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# Aboriginal Women and the Criminal Justice System

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National Inquiry into Missing and Murdered Indigenous Women and Girls

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### Research interests

1999-2004: Indigenous women's prison trajectories

2005-2008: Prison experience of Indigenous men in Quebec

2008-2011: Indigenous spirituality programs in Quebec's prisons

2011-2015: Collective action against domestic/family violence among Indigenous people in Quebec

2014-2017: Domestic/family violence as experienced by Indigenous men

2011 to date: Judicial and correctional profile of Inuit and Cree persons and training of program and parole officers at the federal Port-Cartier Institution



#### Why speak of Indigenous women in the criminal justice system?

- Colonial polices and current living conditions (intergenerational trauma, poverty, overcrowded housing, few accessible preventive social services, shortage of specialized services, systemic discrimination, etc.) can have many consequences.
- One of the social responses to these living conditions is incarceration.
- According to some studies, the racism and discrimination experienced by Indigenous women is partly responsible for their overrepresentation in the criminal justice system.
- The justice system is a structure that has been imposed on and is foreign to Indigenous peoples. It does not consider Indigenous peoples' languages, values, needs or cultures.



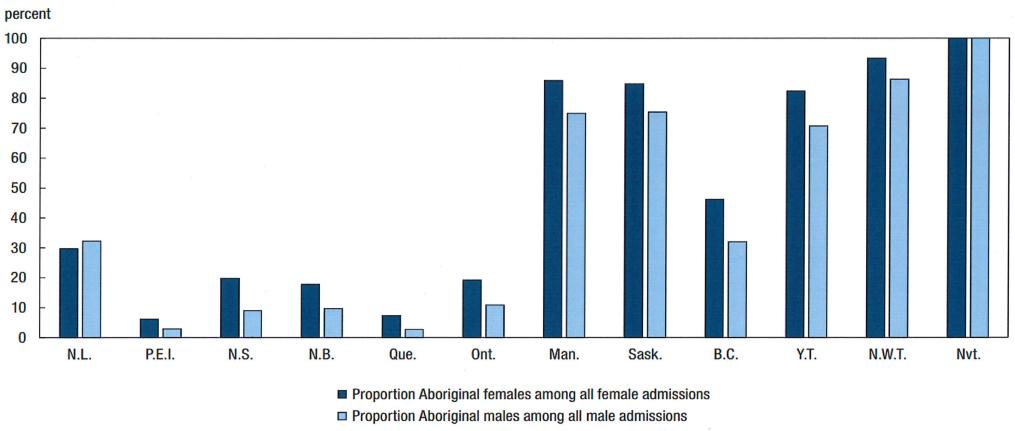
#### Why speak of Indigenous women in the criminal justice system? (cont'd)

• Overrepresentation of Indigenous men and women in the criminal justice system since the 1960s (Laing, 1967)

#### Canada

- 1999: of the 351 women serving a federal sentence, 81 were Indigenous (especially in the Prairies)
- 2001: Indigenous women accounted for almost a quarter (23%) of the entire female prison population in Canada
- 2014-2015: Indigenous women accounted for 38% of women in custody in provincial and territorial institutions and 37% of female offenders in federal institutions (Public Safety Canada, 2016)
- Custodial admissions after sentencing = representation rate of Indigenous women up from 18% in 2000-2001 to 37% in 2014-2015 (Statistics Canada, 2017)

Chart 19
Adult admissions to sentenced custody, by sex and Aboriginal status, 2014/2015

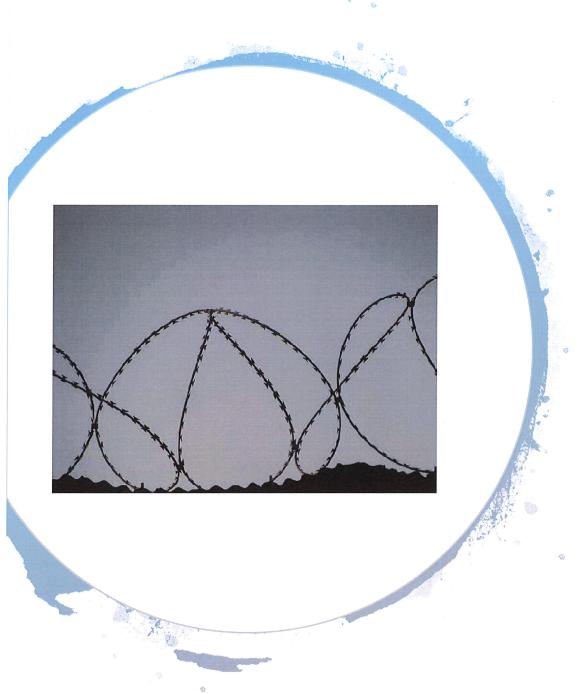


**Notes:** Data for Alberta for this reference period are not available. The calculation of percentages excludes admissions in which the Aboriginal identity was unknown. **Source:** Statistics Canada, Canadian Centre for Justice Statistics, Adult Correctional Services Survey, 2014/2015.



#### In Quebec...

- Less overrepresentation of Indigenous women in prisons compared with the rest of Canada, but Indigenous inmates (M and F) are still overrepresented in relation to their demographic weight in the province
- Indigenous people less urbanized than in Western Canada (geographical challenge)/progressive migration trajectory
- Indigenous women account for 6.5% of the total ADP and 12.6% of the female ADP (Chéné, 2018)
- Inuit women accounted for 28.7% of all <u>incarcerated Indigenous</u> women in 2007-2008 and 75.1% in 2015-2016 (Chéné, 2018)
- Between 2011 and 2015: the Inuit offender population was young (a high proportion of female Inuit offenders were between 18 and 27 years old (47%, n = 786).
- Nature of offences by Inuit women between 2011 and 2015: public order (about 38%), against persons (about 34%), administration of justice (about 20%).



#### Why speak of Indigenous women in the criminal justice system? (cont'd)

- Several studies reveal that Indigenous women are often incarcerated for breach of condition, for failure to pay a fine or for summary offences such as vagrancy, public intoxication, solicitation or causing a disturbance
- Incarceration also associated with alcohol/drug use and domestic/family violence (violent offences)
- Actuarial tools to classify inmates and assess risk of re-offending (e.g. LS/CMI) = being Indigenous is a risk factor
- Incarcerated Indigenous women's experience of victimization is one of the factors that appear frequently in research (e.g., physical or sexual abuse during child- and adulthood, domestic and family violence) (Statistics Canada, 2017)
- Study after study has reached <u>the same results and made the same</u> recommendations for the last 30 years

Prison Trajectories of Indigenous Women in Quebec (1999-2004)

#### Two groups

- 1. Women who have spent little time in institutions and who end up in prison relatively late in life
  - Incarceration creates significant ruptures in their lives (with their families, relational networks and communities)
  - Structural barriers: short sentences = prevent them from working, studying or participating in reintegration programs
- 2. Women who have spent a great deal of time in institutions and who are incarcerated early on in life
  - High risk (homelessness, prostitution, drug abuse, violence)
  - Longer sentences = can participate in the various programs offered
  - Prison overcrowding keeps them in similar living conditions to those they experienced before being incarcerated
- Many of the women met with had experienced institutional or informal placements in their youth (youth centres, foster families, group homes, etc.)
- Post-prison stigma of criminal record: complicates access to housing, marginalization in their home communities

Collective action against family/domestic violence among Indigenous people in Quebec (MSSS, FRQSC, Indigenous women and Missinak)
(2011-2015)

- Qualitative study
- 31 focus groups with Indigenous stakeholders and individuals (men and women)
- 9 Indigenous nations and 4 urban groups
- 234 participants (112 individuals, 122 stakeholders)

#### A government definition ("Preventing, Detecting, Ending") (2012-2017)

"Domestic violence is characterized by a series of repetitive acts, usually of <u>increasing</u> <u>frequency and intensity</u>."

"In the person committing the **abuse**, it proceeds according to a defined **cycle**, through successive phases marked by mounting tension, abuse, rationalization, reconciliation and a calm period."

"For the <u>victim</u>, these phases correspond to fear, anger, a feeling of responsibility for the violence and, lastly, the hope that the situation will improve."

"It is not the result of a loss of control, but is rather a **means chosen** to dominate another person and assert one's power over that person. Domestic violence can be experienced in a marital, extra-marital or dating relationship, and at any age."

#### An Indigenous definition (FAQ, 2011)

Essential to include the term <u>family</u> when describing the problem so as to put it into the same context as <u>other forms of violence experienced by Indigenous families</u>.

The term "family violence" is a direct reference to <u>the history of colonization</u> experienced by Indigenous people who have faced a constant struggle against government policies expressly designed to destroy families and communities.

The violence in Indigenous communities can be seen as an <u>expression of extreme</u> <u>sadness</u> resulting in a loss of bearings and social roles, in addition to profound feelings of shame, pain and powerlessness.

Collective action against family/domestic violence among Indigenous people in Quebec (MSSS, FRQSC, Indigenous women and Missinak)
(2011-2015) + 2014-2015 study of men

#### Guiding principles in domestic/family violence

	Government perspective		Indigenous perspective
•	Domestic violence is a criminal matter.	•	Family violence is a symptom of an imbalance, of suffering; and the result of
•	Domestic violence is a means chosen to dominate another person and assert		the loss of power following colonialism.
	one's power over that person.	•	The well-being and healing of Indigenous women <b>cannot be dissociated</b> from the
• 7	The safety and protection of women victims and children are the priority when it comes to intervention	·	well-being and healing of their children, couples, families and communities.
	strategies.	•	Stakeholders must <b>work together</b> to find solutions focused on collective well-
•	Abusers <b>are responsible</b> for their abusive behaviour; the aim of		being.
	intervention strategies shall be to have them acknowledge and assume responsibility for their violence.	•	Interventions must <b>re-establish a balance</b> between every member of the family.

Indigenous men's
experiences of domestic
and family violence
(Maison communautaire
Missinak)
(2014-2017)

- Qualitative study
- 33 Indigenous men: 9 Atikamekw,
   6 Cree, 7 Innu and 11 Inuit
- One-on-one interviews 1h30-2h
- All had experienced domestic and family violence

Strategies and means applied by participants to manage domestic and family violence

Unofficial help (suspicious of official assistance)

Avoidance and reconciliation strategies (pattern of breaking up and getting back together)

Spiritual/healing approaches

Therapeutic approaches (voluntary or imposed)

Judicial measures (filing complaint, turning oneself in, pleading guilty despite being innocent)

Self-destructive behaviour

#### Social response

Current response:

Women's shelters (crisis, temporary)

Judicial measures (men)

Youth protection measures

Intervention in silos

What Indigenous people want:

Strengthening of the **family unit**, rather than spousal break-ups or family separations (in most cases)

Comprehensive healing and conflictresolution approach (use of community and social regulation mechanisms, mediation, reparation) rather than judicial measures

Family resources (healing centres managed by Indigenous communities)

Solutions that take into account the context

Strategies
implemented by the
MSP to counter
overcrowding in
prisons

Various cultural adaptation strategies implemented by the Ministère de la sécurité publique (often recommended and designed in cooperation with Indigenous communities):

- ✓ Indigenous crime prevention programs: <u>Programs evaluated</u>?
- ✓ Court Reference-Indigenous component: <u>Any data available on content, number, etc.</u>?
- ✓ Training of corrections staff dealing with Indigenous offenders: *No data on nature of training*
- ✓ <u>Adapted and specialized programs</u> for Indigenous clients/participation of Indigenous communities/Makivik, Indigenous communities, Elders, Native Para-Judicial Services of Quebec, etc.:
- Parcours program;
- Peace program;
- Substance abuse program in Innu in cooperation with Kapatakan community residential centre (CRC): <u>Any data available on use, assessment of these programs vs Indigenous needs?</u>

# Strategies implemented by the MSP (cont'd)

- ✓ Institutional accommodations (fitting up of offices and rooms, Elder visits, traditional meals, separate accommodation, etc.)/*Cultural accommodation measures*;
- ✓ Indigenous CRCs: Inuit, Innu and other: *No data on use*, *etc*.
- ✓ **In short**, current initiatives <u>do not seem to</u> be reducing the rate of incarceration of Quebec's Indigenous people (ratio and ADP);
- ✓ Almost no <u>evidence-based data</u> on or initiatives for the social reintegration of Indigenous people <u>(use of CRCs, nature of breaches, conditions, needs, etc.)</u>.

#### Canadian strategies

- Paragraph 718.2(e), Gladue and Ipeelee reports
  - Should translate into release orders and non-custodial sentences (but few Gladue reports, ignorance about Gladue when it comes to serious offences)
- Art. 81, CCRA and Indigenous healing lodges
  - Should result in a healing process for inmates based on culture and spirituality (but employees have different levels of cultural sensitivity and knowledge; few Indigenous women have access vs maximum security)
  - Before September 2011, there were no spots for female Indigenous offenders in healing lodges established under section 81.
- Cultural adaptations and creation of programs (but unjustified shortage of programs for Indigenous women, partly because of delays in the recruitment and training process)

## A recent decision that challenges the tools used for Indigenous people

- Ewert v. Canada, 2018 SCC 30
- The decision provides that "in continuing to rely on the impugned tools without ensuring that they are valid when applied to Indigenous offenders, the CSC breached its obligation under <u>s. 24(1)</u> of the <u>CCRA</u> to take all reasonable steps to ensure that any information on an offender that it uses is as accurate [and complete] as possible."
- "For the correctional system to operate fairly and effectively, the assumption that all offenders can be treated fairly by being treated the same way must be abandoned."
- "[T]hese tools systematically [disadvantage] Indigenous offenders and [fail to] generate accurate information".

# Future directions



- Identify solutions <u>in cooperation/partnership</u> with Indigenous communities (Indigenous structure/healing centres), restorative justice, control over justice, etc.).
- Recognize Indigenous peoples' right to govern themselves/recognize their legal order.
- More diverse and inclusive judicial and socio-penal solutions (e.g., justice circles, family interventions).
- Promote <u>research and data production on correctional services for Indigenous people</u> (monitoring of incarceration rates, breaches and social reintegration) to <u>maximize effect</u> of initiatives.
- Evaluate current initiatives.
- Implement programs for incarcerated Indigenous women.
- Paradigm shift: focus on healing rather than judicial measures (Blagg, 2018).
- Holistic and multi-dimensional approach: comprehensive rather than targeted interventions (basic needs, housing, drug and alcohol use, emotional dependence, violence).

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