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Editorial

Missing and Murdered Aboriginal Women

The RCMP has recently released a report revealing that 1,017 Aboriginal women were murdered between 1980 and 2012 and 164 Aboriginal women are missing. This accounts for 11.3% of missing females and 16% of murdered women. Aboriginal women make up 4.3% of Canadian women.

These figures are shocking. They should have been collected and revealed much earlier. Statistics Canada information has a 20% rate of simply not reporting the race of homicide victims. As a result of the RCMP's file-by-file review, this unknown rate was reduced to 1.5%. As a result, over 250 "new" Aboriginal victims of homicide were "officially" identified. RCMP *Missing and Murdered Aboriginal Women: A National Operational Overview* (2014), at p. 22.

The numbers compiled by the RCMP reveal the power of research and statistics in particular. The RCMP deserves credit for compiling them at a time when the federal Department of Justice has cut its research budget because of concerns that some research was not consistent with the government's message. Similar concerns may have motivated cuts to Statistics Canada including the long-form census.

The question then is what should be done to reduce the alarming overrepresentation of Aboriginal women among homicide victims? There have been repeated calls by Aboriginal organizations and the provinces for the appointment of a public inquiry. The federal government has rejected these calls and offered its tough on crime agenda as an appropriate response to these problems.

Tough on crime does not seem to be working. The problem of disproportionate victimization of Aboriginal women seems to be getting worse. Aboriginal women were 8% of female victims in 1984. In 2012, they constituted 23% of homicide victims. *Ibid.*, at pp. 8-10.

Aboriginal women are not benefiting from declines in crimes. They are not being made safer by increasing imprisonment of Aboriginal people. One

in four people in Canadian prisons are Aboriginal, but the victimization of Aboriginal women is increasing.

Academic advisors close to the government have recently hinted that the government's anticipated Bill criminalizing prostitution in response to the *Bedford* decision and its amendments to s. 718.2(e) of the *Criminal Code* in the proposed *Victims Bill of Rights* are better answers than holding a public inquiry.

The federal government does not get it. The call for a public inquiry is, as is so often the case in Canada, a call for official recognition of the problem. It is a sign that murdered and missing Aboriginal mothers and daughters matter.

An inquiry into missing Aboriginal women should not be dismissed. The BC Missing Women Inquiry found that the police investigating missing women on Vancouver's downtown eastside missed many possible leads in Aboriginal communities and among Aboriginal service providers. The police need advice on how to engage with Aboriginal communities who have many reasons to be suspicious of them.

The *Victims Bill of Rights* proposed amendment of s. 718.2(e) of the *Criminal Code* to require judges to consider community and victim safety before using alternatives to imprisonment is not likely to change much. The provision already requires alternatives to imprisonment to be reasonable in the circumstances and judges are already not blind to the safety of victims and communities. At the same time, many judges know that short imprisonment sentences for domestic violence often make matters worse not better especially given the absence of rehabilitation programs in overcrowded provincial prisons.

The government is already eviscerating s. 718.2(e) through increased mandatory imprisonment sentences and restrictions on community sanctions. Predictably, Aboriginal overrepresentation is increasing yet the available evidence suggests that Aboriginal women are not safer.

To be sure, there is a violence problem in Aboriginal communities and families. The RCMP data indicates that 62% of murdered Aboriginal women as opposed to 43% of non-Aboriginal victims killed in a family relationship were known to have previously experienced domestic violence. That said, Aboriginal victims were less likely to be killed by a former or current spouse than non-Aboriginal victims: (29% compared to 41%) *ibid.*, at p. 13. Clearly more research is required.

Imprisonment works best as a form of incapacitation. 71% of the known killers of Aboriginal women had a criminal record as opposed to 45% of non-Aboriginal cases. The killers of Aboriginal women were more likely to have a record for a violent offence. Life-time imprisonment of all these offenders for their first violent offence would, of course, have prevented the killing of Aboriginal women, but it is very difficult to be able to predict who

will re-offend and sentences must fit the crime and the offender. This figure does, however, indicate that Aboriginal women suffer disproportionately from the criminal justice system's failure to rehabilitate offenders.

The Correctional Investigator has reported on the inadequacy of rehabilitative programs for Aboriginal offenders in the federal system and there are only a small number of spaces available in Aboriginal Healing Lodges. The situation is likely worse in overcrowded provincial and territorial systems. Offenders who emerge from these institutions may often be more dangerous to their families and communities.

Imprisoning people is very expensive. Other forms of support for Aboriginal families and communities to deal with the underlying causes of both offending and victimization, especially addictions, seem more promising than the government's proposed solution of greater imprisonment. Dichotomies between criminals and victims often break down and sometimes help for both groups is the best way to reduce violence.

The RCMP recognized in its report the need for crime prevention and work with other departments of government, *ibid.*, at p. 18. Crime prevention must be done in a way that respects the desires of particular Aboriginal communities or it will fail Aboriginal people as so many other top-down government programs have.

The imprisonment of more Aboriginal people is not likely to solve the national tragedy of disproportionate victimization of Aboriginal people by crime including murdered and missing Aboriginal women. If imprisonment worked, Aboriginal women should already be safer and we know that is not the case.

There is little support for the idea that tougher sentences will deter homicide against Aboriginal women. Intoxicating substances were a factor in 71% of the homicides of Aboriginal women as opposed to 31% of the non-Aboriginal cases. *Ibid.*, at p. 13. This suggests that most homicides of Aboriginal women will not easily be deterred. One third of Aboriginal victims died as result of a beating and Aboriginal victims were less likely to die as a result of guns than non-Aboriginal victims (16% compared to 26%). It is also significant that only 16% of the Aboriginal female victims were employed and 23% were on social assistance or disability and 63% were intoxicated when they were murdered. *Ibid.*, at p. 17. Intoxication and poverty seem to play a greater role in Aboriginal homicides than sex work and guns.

The idea that criminalizing prostitution will save Aboriginal women is a triumph of ideology over facts. The RCMP report reveals that only 2% of Aboriginal murdered women were victims of organized crime. Although 12% were identified as sex workers, the RCMP report warns that this is not a significant difference from the 5% of non-Aboriginal victims in the sex trade. *Ibid.*, at p. 17.

It seems likely, however, that the government will use the danger of the sex trade to all sex workers including Aboriginal women as a slogan to justify criminalizing prostitution despite the Supreme Court's concerns in *Bedford* that laws against solicitation, bawdy houses and living off the avails make sex workers less safe. Many of the same concerns would apply to the government's anticipated solution of making the purchase (and perhaps even the sale) of sex illegal. It will force sex workers underground where they will become even more vulnerable to crime.

A public inquiry, especially one headed by an Aboriginal women, and run in a way that listened to the affected families and communities might help Canadians better understand the causes of the serious national problem of murdered and missing Aboriginal women and its relation to the intergenerational effects of Residential Schools, the Sixties Scoop, conditions on reserves, sexual discrimination under the *Indian Act* and other acts of colonial displacement.

Moreover such an inquiry might reveal more constructive and practical ways to reduce violence against Aboriginal women than simply imprisoning more people. Canada has already heavily invested in imprisonment unfortunately without making Aboriginal women safer.

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