



INJUSTICES AND MISCARRIAGES OF JUSTICE EXPERIENCED BY 12 INDIGENOUS WOMEN

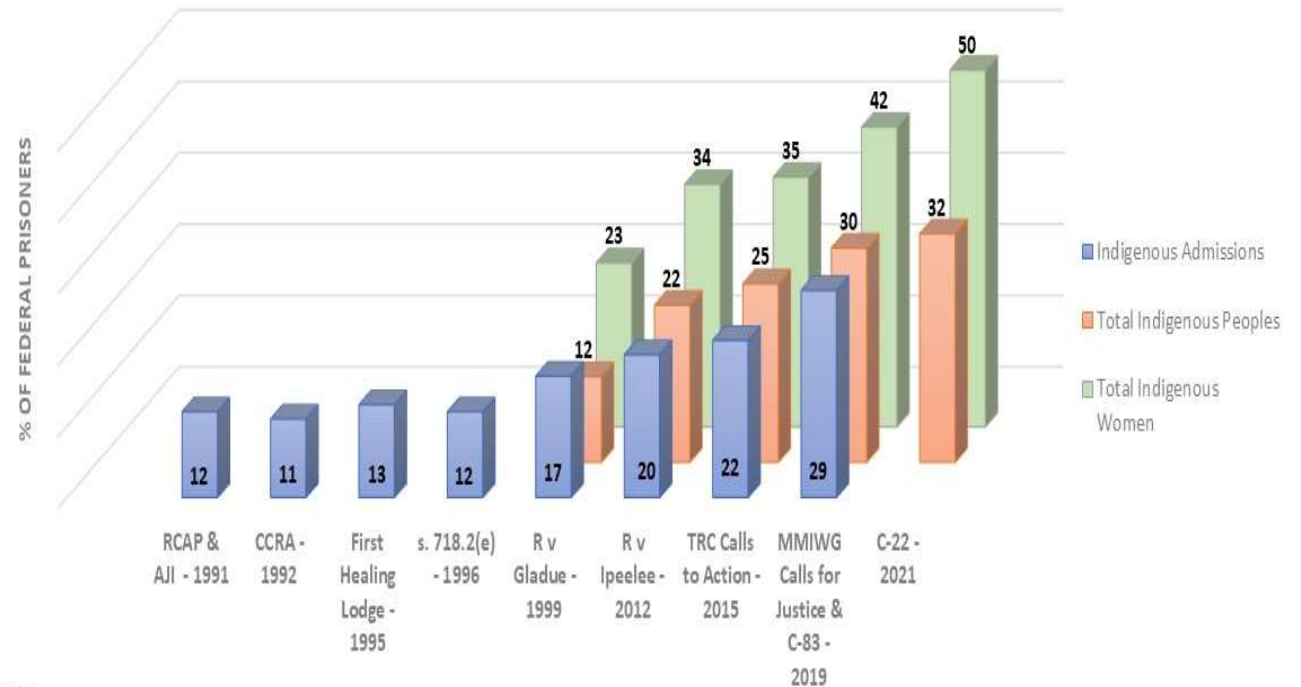
John Ll. J. Edwards
Memorial Lecture
University of Toronto

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CRIMINALIZATION OF INDIGENOUS WOMEN

- By May 2022, Indigenous women accounted for half of all women in federal prisons yet represented fewer than 4% of women in Canada.
- Indigenous women disproportionately experience miscarriages of justice: they are charged, prosecuted, convicted and imprisoned following systemic and discriminatory failures of the criminal legal and prison systems.
- Over the last decade, the number of Indigenous federally sentenced women increased by 60%.

Mass Incarceration of Indigenous Peoples



Sources

Admission Data: Canadian Centre for Justice Statistics, *Adult Correctional Services in Canada* – annual reports

Total Population Data (Indigenous Peoples & Indigenous Women): Office of the Correctional Investigator annual reports

Call for Justice 5.14
of the National Inquiry
into Missing and
Murdered Indigenous
Women and Girls

**“WE CALL UPON FEDERAL, PROVINCIAL, AND
TERRITORIAL GOVERNMENTS TO
THOROUGHLY EVALUATE THE IMPACT OF
MANDATORY MINIMUM SENTENCES AS IT
RELATES TO THE SENTENCING AND OVER —
INCARCERATION OF INDIGENOUS WOMEN,
GIRLS, AND 2SLGBTQQIA PEOPLE AND TO
TAKE APPROPRIATE ACTION AND TO
ADDRESS THEIR OVERINCARCERATION”**

CONTRIBUTING FACTORS

10 Systemic Factors Leading
to Miscarriages of Justice for
Indigenous Women



1. FORCED REMOVALS, FORCED ASSIMILATION, AND EXCLUSION FROM THE SAFETY OF COMMUNITIES

2. VICTIMIZATION, HYPER- RESPONSIBILIZATION AND DEPUTIZATION



**3. HYPER-
RESPONSIBILIZATION,
CRIMINALIZATION, TRYING TO
SURVIVE MARGINALIZATION
AND VIOLENCE**





4. POLICE RESPONSE BIAS

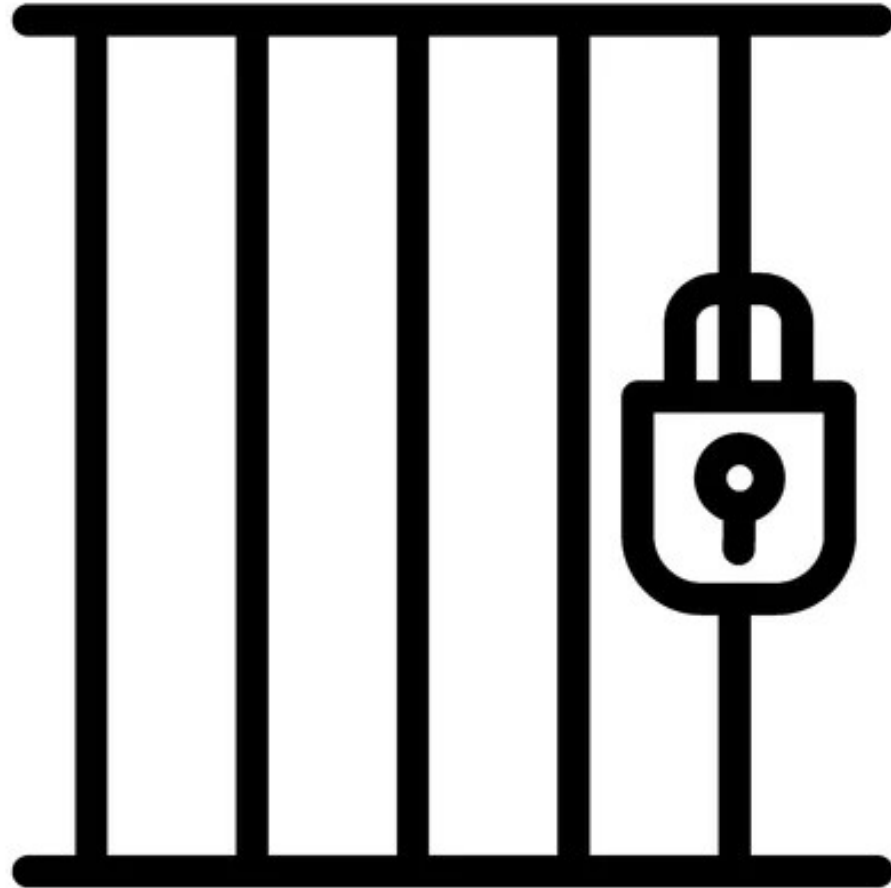
5.
PROSECUTORIAL
RESPONSE BIAS

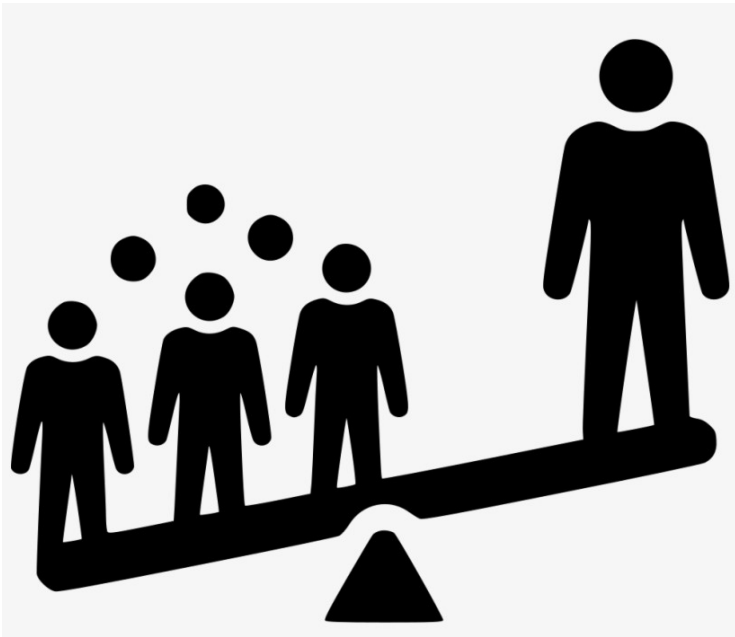


**6. SECTION 718.2(E) AND
INADEQUATE
CONTEXTUALIZATION OF
RACISM, SEXISM AND VIOLENCE
IN LEGAL DEFENCES OF
INDIGENOUS WOMEN**



**7. FAILURE TO
CONSIDER
ALTERNATIVES TO
PUNITIVE
SENTENCES**

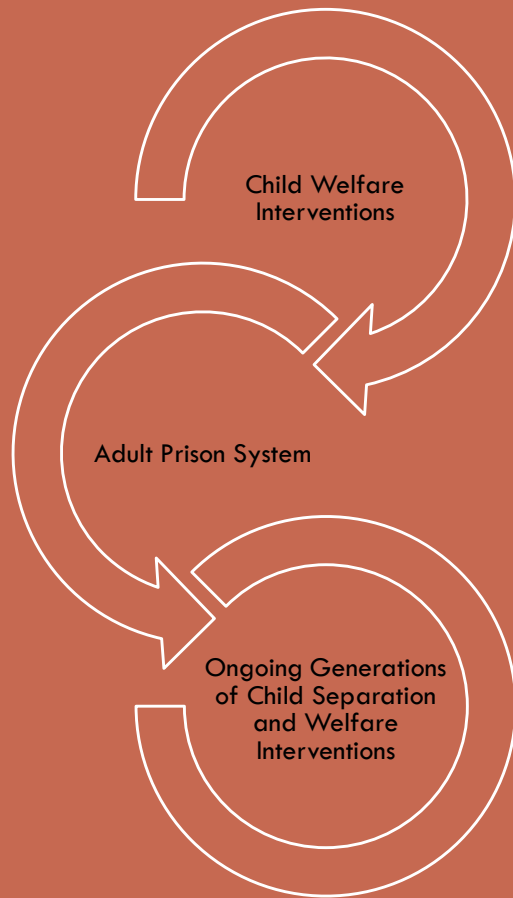




8. DISCRIMINATORY RISK ASSESSMENT AND CLASSIFICATION TOOLS, PRACTICES AND POLICIES, AND LIMITED ACCESS TO PROGRAMS, SERVICES AND CONDITIONAL RELEASE WITHIN THE PRISON SYSTEM

9. UNENDING NATURE AND ONGOING IMPACTS OF LIFE SENTENCES





10. PERPETUATION OF VICIOUS CYCLES AND INCREASED LIKELIHOOD OF INSTITUTIONALIZATION AND CRIMINALIZATION

TWELVE WOMEN



R.A.



Initial conviction at age 21 and while pregnant, for drug trafficking and assault with weapon, with additional convictions and “dangerous offender” designation as a result of incidents while in prison, in particular as a result of separation from her daughter

Initial sentence of 3.5 years; 18 years + indeterminate sentence as a result of “dangerous offender” designation added to sentence

Found guilty of several charges of forcible confinement, including some instigated by others or that were ‘staged’ as part of attempts to secure transfers (e.g. the last two which drove the DO application were, 1. after CSC refused to honour plan to release her from seg; 2. Delay in locking up in attempt to negotiate transfer to treatment for her & Ashley Smith [last move before AS homicide])

Started federal prison sentence in 2000; conditional release in 2018; most of time in segregation

M.C.



Following abuse as a child and suicide attempts, institutionalized in prisons and mental health settings for youth and then adults beginning at age 13; most recently found NCR for assault of forensic hospital staff that resulted in return to prison and forensic hospital issuing statement re: underfunding and concluding that society had failed M.C.

Series of prison sentences beginning at age 14, often with additional charges and sentences as a result of incidents while in prison related to attempts to self-harm and disabling mental health issues

In many cases, pled guilty to charges to try to please people, including prison staff; attempt by Corrections to have M.C. declared a “dangerous offender” in 2014 rejected by court, which emphasized need for her to be in a mental health setting

In and out of institutions between 1989 and 1992, 1999 and 2006; in federal prison or forensic hospital from 2009 to present

Remains in federal prison as a result of NCR finding though no longer under sentence; kept in segregation and restraints due to self-harm

C.D.



Second degree murder; death of woman involved in procuring her for man who had videos and photos of other Indigenous women he assaulted; 19 years old

Mandatory life sentence; mandatory 10-year parole ineligibility

History of childhood trauma not discussed

Nearly three decades in federal prison beginning in 1990

Died 16 April 2022 after a lengthy battle with cancer; was on conditional release subject to lifelong community supervision by parole officer

S.D.



Initially jailed as accomplice to abusive partner's drug dealing; while in prison, convicted of second degree murder after confessing, long after investigation closed, to death of friend widely acknowledged by staff and prisoners to be a suicide

Mandatory life sentence; mandatory 10-year parole ineligibility; nearly 2 decades past parole eligibility date at time of conditional release

represented by lawyer but pled guilty based on feeling of personal rather than legal responsibility

More than 3 decades in prison, much of it in segregation; longest serving woman prisoner at time of release on day parole "other" in 2020

On day parole – other with family in community; full parole

Y.J.



First degree murder; death of man believed to be abusing children in the community, including her son; in absence of other evidence, Crown characterized her as more responsible than others who played more significant role in death based on fact she was a survivor of abuse

Mandatory life sentence; mandatory 25-year parole ineligibility was reduced to time served (16 years) following 15 year judicial review

Initially charged with second degree murder and pled innocent, crown then changed charge to first degree murder 16 years in federal prison beginning in 1991

On conditional release subject to lifelong community supervision by parole officer

T.M.



Initially convicted of breaking and entering for sheltering at a school after fleeing abusive father, discharge of weapon in suicide attempt, then subsequent charges as a result of in-custody responses to strip searches etc.; NCR for only act of violence in community

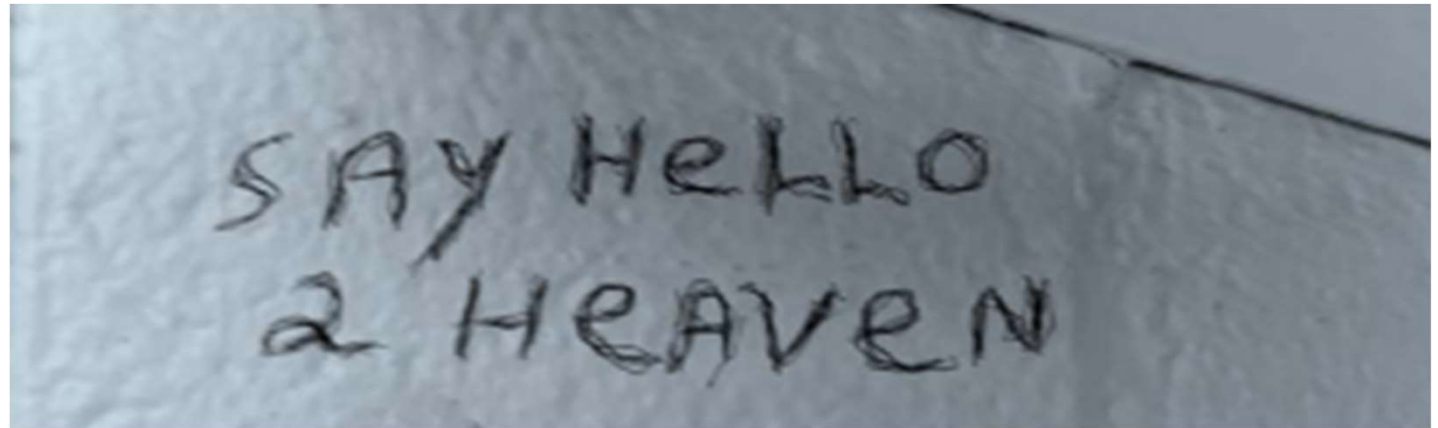
Short initial sentence was added to based on subsequent charges while in prison

Pled guilty to most charges; last charge she was found NCR based on evidence of police officers. NB – psychiatrist initially assessed her as fit based on her state of mind at time of assessment (i.e., after being back on anti-psychotics and in custody for several weeks) but re-assessed at request of defence team

More than a decade in federal prison, most of it in isolation, then transferred to mental health system

In assisted living in the community; diagnosed with isolation-induced schizophrenia from segregation

L.N.



- Criminalized and institutionalized from a young age; “dangerous offender” designation when she was 21 as part of sentencing for robbery conviction based on things she had said rather than things she had done
- Series of short sentences followed by indeterminate sentence as a result of “dangerous offender” status, (overturned on appeal after 5 years)
- Found guilty of armed robbery after acknowledging she cut off clothes of victim with exacto knife. Victim testified L.N. took care not to harm her in ‘street justice’ retaliation vs victim for assault resulting in miscarriage and hospitalization of L.N.’s friend
- First criminalized at age 12 (1985), much of the time in prisons for youth and then adults, mostly in segregation, until released in 1999 after “dangerous offender” designation overturned
- More than 2 decades living in the community; diagnosed with schizophrenia likely tied to conditions of segregation

S.N.



Convicted of second-degree murder; 15 years old, transferred up from youth system; tried and sentenced as an adult

Mandatory life sentence

Found guilty, with co-accused, of murder of group home worker.

1999 to present in federal prison, mostly in segregation, causing significant decline in mental health

In federal prison

S.P.



- Manslaughter and robbery-use of a firearm; took responsibility for death of man shot by co-accused, one of whom testified against her and was apparently granted immunity
- Life sentence with 7-year period of parole ineligibility and 14 years concurrent
- No consideration of s. 718.2(e); successive appeals denied
- 15 years in federal prison, plus two years in halfway house; starting in 1999
- On conditional release subject to lifelong community supervision by parole officer

N.Q.



Second degree murder; death of residential school caretaker who was propositioning her and sister O.Q.; another person confessed responsibility for death; 19 years old

Mandatory life sentence; mandatory 10-year parole ineligibility

Found guilty by all-white jury; history of residential school not discussed; appeal denied

1994 to present in federal prison; brief time on conditional release but returned to prison for breach of conditions

In federal prison; applications pending for conditional release and conviction review

O.Q.

- Second degree murder; death of residential school caretaker who was propositioning her and sister N.Q.; another person confessed responsibility for death; 21 years old
- Mandatory life sentence; mandatory 10-year parole ineligibility
- Found guilty by all-white jury; history of residential school and abuse not discussed; appeal denied
- 1994 to present in federal prison; brief time on conditional release but returned to prison for breach of conditions
- In federal prison; applications pending for conditional release and conviction review

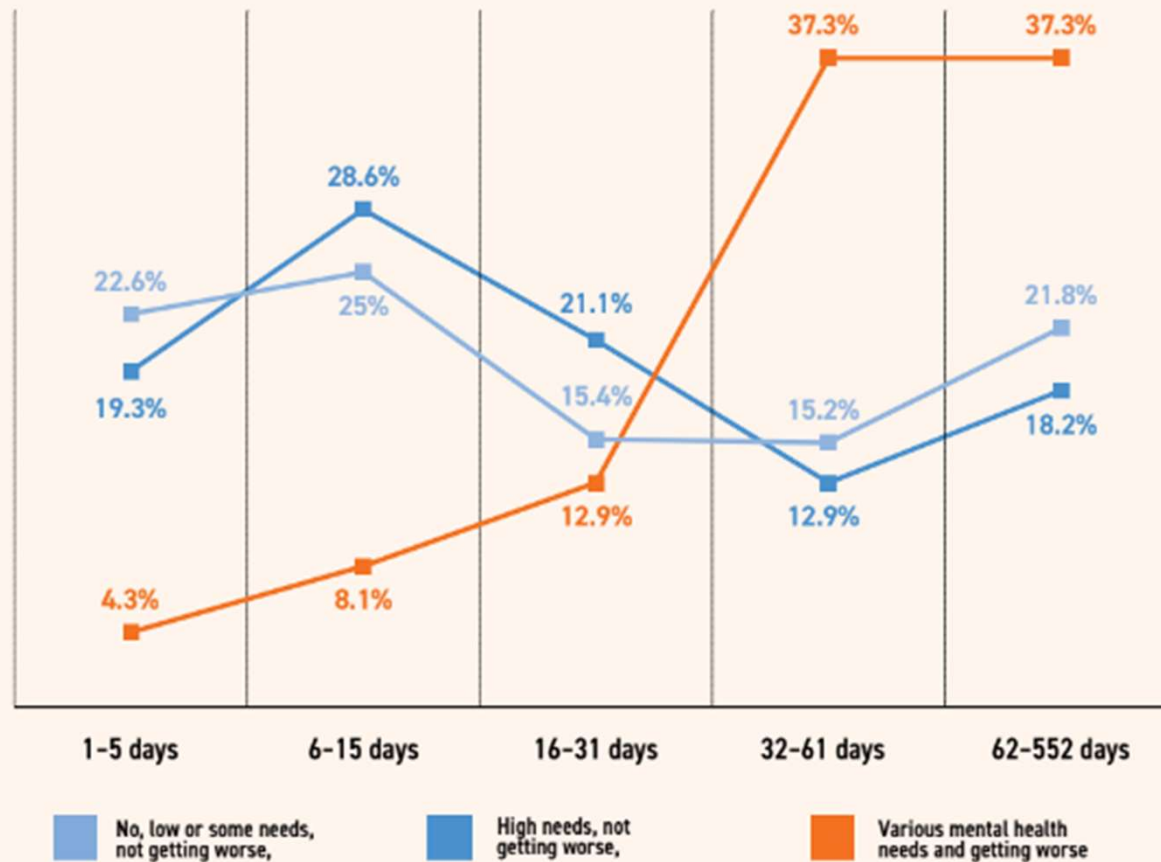


G.S.



- Convicted of murder in death of abusive partner
- Mandatory life sentence
- NSCA denied appeal
- Served time in P4W and Nova
- On conditional release subject to lifelong community supervision by parole officer

Mental health groups and total days in SIU



Those whose mental health status was deteriorating while in the SIU were much more likely to be held for a very long time in the SIU.

Isolation in SIU by region

Percentage of prisoners who received an average of less than the mandated "2 hours of meaningful human contact" and never received their full legislated 4 hours out of their cell.

ATLANTIC

36.9%

QUEBEC

48.6%

ONTARIO

27.4%

PRAIRIES

17.1%

PACIFIC

50.2%

SOURCE: Preliminary Observations of the Operation of Correctional Service Canada's Structured Intervention Units (26 October 2021)

RECOMMENDED STEPS

1. The federal government must provide for a **group review and exoneration of the 12 Indigenous women whose circumstances are referenced in this document**. This could be part of the initiating terms of reference for the newly invigorated Law Commission of Canada or the anticipated Miscarriages of Justice Commission.
2. **Implement Tona's Law, Bill S-230**
3. **Eliminating Mandatory Minimum Penalties:** The federal government should repeal all mandatory minimum penalties, mandatory periods of parole ineligibility, and restrictions on the use of conditional sentences in line with TRC Call to Action 32, Calls for Justice 5.14 and 5.21 of the National Inquiry into MMIWG, and countless other Sentencing and Law Commission reports.
4. **Eliminating Over-Representation of Indigenous Peoples in Prisons:** Federal, provincial, and territorial governments must deliver on the commitment outlined in TRC Call to Action 30 to eliminate the over-representation of Indigenous Peoples in prisons by the year 2025 and post detailed annual reports that explain and monitor their progress.
5. **Incorporating Substantive Equality and Intersectionality into the Conviction Review Process:** An intersectional approach to conviction reviews, which could be pursued through the Miscarriages of Justice Commission recommended by Justices Laforme and Westmoreland-Traoré, would better recognize and redress the realities of racism, class bias and misogyny experienced by Indigenous women that lead to miscarriages of justice. Intersectionality recognizes that violence and oppression are a particular reality for those with intersecting vulnerabilities, and that it is the responsibility of state actors and policymakers to address structural oppression through policies and programs that reflect the needs of those subjected to discrimination.