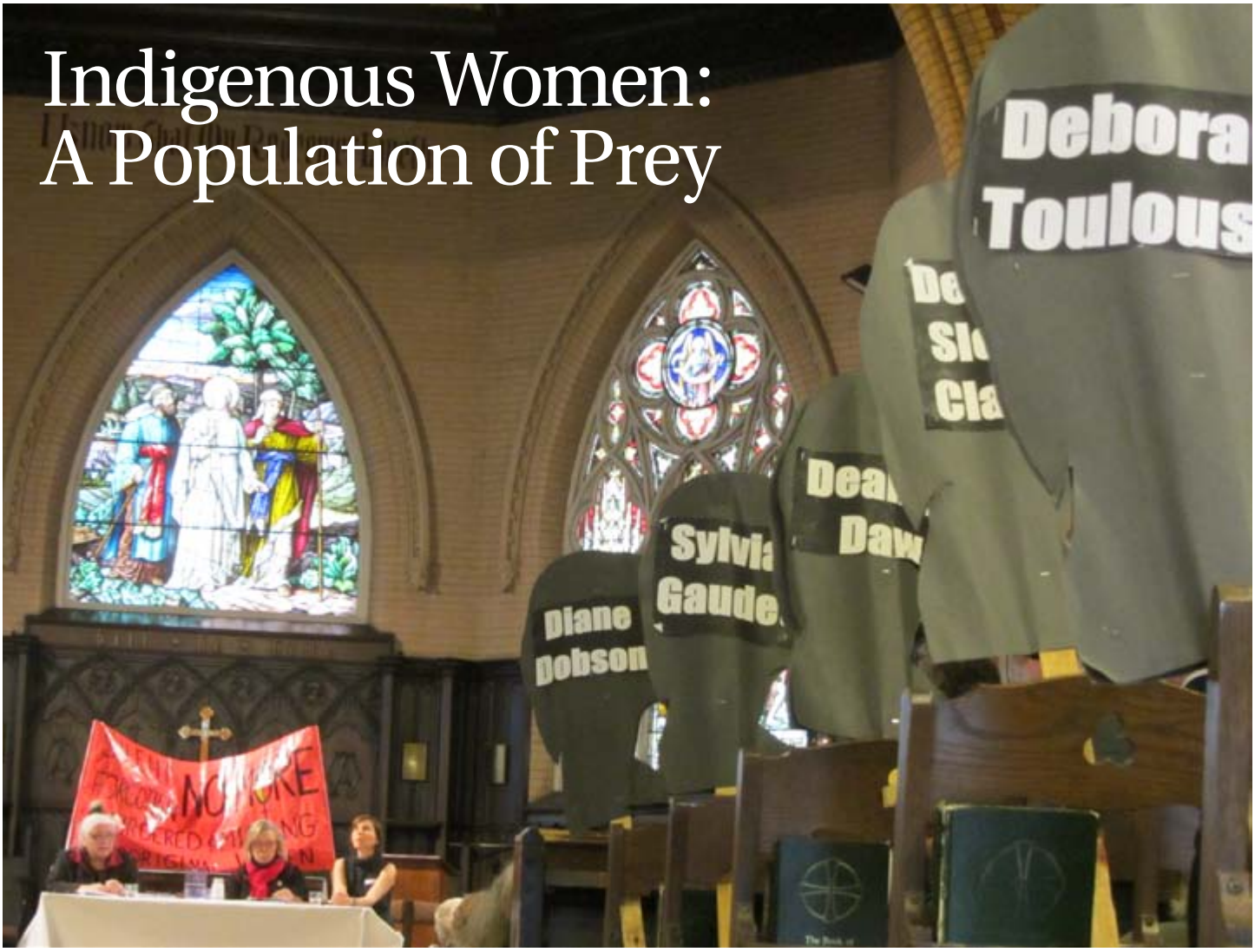
Indigenous Women: A Population of Prey



On International Women's Day, March 8, 2014, we hosted a teach-in on the topic of Missing and Murdered Aboriginal Women and Girls. One of the panellist, Mary Eberts, has graciously shared her presentation notes with us.

In 1969, Canada published its *White Paper on Indian Policy*[1], proposing that it would henceforth treat Indians equally, that is the same, as other Canadians. It would do that by abolishing the *Indian Act* and finally burying what was left of the Treaties between the Crown and Aboriginal Peoples. From then on, Indians would have the same "neutral" citizenship as other Canadians.

This solution was to deny everything about First Peoples that was distinctive and had so far escaped the levelling effect of the *Indian Act*. It was to remove what small protections of that distinctiveness that had snuck into Canadian law, and to pretend that over two centuries of oppression and ill-treatment, much of it official government policy, had never happened. Concerted opposition from First Peoples led to abandonment of the *White Paper* in 1970.

However, over forty years later, I thought of the *White Paper* and the way it wanted to make Indians disappear when I read the report of the Special Committee on Violence Against Indigenous Women, *Invisible Women: A Call to Action*[2]. Many of its

1 Canada, Department of Indian Affairs and Northern Development, *Statement of the Government of Canada on Indian Policy (The White Paper),* Ottawa, Queen's Printer, 1969.

2 Canada, 41st Parliament, Second Session, Special Committee on Violence Against Indigenous Women, *Invisible Women: A Call to Action. A Report on Missing and Murdered Indigenous Women in Canada.* March 2014. Of the Report's 16 recommendations, seven relate directly to the police and the justice system; although two of these speak of involving Aboriginal

recommendations further the Conservative law and order agenda, which has nothing distinctive to do with Indigenous Women. The recommendations do not address, for example, the testimony at the Special Committee hearings by many Indigenous witnesses that police had ignored or belittled their requests that police look for missing women relatives, or had failed to investigate violence against them. The very recommendations of this Report make Indigenous women invisible. This is exactly what the government did when it withdrew funding from the Native Women's Association Sisters in Spirit Research Program into the cases of murdered and missing Indigenous women, and gave a large proportion of the available $10 million to the RCMP to proceed with race-neutral crime prevention strategies.[3]

We marked International Women's Day with a teach-in on Missing and Murdered Aboriginal Women and Girls on Saturday, March 8. The keynote speaker was Dr. Dawn Lavell-Harvard *President, Ontario Native Women's Association* and there was a panel: the Hon. Dr. Carolyn Bennett Liberal Critic for Aboriginal Affairs and Chair of the Liberal Women's Caucus: *Government Action and Inaction;* Mary Eberts Human Rights and Aboriginal Issues Lawyer: *Indigenous Women: A Population of Prey;* and Crystal Basi, Executive Director, Native Women's Resource Centre of Toronto: *Grassroots Organizing and Trafficking.* A number of initiatives have arisen out of this event and we will learn more about them in the coming months from the Aboriginal Issues Working Group.

Recommendation 4 of *Invisible Women* urges that the federal government maintain its commitment to develop the *Canadian Victims Bill of Rights*. On April 3, 2014, the government introduced this Bill into Parliament.[4] The Bill does not contain any provisions that would specifically address Indigenous concerns about their treatment as victims of crime, including those that police authorities do not take them seriously when they report missing relatives. There is no right to have a complaint taken seriously, or to have an investigation started. The Bill says that an investigation is "deemed" to begin at the time an offence is reported[5]. Police often refuse to believe that an offence is involved when Indigenous women disappear, so it could be impossible to secure even a deemed investigation in a missing women case.

The Bill says that it is to be applied in a way that will not interfere with the exercise of police, or prosecutorial discretion in the operation of the criminal justice system[6].Testimony before the Special Committee and in many other places suggests that it is the exercise of that discretion that gives rise to so many of the problems experienced by those seeking justice for their missing and murdered relatives.

The approach of neutralizing away Indigenous identity and Indigenous experience of the criminal justice system tries to suppress one crucial fact: the violence against Indigenous women is specific to them. It has everything to do with how settler society has seen Indigenous women for over two hundred years, how Indigenous women have deliberately been treated in the streets and roads, shops, hotels, media, hospitals and police stations of Canada, and how Canadian law has confined Indigenous women to a small space in which they are primarily a "population of prey.'[7] Fair game. Not citizens. Not even human: until 1951, the *Indian Act* defined "person" so as not to include Indians.

communities or organizations in program development, even these use neutral language like facilitating "multipartite investigations" and fostering "cultural understanding and sensitivity.'

3 Department of Justice Canada, "Government of Canada Takes Concrete Action Regarding Missing and Murdered Aboriginal Women," October 29, 2010 announced a new National Police Support Centre for Missing Persons, and a national "tip" Web Site for missing persons and other measures. www.justice.gc.ca/eng/news-nouv/nr-cp/2010/doc_32560.html A press release from the Native Women's Association issued November 9, 2010 points out that the details in this announcement are not specific to Aboriginal women, and states that NWAC was excluded from discussions with government about how this $10 million in funding would be allocated.

4 Canada, Second Session, 41st Parliament, House of Commons, *Bill C-32: An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*, First Reading, April 3, 2014.

5 *Bill C-32*, s. 18

6 *Bill C-32*, s. 20

7 These ideas are more fully developed in my essay, "Victoria's Secret: How to Make a Population of Prey," in Joyce Green, ed., *Indivisible: Indigenous Human Rights*, forthcoming, Fernwood Publishing, 2014.

Unless Canada finally acknowledges this shameful history in its treatment of Indigenous women, there will never be an end to violence against them, no matter how many fancy new crime detecting machines the government buys for the RCMP or how many programs, strategies, or crime control measures are put in place with the "race-neutral" "gender-neutral" cover on them.

The only "remedy" for this alleged out-of-control condition of Indigenous women was for them to become good Victorian wives.

What I mean when I say that violence against Indigenous women is specific to them can be briefly and—to be frank—brutally, put. It is now well-documented by scholars, but this knowledge has dwelt in the hearts of Indigenous peoples for over two centuries. For various reasons relating to the perceived need to establish white settler society in Canada, it became common to devalue Indigenous women, who had played such a crucial role in fur trade mercantile society. To do this, almost uniformly across the country, the Indigenous woman was seen, written about, and treated as if she were an out-of-control, threatening, sexual being, fair game for predatory men, but to be shunned and contained by polite society. When the *Indian Act* was passed in the first years of the new Dominion, this view was cemented into Canadian legislative policy. Women were barely mentioned in the early *Indian Acts*, except for terms controlling their access to liquor and their alleged activities of prostitution. Soon, residential school legislation reflected the view that Indigenous women were unfit to raise their own children. And the *Indian Act*'s creation of male-dominated Bands as the only method of governance that would be recognized by Canada meant that women were deprived of the respected role in governance and social organization which they had in their original cultures.

The only "remedy" for this alleged out-of-control condition of Indigenous women was for them to become good Victorian wives. If they married white men, they would cease to be Indians, assimilated in the blink of an eye…..no longer Canada's problem. Though they would not lose their children to residential school, their ability to pass on traditional knowledge and maintain family ties was limited by the *Indian Act* sections banning them and their children from coming onto the reserve.

If they married status Indian men, they would be their husband's possession, with no rights inside or outside the Band until well past the mid-point of the 20th century. They would be adjuncts, possessions of men, but not mothers, because their children were taken to the residential schools. If Indigenous women did not comply with the command to be a good Victorian wife, of some man or another, they would be fair game, open to exploitation physically and sexually, exposed to danger, and ultimately to death.

Years of law reform effort have cleared away many of the aspects of Victorian womanhood that used to be routinely embedded in Canadian law. But not for women who are subject to the *Indian Act*. For them, the Victorian knots have grown tighter, not looser. In 1985, when Canada was finally forced by international human rights law and our own *Charter of Rights* to repeal the law depriving women of Indian status when they married non-status men, the government included in the new law a reinforcement of the Victorian ideal.

Now, in order to be registered as an Indian, a child must have two registered Indian parents. Formerly, one parent was enough. For married parents, it was the father's status which would determine whether the child could be registered. However, it was possible for an Indian woman to register as an Indian a child born to her as a single woman, as long as no one could actually prove that the child's father was not a status Indian. That right of the single woman has now been abolished. A woman is now forced to declare the paternity of her child, and if she does not, the child may not receive Indian status. There are many reasons why a single woman would not want to declare her child's paternity, including rape and incest. The reasons for not disclosing the name of the father don't matter to the Canadian

government. This brutal reminder of the Victorian era, which has put single Indian women in the worst position they have ever been in under the law, applies whatever the reason. In the 21st century, Indian women, and their children, are still being punished for failing to conform to the Victorian ideal of marriage and family.

Just as it did at Confederation, the *Indian Act* is still creating of Indigenous women a population of prey. The model for the *Indian Act* family is Victorian, and any woman or child outside that ideal (or perceived to be outside it) is fair game, open to predation. For almost 150 years, through its laws, the Canadian state has made Indigenous women the most highly vulnerable population in the country.

At Canada's centennial, settler writers like George Ryga and Margaret Laurence were highlighting the devastation wrought upon Indigenous women, in Ryga's play, *The Ecstasy of Rita Joe*, and in Laurence's Manawaka Cycle of short stories and novels. Their high profile work did not lead non-Indigenous Canadians to rise up and tell the Canadian government to stop these practices. The message of Ryga and Laurence sank without a trace until Indigenous activists put the issue of violence against Indigenous women back in the spotlight.

I ask myself why we let our centennial opportunity go by.[8] There are several answers, all of them saddening. Metis author Maria Campbell writes in her autobiography of a time when desertion by her husband and her ensuing poverty had her living in an apartment in Vancouver, and being made available by "Lil" to "a very wealthy and influential man."[9] She warns that poor people can never look to business and political leaders for help: "Regardless of what they promise, they'll never change things, because they are involved in and perpetuate in private the very things that they condemn in public."[10] Other forms of self-interest prevail over justice for Indigenous women. Steven Kummerfield confessed to his mother that he and a friend had killed Pamela George, a Saulteaux woman. His mother suggested that she would phone Crime Stoppers and provide a false tip, and cleaned the clothes he had worn the night of the murder.[11] The image of wrongdoers as normal kids next door, whose white male lives are more valuable than those of Indigenous women who have been violated or killed, leads to community support for them that can result in indifference to the possibility that crime is taking place, suppression of information about a crime, failure to prosecute or meagre sentences once it comes to light.[12]

Even when we are not directly involved in suppressing information of a crime, or underplaying its seriousness, settlers shy away from the implications of violence against Indigenous women. We do not want to recognize that we are the authors of this carnage, through our governments, institutions like the police, and our own indifference. We want to think of ourselves as good people. We do that by suppressing the stories of what has been happening on our watch for 150 years. As Paulette Regan reminds us, the really provocative question is "How do we solve the settler problem?"[13]

The need for a good thorough airing of what has been going on in the name of ordinary Canadians, through our governments, is one of the factors that makes the idea of a national inquiry into the murdered and

8 Mary Eberts, "Knowing and Unknowing: Settler Reflections on Missing and Murdered Indigenous Women," (2014) 77:1 *Saskatchewan Law Review* 45-79

9 Maria Campbell, *Half Breed* (Halifax, Formac Publishing, Goodread Biographies, 1983), at 136

10 *Half Breed*, at 137

11 Sherene H. Razack, "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George," 121-156 in Sherene H. Razack, ed., *Race, Space, and the Law: Unmapping a White Settler Society*, Between the Lines, Toronto, 2002 at 140

12 "Knowing and Unknowing," at 58-60, 70-71 (murder of Helen Betty Osborne).

13 Paulette Regan, *Unsettling the Settler Within* (Vancouver: UBC Press, 2010) at 11,citing Roger Epp, "We Are All Treaty People: History, Reconciliation and the 'Settler Problem'" in Carol Prager & Trudy Govier, eds., *Dilemmas of Reconciliation: Cases and Concepts* (Waterloo: Wilfrid Laurier University Press, 2003) 223 at 228. See "Knowing and Unknowing" at 77.

missing Indigenous women so attractive. An inquiry can shine a spotlight on what needs correcting. At a coroner's inquest into the death of Minnie Sutherland, Native Women's Association lawyer Sharon McIver was cross-examining a police officer who had failed to ensure adequate medical treatment for Ms. Sutherland after an accident on a cold winter night. He was trying to explain that when he used the term "squaw" to describe Ms. Sutherland, he meant nothing derogatory: that was simply how he described Indigenous women. Ms. McIvor asked him, "So, if you were describing me, you would say, 'The squaw who was cross-examining me'?.' [14]

Yes, there are many pitfalls in such an inquiry, and many conditions that must be met right from the outset if it is to have any chance of success. Its terms of reference must include all necessary topics. Its budget must be adequate, and assured from the outset. That budget must include funding for the inquiry to be a real joint project with Indigenous peoples, involving them in designing the inquiry, guiding and directing it, and holding generous standing at it, for both the families of missing and murdered women and Indigenous governments, advocates, and groups. The persons heading the inquiry must be independent of government affiliation, past and present, and widely respected. It should have the power to make transparent the government and police practices and policies that have sustained predation on Indigenous women over many decades, including the power to make adverse findings. While conforming to the legislative rules which provide such inquiries with their power and authority, this inquiry should utilize different formats, recognize different methods of presentation (like artistic contributions) and honour traditional Indigenous practices, so as to make it more truly accessible.

14 Ron Corbett, "The life and death of Minnie Sutherland," *Ottawa Magazine*, October 1989, 21 at 90.

While the idea of having a national inquiry has already attracted broad support, some respected voices say that it is not necessary, that the causes of epidemic violence against Indigenous women are already known and we should apply scarce resources to the development of plans to eliminate such violence. They point to the inadequate outreach of the Oppal inquiry, and the neglect of the recommendations of the Royal Commission on Aboriginal Peoples, as unhappy reminders of what can happen with inquiries, and urge that action, rather than study, be the chosen step.

I believe that there is an answer to these critiques. Settlers do not already know the causes of violence against Indigenous women. We have been doing our best to avoid such knowledge for far too many decades. This inquiry should not only inquire into these causes, but also make this knowledge inescapable. The outreach of the inquiry should be directed not only to Indigenous peoples, but settlers, and should strive to make settlers aware of what has been done in our name for far too long.

In our efforts to support the call for a national inquiry, settlers can start this process. We can undertake self-examination and face up to our role in creating the vulnerability of Indigenous women. We can work to change our expectations and our behaviour. We can build the respectful alliances, and do the respectful listening and talking, that are necessary to understand what has been happening in our name. The time, and the activities, that it takes to secure appointment of a national inquiry can be used to prepare the ground for ready acceptance of the knowledge that it will generate, and to open the way for change in government, police and individual attitudes and practices. We can begin as we mean to go on.