federal level. In some provinces a child advocate with sole responsibility for looking after Indigenous children in care will mean that there would be little work for the non-Indigenous child advocate since virtually all children in care are Indigenous. This might make obvious the crisis we are speaking of to those who wish to ignore it.
85. It is also important to recognize that the silos that are used to compartmentalize the lives and needs of Indigenous people may serve bureaucratic ends, but are not necessarily useful in other contexts. In June 2016 the coroner's jury in the First Nations Youth Inquest in Thunder Bay issued their recommendations. That inquest focussed on the deaths of seven First Nations Youth who all died while attending high school in Thunder Bay. They all came from remote First Nations. The inquest recommended the creation of a Federal Advocate for First Nations Children and Youth and we think this is a vital recommendation.⁶⁵

⁶⁵ Ontario, Ministry of Community Safety and Correctional Services, Inquest into the Deaths of Jethro Anderson, Curran Strang, Paul Panacheese, Robyn Harper, Reggie Bushie, Kyle Morrissette, and Jordan Wabasse, *Verdict of Coroner's Jury*, 28 June, 2016, Recommendation #16

86. The reform of the child welfare system needs to be a paramount concern for this Inquiry.

One of the ways in which change can take place in this area is through the use of alternative dispute resolution processes – particularly those initiatives that are focused on the needs of Indigenous families and grounded in Indigenous traditions, culture and law. Such initiatives are underway in Ontario and British Columbia but they need to be more fully integrated into the child welfare system and other jurisdictions need to implement these initiatives as well.

87. Funding to ensure these initiatives are given a firm footing is essential. Such funding needs to come from provincial and territorial governments but also from the federal government. It is also important that projects build on the strengths and lessons that others have learned.

i) Recommendations regarding Child Welfare

- Endorse the recommendation of the First Nations Youth Inquest to:
 - Establish and fund a Federal Advocate for First Nations Children and Youth to monitor the progress toward closing the outcome gaps between First Nations children and non-Indigenous children in areas such as education, health, economic well-being and social services and to report directly to Parliament on this progress on an annual basis. The office should also be mandated to assist First Nations in identifying and accessing programs, funding and services. In response to a request, a complaint, or on its own initiative, the Federal Advocate would act on behalf of concerns of Indigenous individuals, families, communities, or organizations and could initiate reviews, make recommendations, and provide advice to governments, facilities, systems, agencies, or service providers.
- Provide the necessary funds to on-reserve First Nations child welfare agencies. While they are currently under-funded, adequate funding may mean providing more funds than provincial agencies receives given the years of chronic underfunding and the work needed to address the history of harm caused by child welfare agencies.
- Reconstitute child advocate offices so that there are Indigenous-specific children’s advocates at both the provincial and federal level.
- Ensure that all child advocates are mandated to release their reports to the public
- Facilitate the creation and support of Alternative Dispute Resolution in Child Welfare focused on the needs of Indigenous families and grounded in Indigenous traditions, culture and law.

<https://www.mcscs.jus.gov.on.ca/english/Deathinvestigations/Inquests/Verdictsandrecommendations/OCCVerdictsSeventeenFirstNationsYouths.html> accessed 14 December, 2018.

- Ensure that each child welfare agency is accountable to an oversight body which includes Indigenous representation proportional to the percentage of Indigenous children in the care in the agency's service area.
- Ensure families and Indigenous communities have access to a transparent complaint process in child welfare systems.
- The federal government should organize a conference within one year of the release of the Inquiry's Final Report to share best practices to support Indigenous families, create and sustain alternatives to child welfare and for people to learn about the options that exist to infuse the child welfare system with Indigenous values even where a child has been apprehended.

4. Community - based solutions

88. To this point in our submissions we have focussed on the role that institutions have played in creating and perpetuating the crisis of murdered and missing IWGTTS. It is important to draw this link because, given their histories, these institutions are never going to be the solution to the problem. If we want to truly change the narrative then we have to create opportunities for Indigenous-led initiatives to take over. Power has to pass from the institutions of colonialism to Indigenous hands. This is essential because too often the solutions proposed by Canadian government institutions are paternalistic and based on assumptions about what a victim or survivor wants or a community needs, rather than their actual wishes or goals.
89. IWGTTS have been particularly uprooted from their communities – they have been displaced from their traditional territories. In a very real way they have become homeless. Most Canadians think of the homeless as those that we see living on the streets - a disproportionate number of whom are Indigenous.
90. But Indigenous homelessness has a broader reach. In “Aboriginal Homelessness in Canada: A Literature Review,” Caryl Patrick explains:

...Canadian Aboriginal groups have endured the loss of what they have traditionally thought of as ‘home’, since involuntary uprooting and displacement from homes or communities continues to be a reality for many. As a consequence, many Aboriginal families and communities have become fragmented, culturally disconnected, and frequently experience the absence of a place to consider ‘home’. Thus, it is productive to expand the definition of ‘homelessness’ to one

that into account both physical space/amenities and emotional/cultural connections.⁶⁶

Home is the place where we feel safe – it is the place where we are comforted, find nurture and support and where we can avoid the violence and tumult that goes on in the world around us. But we know that this idealized version of home is not the reality for many Canadians, Indigenous and non-Indigenous. There may well be aspects of our home – wherever we set it up – that are problematic, difficult and unsafe. But nevertheless that home may well be the best of the options that are available.

91. In our experience the line between someone being safe and someone being exposed to violence is not black and white. There are a number of shades of grey which a person may experience and move between. Some factors which are protective include connection to culture and a sense of community.⁶⁷
92. It is essential that IWGTTS are recognized as having some agency in the choices they make, even when they are perceived as “risky” by others. For example, a young woman might choose to stay with a male friend who offers some protection in exchange for money she generates from engaging in sex work. She may face some risk in the relationship but she may assess that risk as less than risk she would face without his protection.
93. Children may be exposed to violence in the home or the community but because they know their family and their community they may have developed coping strategies and ways of avoiding some of the harm that might befall them. When they are taken away from that home and placed with strangers in a strange community in order to be safer they are also immediately made more vulnerable because they don’t have that kinship web and community knowledge to protect them. The history of child welfare in this country shows all too sadly how taking children away from their families and communities for their own good leads, in fact, to much more harm.

⁶⁶ Caryl Patrick “Aboriginal Homelessness in Canada: A Literature Review” (Toronto: Canadian Homelessness Research Network Press, 2014) at 13 <https://yorkspace.library.yorku.ca/xmlui/handle/10315/29365> accessed 14 December, 2018.

⁶⁷ Chandler, M.J & Lalonde, C.E, “Cultural Continuity as a Moderator of Suicide Risk among Canada’s First Nations” in Kirmayer, L. & Valaskakis, G. (Eds.) *Healing traditions: The mental health of Aboriginal peoples in Canada* (pp 221-248) (Vancouver: University of British Columbia Press, 2008) at 238.

94. There are also shades of grey for those who commit violence. Many are victims of violence themselves, often physical and sexual violence which are the legacies of the abuse suffered by many survivors of residential school. Sometimes offenders want to acknowledge the harm they have caused and seek treatment but the threat of criminal prosecution – even if this is not what the victim wants – prevents such opportunity for accountability and healing.
95. All of this means that when we speak of creating environments that are safer for IWGTTS we are talking about recognizing that safety is not an absolute but is found on a scale and that over time we hope that people move up the scale to safer and safer environments. It also means allowing IWGTTS to have agency in their lives, to make choices for themselves, sometimes choices we may not like.
96. When we have a friend or a loved one in an abusive relationship we are told that what we need to do most of all is to be supportive of them. To let them know that we are there for them when they need us. Not to judge them and not give them ultimatums. Never to turn our back on them or tell them we've given up on them. And this is the best advice. Because we can't save people from themselves, they have to be ready to make the changes they need to make. And when they are ready to make those changes, we need to be there for them. We need to bring this attitude and approach towards the work of this Inquiry. The days of telling Indigenous people that what is best for them is what agents of state tell them is best for them has to end and it has to end now.

a) Recommendations to broadly support community-based solutions

- Ensure that bodies which hold public institutions accountable, such as human rights commissions and tribunals and ombudsmen offices, have meaningful representation of Indigenous communities in their governance and operations.
- Ensure that there is effective representation of Indigenous communities at all tables where decisions about funding of services for IWGTTS are made, whether at the municipal, provincial, territorial or federal levels,
- Identify a national Indigenous community organization which can be responsible for the collection and maintenance of statistics of missing and murdered IWGTTS and fund them to be successful in this role and to work effectively with government and police partners to ensure accurate and comprehensive data is collected.

b) Specific Community Based Initiatives

97. What we know actually makes people safer does not always involve the police or the justice system; it comes from creating the necessary infrastructure to allow people to live their lives in a safer environment.
98. In this portion of our submissions we will make recommendations in the area of transportation, addictions, shelter and healing lodges.

i) Transportation

99. There are many tragic stories around the Highway of Tears in British Columbia, which runs seven hundred and twenty four kilometres along the Yellowhead Highway 16 between Prince Rupert and Prince George. Community members say that as many as 30 women have disappeared along the highway.⁶⁸ One of the reasons that we continue to hear about IWGTTS going missing there is because there is no public or affordable transit. People living in rural and First Nations communities need and want to be able to leave their communities for all sorts of reasons and they have a perfect right to do so. Where the residents of those communities do not have a lot of money, taking a car is not an option. If there is no public transit or other affordable options, then people will make riskier choices such as hitch hiking.
100. The answer to the problem is not to warn IWGTTS not to hitch hike – to tell them to stay in their place – but rather to provide them with the safer options that they need. The closing of Greyhound bus routes across the country is going to exacerbate this problem. Uber is not coming to the rez any time soon. But Indigenous communities have come together to organize and advocate for either their own shuttle services⁶⁹ or increased services that will meet their communities' needs.⁷⁰ These models should be supported and replicated. Governments – federal, provincial, municipal and Indigenous - must either deliver these services themselves or provide meaningful subsidies to companies who want to provide these

⁶⁸ Lheidli T'enneh First Nation et al, *Highway of Tears Symposium Recommendations Report* (2006) at 7 <https://www.highwayoftears.org/uploads/Highway%20of%20Tears%20Symposium%20Recommendations%20Report%20-%20January%202013.pdf> accessed 14 December, 2018.

⁶⁹ In Winnipeg, see: <https://ikwesaferride.wordpress.com> accessed 14 December, 2018; <https://www.cbc.ca/news/canada/manitoba/winnipeg-indigenous-women-cab-harassment-rideshare-1.3428759> accessed 14 December, 2018.

⁷⁰ Along the Highway of Tears, see: Bulkley Nechako Regional Transit System, Recent News, “Highway 16 Transit Plan Earns High Accolades,” Nov. 23, 2018, <https://bctransit.com/bulkley-nechako/news?nid=1529701918434> accessed 14 December, 2018.

services. If we don't do this then no amount of warning signs and cautionary tales will prevent this problem from persisting.

101. It's not hard. If we truly value the lives of IWGTTS we will not force them to choose dangerous options in order to make choices that most Canadians take for granted. If we want them to be safe then we need to do the things that will make them safe. In addition to the pain and loss to families in communities, from a straight dollars and cents perspective, it is more cost effective to provide the necessary transportation infrastructure than to hire more police officers to investigate the disappearance and deaths of more IWGTTS.

a. Transportation Recommendations

- Support and replicate community shuttle services.
- Federal, provincial, municipal and Indigenous government must either deliver transportation services to rural, remote and First Nations themselves or provide meaningful subsidies to companies who want to provide these services.

ii) Addictions

102. We know that the causes of addictions in the Indigenous community stem from the continued impacts of colonialism. And we knew that many Indigenous women who struggle with addictions resort to survival sex work. For these women the way off the street involves addressing their addictions and the root causes behind those addictions.

103. The opioid crisis is having a particular impact on IWGTTS. Whether an Indigenous sex worker dies at the hands of a killer such as Robert Pickton or from an opioid overdose, it is just as much of a loss and it is just as senseless a loss. We need to ensure that there are programs to assist IWGTTS with their addictions.

104. Harm reduction, including the use of safe injection sites, is essential to stem the tide of opioid deaths. These sites can and do encourage Indigenous women to participate in more long term addictions programming but there is a need for such programs to actually be in place. NNADAP (National Native Alcohol and Drug Abuse Program) funded programs are fine, but there needs to be treatment options available for IWGTTS in urban areas as well. And we need to recognize that treatment options take many forms. While group work may work for some it will not work for all and we can't restrict access to treatment to just one particular model.

105. One of the real problems with residential treatment models is that women often have to find care for their children in order to enter such programs. For Indigenous women without a lot of community support that may mean placing their children with child welfare authorities for a period of time and it is easy to understand why many women are unwilling to do so. If day programs in urban areas were available, then we would not have to ask women to make these impossible choices.

a. Recommendations to address addictions

- Support culturally-based, harm-reduction addiction programs including residential treatment models that provide options for IWGTTS with children or other family responsibilities.
- Support access to land-based treatment for people in cities.
- Ensure people in remote communities have access to treatment, including transportation costs.
- Support the creation of safe consumption sites and low-barrier overdose prevention sites to ensure IWGTTS living with addiction have access to live-saving procedures, non-judgemental counselling and support, without fear of criminal prosecution.

iii) Shelter

106. It is hard to feel safe if we don't have a home. This is so obvious it should not need to be stated – but the reality is that IWGTTS do not have the shelter they need on reserve, in urban centres, even on a temporary basis. And this lack of shelter is a huge contributor to the dangers that they face.

107. In terms of permanent shelter the federal government needs to commit to truly addressing the housing crisis on reserve. We all know the dimensions of this problem. In 2011, nearly half (42.9%) of First Nations individuals living on reserve resided in homes in need of major repairs, as opposed to a national average of 6.8%. In terms of overcrowding, 27.7% of First Nations individuals living on reserve lived in crowded homes, compared to the national average of 4%.⁷¹ The federal government is undertaking to replace substandard housing on reserve but where is the new housing going to come from that will allow Indigenous women

⁷¹ Canada, Statistics Canada, *Aboriginal Peoples: Fact Sheet for Canada*, (Ottawa: Statistics Canada, 2015) at 4 – 5 <https://www150.statcan.gc.ca/n1/pub/89-656-x/89-656-x2015001-eng.htm#a5> accessed 14 December, 2018.

to return to their communities? There must be a specific commitment from the federal government to make real inroads in this area.

108. In urban areas there is also the need for housing for IWGTTS. There are many Indigenous housing providers in urban centres who are ready and eager to address this housing need but they need the funds to be able to do so. Those funds have to come from all levels of government.
109. It is also important to recognize, as the Mental Health Commission of Canada did, that in developing projects that the focus should be on housing first.⁷² We need to understand that once people have housing they are better able to deal with and address the issues in their lives that may have made it difficult for them to access housing in the first place. Under this approach, which we fully support, the focus is to house people first and then have them work on issues such as addictions and mental health once they are housed. Study after study has shown that his approach works – that once housed, people are better able to deal with the other issues in their lives – and really why should that be a surprise to anyone.
110. There is also a need for temporary shelter solutions. Temporary shelters are necessary for Indigenous women fleeing violence and also seeking a place to stay as they take the steps to put their lives together.
111. As has been pointed out repeatedly, Indigenous women living on reserve or in rural and remote communities who are victims of domestic violence have very little access to shelters.⁷³ Often these shelters are located at some distance from their community and require them to leave and uproot their children as well. For many women, leaving their community, their supports and all their children know, make it difficult to make that choice. One option is to make sure there are safe houses or spaces on reserves, although given the housing crisis that exists on many reserves that is not often possible. Another approach is make sure that victims of violence have the option of staying in their homes and that it is the abuser who leaves – not necessarily the community, because that may not be what the

⁷² Canada, Mental Health Commission of Canada, *National At Home/Chez Soi Final Report*, (Calgary: Mental Health Commission of Canada, 2014) at 10
https://www.mentalhealthcommission.ca/sites/default/files/mhcc_at_home_report_national_cross-site_eng_2_0.pdf accessed 14 December, 2018.

⁷³ Canada, Statistics Canada, *Shelters for abused women in Canada, 2014* (Ottawa: Juristat, 2014) at 3
<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2015001/article/14207-eng.pdf?st=kc3XXYWE> accessed 14 December, 2018.

woman wants, but he should certainly leave the home. First Nations should be at the forefront of developing these initiatives.

112. In urban areas there is a need for Indigenous specific shelters for women, both those leaving abusive situations and those seeking temporary shelter. But here too there need to be options – and particularly options for those who are still dealing with addictions. Harm reduction is not just a model that should be used in addictions treatment; it also needs to be incorporated in shelter services. The Commission into the Death of Frank Paul in Vancouver – whose final report was entitled *Alone and Cold*, recommended the establishment of shelters where people could consume alcohol under controlled circumstances. A similar recommendation was made by a coroner’s jury into the death of Gloria Assin, who died in 2012 in police custody in Kenora, Ontario.⁷⁴

113. Both the Inquiry and the inquest noted that many of the problems associated with homelessness and addictions are worsened by shelter policies that prevent people from consuming alcohol in the shelter. Shelters that allow alcohol consumption – wet shelters – are often very successful in reducing the harms caused by and faced by, their residents. This is a model that must be taken up across the country.

a. Shelter Recommendations

- The Federal government must commit to ending the housing crisis on reserves by providing significant additional funding to create new homes and to improve inadequate housing.
- Additional funding must also be available to urban Indigenous housing providers.
- Provide housing that addresses the mental health needs of IWGTTS, especially those who have experienced homelessness in the past using a “housing –first” approach.
- Create or sustain shelters with permanent core funding on both on and off reserves for IWGTTS leaving violent relationships.
- Create or sustain shelters run by urban Indigenous communities for IWGTTS that meet the diverse needs of people living with addiction, including those that provide a space free from substances and others that allow safe consumption.
- Expand non-incarceration options for publicly intoxicated individuals, including sobering centers where medical personnel can provide appropriate care

⁷⁴ Ontario, Ministry of Community Safety and Correctional Services, *Inquest into the Deaths of Gloria Assin, Verdict of Coroner’s Jury*, 15 June, 2017, <https://www.mcscs.jus.gov.on.ca/english/Deathinvestigations/Inquests/Verdictsandrecommendations/OCCInquestAssin2017.html> accessed 14 December, 2018.

iv) Corrections and Healing Lodges

114. If we want IWGTTS to be safer then we also need to remove the causes of the violence that they face. Some of that violence comes from members of the non-Indigenous community; some comes from other Indigenous people.
115. We know that prison does not work well in terms of changing the behaviours of those who are imprisoned. This is particularly the case for Indigenous women and men. Racism, direct and systemic, in the prison system directed at Indigenous inmates has been noted repeatedly by the Supreme Court of Canada⁷⁵ and the Office of the Correctional Investigator.⁷⁶ Healing Lodges, whether operated by Correctional Services, or more preferably, Indigenous organizations, offer a real opportunity for those who have been in conflict with the law to change their perspective on life.
116. CSC needs to make it easier for Indigenous women and men to access healing lodges. A recent study showed that 17% of beds in CSC Healing Lodges were occupied by non-Indigenous inmates.⁷⁷ If this were occurring because all the Indigenous people who wanted access to the lodges were accepted and the non-Indigenous people took up the rest of the spaces that would be fine, but that is not what is happening. A report of the Office of the Correctional Investigator found that “CSC’s policy criteria effectively exclude about 90% of Aboriginal federal offenders from being considered for transfer to a Healing Lodge.”⁷⁸ Either CSC changes the way it classifies inmates, as has been urged repeatedly, or they change their admission requirements – either way if our jails are filled with Indigenous people – as they are – then the Healing Lodges should be as well. This should apply as well to lodges set up to work with inmates post-release. We need to ensure that Indigenous organizations have the funding to create and maintain such lodges.

⁷⁵ *R v Gladue* [1999] 1 SCR 688; *Ewert v Canada* 2018 SCC 30.

⁷⁶ Canada, Office of the Correctional Investigator, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*, (Ottawa: Office of the Correctional Investigator, 2012); Canada, Office of the Correctional Investigator, *Annual Report* (Ottawa: Office of the Correctional Investigator, 2012) at 60.

⁷⁷ Canada, Correctional Service Canada, *Evaluation Report: Strategic Plan for Aboriginal Corrections, Chapter One: Aboriginal Healing Lodges* (2011) at 45 <http://www.csc-scc.gc.ca/publications/092/005007-2005-eng.pdf> accessed 14 December, 2018.

⁷⁸ Canada, Office of the Correctional Investigator, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*, (Ottawa: Office of the Correctional Investigator, 2012) at 18 <http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf> accessed 14 December, 2018.

a. Recommendations regarding Corrections and Healing Lodges

- Make it easier for Indigenous communities to offer rehabilitation services, both on reserves and in urban environments.
- Increase funding for Healing Lodges and make it easier for IWGTTS to access them.
- Support Aboriginal communities for the continued implementation and expansion of collaborative and cooperative Restorative Justice Approaches

5. Conclusion

117. The work of this Inquiry follows that of RCAP, the TRC and the many other inquiries that have looked at Indigenous people and the justice system. But despite all that good work change has been slow when it has occurred at all. It has been over 20 years since RCAP, if you find their recommendations relevant, and we certainly do, then you should say so in your report. It often takes people time to hear a message and you will be doing all of Canada a great service if you reinforce the conclusions that RCAP arrived at.

118. One of the crucial differences between RCAP and the TRC, and a difference we suggest you keep top of mind, is that RCAP focussed all its efforts on recommending changes to be undertaken by federal, provincial and territorial governments. The TRC on the other hand, while they directed many of the calls to action to government, also looked to civil society.

119. We commend that approach to you. Governments change - their commitment to issues waxes and wanes. We have seen however that many Canadians are genuinely concerned with the crisis of murdered and missing Indigenous women and girls. Media outlets have changed the way they report on these issues. Non-Indigenous Canadians understand that this crisis is a stain on the country and one they want to help erase. You can help them to that by making recommendations or calls to action that engages people both in and outside of government.