

**MISSING AND MURDERED
ABORIGINAL WOMEN AND GIRLS IN
BRITISH COLUMBIA, CANADA**

**Follow-Up Briefing Paper
June 22, 2012**

**Follow-up to
Thematic Hearing before the
Inter-American Commission on Human Rights
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Follow-Up to Thematic Briefing on Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada

The Native Women's Association of Canada, the Canadian Feminist Alliance for International Action, and the Human Rights Clinic, University of Miami

This follow-up brief is provided by the Native Women's Association of Canada, the Canadian Feminist Alliance for International Action and the Human Rights Clinic, University of Miami, to answer some questions asked by Commissioners during the March 28, 2012 Inter-American Commission on Human Rights (IACHR) thematic briefing on Missing and Murdered Aboriginal Women and Girls in British Columbia, Canada.

In particular, this memo provides answers to questions regarding: 1) accountability mechanisms; 2) federalism; 3) statistics gathering; and 4) the connection between murders and disappearances of Aboriginal women and girls and land issues for Aboriginal peoples in Canada. Finally, this follow-up brief also provides some updated information regarding the Missing Women Commission of Inquiry in British Columbia, and developments related to international human rights investigations and fact-finding missions in Canada.

Section 1: Accountability Mechanisms

Commissioner Robinson noted that before and during the hearing, Petitioners raised concerns about the failure of State actors in Canada to meet the required standard of due diligence, as highlighted by inadequate investigations and inappropriate responses from the criminal justice system to the disappearances and murders of Aboriginal women and girls. Commissioner Robinson requested further information about accountability mechanisms.

I. Judicial Accountability¹

As described on page 20 of the Petitioner's Briefing Paper, judicial independence is a cornerstone of the Canadian judicial system and judges are truly self-regulating. Given the rarity with which punishment and removal of judges occurs, this self-contained system in which only judges monitor the conduct of judges is particularly concerning.² In fact, only five superior court judges have been recommended for removal in the 145 years since Canadian Confederation.³

The Parliament of Canada created the Canadian Judicial Council (CJC) in 1971 under the mandate of the *Judges Act*. The CJC consists of 39 members who are all judges, including chief justices, associate chief justices, and senior judges from provincial and federal superior courts across Canada and it has the sole authority to deal with complaints regarding the conduct of 1,100 federally-appointed judges.⁴ To date, only eight—soon to be nine—inquiries into the

¹ There are four levels of provincial/territorial courts and two levels of federal courts in Canada. The lowest courts are the Provincial/Territorial Courts, which handle the majority of cases (Canada Department of Justice, Canada's Court System, available at: <http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/page3.html>). Provincial/Territorial Superior Courts hear appeals from Provincial/Territorial Court. Provincial/Territorial Courts of Appeal hear appeals from Provincial/Territorial Superior Court. Provincial boards, offices, and tribunals are subject to judicial review by Provincial Superior Courts. Federal Courts have jurisdiction over matters specified in federal statutes, such as immigration and refugee matters, federal elections, official languages, access to information, oceans and fisheries and First Nations peoples. The Federal Courts do not have inherent, general jurisdiction (Federal Court Canada, Jurisdiction available at: http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Jurisdiction). In order for the Federal Court to have authority to hear a given subject matter, the following three requirements must be present: (1) that subject matter must be assigned to Parliament under the Constitution, (2) there must be actual, existing and applicable federal law, and (3) the administration of that law must have been conferred upon the Federal Court by the Federal Courts Act and other applicable federal statutes. Federal offices, boards, commissions, and tribunals are subject to judicial review by Federal Courts. At the top of the hierarchy is the Supreme Court of Canada, which hears appeals from both the Provincial/Territorial Courts of Appeal and the Federal Courts of Appeal. *See also*, Addendum at the end of this Memorandum, "Outline of Canada's Court System".

² See Petitioner Briefing Paper at 20.

³ Michael McKiernan, *Judging the Judges*, Canadian Lawyer Magazine (Feb. 2012).

⁴ The federal government appoints judges to Provincial Superior Courts, Federal Courts and the Supreme Court of Canada. See also Michael McKiernan, *Judging the Judges*, Canadian Lawyer

conduct of judges have been made by the CJC. In addition to the rarity with which inquiries are made, there appears to be a lack of even-handedness in the process, depending on the subject of inquiry. For example, the subject of the ninth CJC inquiry is a female justice whose lawyer husband sent provocative pictures to a client and suggested he have sex with her.⁵ There has been talk of her removal, and the process has been slow, with a complaint first filed in July 2010.⁶ The complex inquiry of a female justice based on the conduct of her husband is particularly disturbing when contrasted with the overt misogynistic statements made by a male justice while on the bench, who was left relatively unscathed when the CJC accepted his apology and closed his case within six months.⁷

There also appears to be a disturbing lack of efficient and effective accountability in situations where judges themselves demonstrate egregious behavior. As described in the Briefing Paper, provincial judge David Ramsay was found guilty of brutal sexual and physical violence against Aboriginal girls aged 12-16, over whom he presided in youth criminal and family courts.⁸ Disturbingly, Judge Ramsay was allowed to remain on the bench for three years after investigations began, a time during which he continued to abuse girls.⁹

Magazine (Feb. 2012); Canadian Judicial Council, *Mandate and Powers*, available at http://www.cjc-ccm.gc.ca/english/about_en.asp?selMenu=about_mandate_en.asp.

⁵ Michael McKiernan, *Judging the Judges*, Canadian Lawyer Magazine (Feb. 2012), available at <http://www.canadianlawyermag.com/4030/judging-the-judges.html>.

⁶ Ibid.

⁷ Ibid. (as described in Petitioner Briefing Paper at 20).

⁸ Petitioner Briefing Paper at 20-21 (citing Justice for Girls, *Human Rights Violations against Indigenous Teen Girls in British Columbia* at 4 (October 2011)).

⁹ Ibid.

II. Police Accountability

Petitioner's Briefing Paper¹⁰ describes racial discrimination and misogyny within police forces in both public and internal matters. There is a lack of effective accountability for the discrimination and bias in policing, and within police services.

Municipal forces and the Royal Canadian Mounted Police (RCMP) have different accountability mechanisms, both of which are a cause for concern.¹¹ According to Justice for Girls, a non-governmental organization in British Columbia, police act within a police culture and there is a "lack of fully independent external oversight and accountability. It is virtually impossible to get a finding of wrong doing in cases of police abuse including in cases of in-custody deaths in British Columbia. There have been numerous cases in the province in which police have shot persons, mostly Indigenous men, while in police custody."¹²

The Petitioners' Briefing Paper refers to two RCMP police officers who were implicated for abuse/exploitation of Aboriginal girls, as revealed within investigations related to the Judge David Ramsay scandal. Criminal charges were not brought against them, and internal police disciplinary hearings against these officers were dismissed because the RCMP waited too long to launch proceedings.¹³ Additionally, in a recent incident of excessive force allegations against an

¹⁰ Petitioner Briefing Paper at 21-22.

¹¹ In Canada, policing is a provincial responsibility. Some provinces meet this responsibility by contracting with the Royal Canadian Mounted Police (RCMP), a federal entity, to provide provincial police services. British Columbia is a province that opts for the latter option. Communities have the option to have their own municipal police force (which some do, such as the Vancouver Police Department (VPD)) or have an RCMP detachment. BC Civil Liberties Association, *Small Town Justice: A Report on the RCMP in Northern and Rural British Columbia* at 53 (2011).

¹² Justice for Girls, *Human Rights Violations against Indigenous Teen Girls in British Columbia* at 5 (October 2011).

¹³ Petitioner Briefing Paper at 21 (citing Justice for Girls, *Human Rights Violations against Indigenous Teen Girls in British Columbia* at 4-5 (October 2011)). See also, The Vancouver Province, *RCMP Internal Probe Fizzled* (Nov. 27, 2007), available at <http://www.canada.com/theprovince/news/story.html?id=601f98b1-eddd-43a0-9809->

RMCP officer, who allegedly punched a 17-year-old Aboriginal girl in the face while she was handcuffed in the back of a police vehicle,¹⁴ the officer's own RCMP detachment initially handled the complaint, which was later transferred to another police force in British Columbia.¹⁵ This raises concern about sincerity and transparency within investigations, even in cases of egregious police behavior.

Perhaps the most notorious example of systemic police failure in the province is the case of serial killer Robert William Pickton, who preyed on women from the Downtown Eastside area of Vancouver. His victims were disproportionately Aboriginal women, and poor.¹⁶ The Pickton investigation was plagued by a lack of resources, training, and leadership, poor continuity of staffing, and multi-jurisdictional challenges. Both the Vancouver Police Department and the RCMP were involved, and each agency blames the other for failures. Police failed to pursue compelling information in 1998 and 1999 suggesting Pickton was the likely killer.¹⁷

The Missing Women Commission of Inquiry¹⁸ appointed by the Government of British Columbia in 2010 is mandated to examine both police and prosecutorial conduct and decision-making in the Pickton case. This public inquiry is itself an accountability mechanism, established

[fd7e04f9a17a](#). According to this article, the “[t]hen-assistant RCMP commissioner ... said police didn't do anything about it at the time because so many officers ‘in a small town’ like Prince George had been named by prostitutes.”

¹⁴ Petitioner Briefing Paper at 22 (citing Global News, *Williams Lake Mom Says Police Punched Her Handcuffed Daughter* (Sept. 27, 2011), available at <http://globaltvbc.smdg.ca/williams+lake+mom+says+police+punched+her+handcuffed+daughter/6442490404/story.html>). The officer had previously been inadequately disciplined for firing his service weapon while intoxicated in a hotel room following a telephone conversation with his girlfriend.

¹⁵ Evan Duggan, *B.C. Mountie Facing Assault Charge Previously Disciplined for Gunplay*, *The Vancouver Sun* (March 8, 2012), available at <http://www.vancouversun.com/news/Mountie+facing+assault+charge+previously+disciplined+gunplay/6272459/story.html>.

¹⁶ Petitioner Briefing Paper at 11-12.

¹⁷ Petitioner Briefing Paper at 11 (citing Doug LePard, Deputy Chief Constable, Vancouver Police Department, *Missing Women Investigation Review* (August 2010), available at http://vancouver.ca/police/media/2010/MWInvestigationReview_final2.pdf).

by the government to determine whether there was wrong-doing on the part of police officers or prosecutors in the Pickton case, and to recommend changes that might be needed to ensure no repetition.

However, because of its restricted scope (only murders of women by Robert William Pickton) and the exclusion from participation in the inquiry of groups that were granted standing, the Missing Women Commission of Inquiry has not offered an adequate investigation and cannot provide an adequate remedy for the systemic failures involved in the disappearances and murders of Aboriginal women and girls, even in the Pickton case. The Inquiry's scope, legitimacy and operation continues to be criticized by diverse parties, and it is now widely viewed as a gesture, by the government, at accountability, which has failed, even before the Commissioner's report has been issued. (Further information is provided in Section 5 of this follow-up brief.)

The previously-mentioned individual instances and systemic failures are just a sampling of problems in British Columbia and underscore why the lack of effective accountability mechanisms for police is particularly problematic.

Regarding municipal forces in British Columbia, professional conduct violations (policy breaches) are governed by the British Columbia Office of the Police Complaint Commissioner (OPCC). The OPCC provides for civilian "oversight," but ultimately there is no civilian investigation of police; police investigate police under this mechanism. For criminal accountability, there is no civilian investigation and investigation of police is also done by police. If the violation is particularly serious, investigation will be conducted by outside forces, often resulting in the RCMP investigating municipal forces.¹⁹

As the current contract between the British Columbia Provincial Government and the RCMP expired in March 2012, the Province negotiated and signed a new 20-year agreement, which

¹⁸ Petitioner Briefing Paper at 12-15.

¹⁹ The Office of the Police Complaint Commissioner, *British Columbia: A Step-by-Step Guide to the Municipal Police Complaints Process*, available at <http://www.opcc.bc.ca/>.

features a new complaint mechanism, the Independent Investigation Office (IIO).²⁰ Although this agency is held out to be civilian-led, because of a staff requirement for investigatory experience, there are questions as to whether this, at least initially, will be entirely true.²¹ Investigators within the IIO may be (1) any civilian with investigative experience; (2) a former member of a police or law enforcement agency outside of British Columbia; or (3) a former member of the RCMP.²² Additionally, the IIO is limited to investigations of serious conduct breaches, including actions resulting in death, serious harm to a person, or a contravention of the *Criminal Code*.²³ This means that complaints involving non-criminal discrimination, breach of policy without serious personal harm, and failures in investigation are still handled under the existing mechanism where police investigate police.

III. Prosecutorial Accountability

At the provincial level, Crown Counsel are prosecutors who work for the Criminal Justice Branch of the Ministry of Justice.²⁴ Crown Counsel do not represent the government, the police or the victim of an offense. They represent Canadian and specifically British Columbian society as a whole. They are responsible for the prosecution of all offenses and appeals in British Columbia related to the *Criminal Code of Canada* and provincial regulatory offenses. Crown Counsel are responsible for pressing charges, reviewing investigation reports from police and investigative agencies and conducting charge assessments in relation to offenses under the

²⁰ British Columbia Ministry of Justice, *News Release: New B.C. RCMP Contract Empowers Province, Municipalities* (March 21, 2012) available at http://www2.news.gov.bc.ca/news_releases_2009-2013/2012JAG0028-000331.htm.

²¹ See, e.g., Laurel Dietz, *Reasonable Doubt: Police Under Microscope with New B.C. Independent Investigations Office* (Mar. 23, 2012), available at <http://www.straight.com/article-643671/vancouver/reasonable-doubt-police-under-microscope-bc-independent-investigations-office>. Laurel Dietz is a criminal defense attorney at the law firm Cobb St. Pierre Lewis.

²² Legislative Assembly of British Columbia, 3rd Session, 39th Parliament, Bill 12 – 2011: Police (Independent Investigations Office) Amendment Act, 2011, § 38.06 (2).

²³ Legislative Assembly of British Columbia, 3rd Session, 39th Parliament, Bill 12 – 2011: Police (Independent Investigations Office) Amendment Act, 2011, § 38.02 (1).

²⁴ See the Government of British Columbia's description of its prosecution service, which can be found at: <http://www.ag.gov.bc.ca/prosecution-service/BC-prosecution/crown-counsel.htm>.

Criminal Code, Youth Criminal Justice Act, or under various provincial statutes. Crown prosecutors apply a two-pronged charge assessment standard—whether there is a substantial likelihood of conviction and, if so, whether a prosecution is required in the public interest. Additionally, Crown Counsel advise government on all criminal law matters and develop policies and procedures for the administration of criminal justice in British Columbia. Crown Counsel are guided by the policies of the Criminal Justice Branch and they are ultimately accountable to the Assistant Deputy Attorney General (ADAG). The ADAG is head of the Criminal Justice Branch and is responsible for the administration of the branch and the day-to-day operations of the prosecution service. The Attorney General is responsible for overseeing the administration of justice in the province, but does not normally become involved in prosecution decisions relating to individual cases. Notably, "where there is a significant possibility of a perceived or real improper influence on the prosecution process, the head of the prosecution service – the ADAG of the Criminal Justice Branch – will appoint a respected lawyer from outside the prosecution service as a Special Prosecutor to handle the case."

At the federal level, the Public Prosecution Service of Canada (PPSC) "fulfills the responsibilities of the Attorney General of Canada in the discharge of his criminal law mandate by prosecuting criminal offenses under federal jurisdiction."²⁵ The PPSC reports to Parliament through the Attorney General of Canada and is responsible for prosecuting offenses under more than 50 federal statutes and for providing prosecution-related legal advice to law enforcement agencies.²⁶ The cases that the PPSC prosecute include cases involving, "drugs, organized crime, terrorism, tax law, money laundering and proceeds of crime, crimes against humanity and war crimes, Criminal Code offenses in the territories, and a large number of federal regulatory offenses."²⁷

In an article written for the 2003 Ipperwash Inquiry in Ontario, entitled *Aboriginal Peoples and the Criminal Justice System*, Jonathan Rudin presents both issues and historical context that are

²⁵ Public Prosecution Service of Canada, About the Public Prosecution Service of Canada available at: <http://www.ppsc.gc.ca/eng/bas/abt-suj.html>.

²⁶ Ibid.

relevant to the disappearances and murders of Aboriginal women and girls in British Columbia. Rudin contends that evidence exists to suggest that Aboriginal people are viewed by the police as “less worthy victims” and therefore crimes against them are not investigated as thoroughly or prosecuted as vigorously.²⁸ Moreover, Rudin cites the forced placement of Aboriginal children into residential schools and the numerous cases of physical and sexual abuse of Aboriginal children in those schools as illustrative of a history in the Canadian justice system of a lack of prosecutions for crimes committed against Aboriginal peoples. Noting that despite the abuse that went on in these schools—abuse that continued for years and years—charges were never laid against those perpetrating the abuse while it was occurring.²⁹ Aboriginal children were simply not viewed as credible victims of crime.³⁰ Rudin notes the irony of the fact that many of the abused children were arrested by the police in their later lives as they tried to cope, often through the use of alcohol and drugs, with the aftermath of the abuse.³¹

The Pickton, Judge Ramsay, and Frank Paul³² cases all exemplify the failure of prosecutors to prosecute perpetrators—both state and non-state actors—of crimes against Aboriginal people. Prosecutors may claim that they lacked sufficient evidence or unreliable witnesses or victims. Nonetheless, the failure to prosecute reflects a lack of accountability in the criminal justice system and further institutionalizes sexism and racism against Aboriginal people.

As described in Page 22 of the Petitioners Briefing Paper,³³ failures to pursue prosecution due to systemic bias and discriminatory policies and practices are highlighted in the Pickton and Judge

²⁷ Ibid.

²⁸ Jonathan Rudin, *Aboriginal Peoples and the Criminal Justice System*, available at: http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/Rudin.pdf.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² See *Alone and Cold, Final Report of the Frank Paul Inquiry*, available at <http://www.frankpaulinquiry.ca/report/Final/>

³³ As described in Petitioner Briefing Paper at 22-23

Ramsay cases. Currently, the Missing Women Commission of Inquiry is looking into the decision of the Criminal Justice Branch on January 27, 1998, to enter a stay of proceedings on charges against Robert William Pickton of attempted murder, assault with a weapon, forcible confinement and aggravated assault.³⁴ Many believe that, had the Crown pursued charges against Picton in 1998, many lives would have been saved.

Interestingly, the Missing Women Commission of Inquiry learned that the original Crown Counsel file from the Pickton case, "which would have contained records related to how prosecutors handled the case, was destroyed several years later, despite a policy that dictates serious files such as attempted murder cases must be archived for 75 years."³⁵ Acting regional Crown Counsel who is responsible for looking into file destruction for the province's Criminal Justice Branch, Andrew MacDonald, told the Inquiry that "the [original Pickton file] file was destroyed because of an administrative error" that happened in both the administrative Crown Counsel office and by an official in the capital city of Victoria in British Columbia. Moreover, in regard to the destruction of the original Pickton file, MacDonald contends that "it [destruction of Crown Pickton files] was an error made repeatedly," in the batch of 121 boxes of documents that were mistakenly marked for destruction that should have been procedurally archived.³⁶

The 2007 Davies Commission Inquiry in British Columbia into the December 1998 death of an Aboriginal man, Frank Paul, further reflects a systemic failure to prosecute crimes against Aboriginal people. Paul was arrested by two officers but refused entry by another officer into the Vancouver Police Department jail. He was left by a Vancouver Police Department constable, drunk and unconscious, on a street and died of hypothermia.³⁷ In 2000, the Vancouver Police

³⁴ The Canadian Press, *Early Pickton prosecution fouled by witness's drug habit: 19 women disappeared after attempted murder charge against Pickton dropped* (April 12, 2012) available at <http://www.cbc.ca/news/canada/british-columbia/story/2012/04/12/bc-pickton-inquiry-prosecutor.html>

³⁵ Ibid.

³⁶ Ibid.

³⁷ See, *Alone and Cold, Final Report of the Frank Paul Inquiry*, available at <http://www.frankpaulinquiry.ca/report/Final/>

Department concluded disciplinary proceedings against two officers.³⁸ One officer was suspended for two days for discreditable conduct, and the other officer was suspended for one day for neglect of duty.³⁹ The Davies Commission found that "[o]n several occasions the Criminal Justice Branch of the Ministry of Attorney General examined the circumstances surrounding Mr. Paul's death. In each review, the Branch decided not to proceed with criminal charges against any of the police officers involved."⁴⁰ The Criminal Justice Branch did not proceed with criminal charges because they concluded that there was insufficient available evidence.⁴¹ However, when asked "why the Branch included the coroner's finding that Mr. Paul's death was an accident, but did not include the Police Complaint Commissioner's finding that the police investigation was flawed and incomplete," the Assistant Deputy Attorney General (ADAG) told the Commission: "I suppose you could have included both. I don't know. You could have excluded, I suppose, the coroner's report as well".⁴²

The failure of the Crown to press charges against police officers who were arguably guilty of negligence causing death highlights the many dimensions of excuses made by the Criminal Justice Branch in relation to Frank Paul's death.

The inadequacy of police investigations and the lack of prosecution in cases involving male violence against women are clearly linked. In her article, *What Women Need Now from Police and Prosecutors: 35 Years of Working to Improve Police Response to Male Violence Against Women*, Louisa Russell, writing as a Vancouver Rape Relief and Women's Shelter (VRRWS) advocate, notes that one of the most frequent complaints of female victims and prosecutors about the police is their failure to collect sufficient evidence from both the crime scene and victims

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

immediately after violent attacks happen against women.⁴³ Russell writes: “Cases often fall apart because police have not taken photographs of the scene, they have failed to document women’s injuries, they have not interviewed the neighbors or sought out the person who called 911 or the first person to whom the woman spoke. Police officers often apply bias rather than do their job, on the pretext that they cannot proceed because that would require believing the woman without ‘proof’.”⁴⁴ Russell further contends that police are often unwilling to believe the female victim until they have determined they do not believe her male abuser; only then will they search for supporting evidence, which may by that time be unavailable.⁴⁵

Unfortunately, the pattern of under-prosecution of perpetrators of violence against women is overwhelmingly highlighted in cases of missing and murdered Aboriginal women and girls. Moreover, the under-prosecution inherently furthers the violence against Aboriginal women and girls by sending a message of impunity to perpetrators.

In the January 2010 article, *Canada's Missing and Murdered Women*, the Neechie News tells the story of the high numbers of Canada's missing and murdered Aboriginal women. Quoting the 2004 report by Amnesty International titled, “Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada,” Neechie News notes:

both the perpetrators of violence against women and those who administer the criminal justice system – judges, prosecutors, police – often hold the pervasive view that women are responsible for violence committed against them ... The perpetrators of violence against women can thus commit their crimes safe in the knowledge that they will not face arrest, prosecution or punishment. Impunity for violence against women contributes to a climate where such acts are seen as normal and acceptable rather than criminal, and where women do not seek justice because they know they will not get it . . . Beth Burton

⁴³ Louisa Russell, "What Women Need Now from Police and Prosecutors: 35 Years of Working to Improve Police ResponsetoMaleViolenceAgainstWomen, available at <http://www.rapereliefshelter.bc.ca/sites/default/files/imce/28-36%20Russell%5B1%5D.pdf>.

⁴⁴ Ibid.

Hunter of Amnesty International says, “The cases are not being handled as other murdered women cases are. There is not enough investigation or community consultation. And it ends up many of them are never solved. The disappearances are casually treated.”⁴⁶

As with judges and police, oversight and accountability mechanisms of Crown Counsel conduct and decision-making is highly problematic. According to the British Columbia Criminal Justice Branch, Ministry of Attorney General Crown Counsel Policy Manual, complaints made to Crown Counsel offices about the conduct of Crown Counsel are referred to the Administrative Crown Counsel.⁴⁷ The Administrative Crown Counsel is tasked with resolving a complaint by issuing a copy of the complaint to the identified Crown Counsel and subsequently discussing the complaint with the Counsel.⁴⁸ If the complaint is deemed "serious" by the Administrative Crown Counsel, then the complaint is sent to the Regional Crown Counsel.⁴⁹ The Regional Crown is then tasked with deciding whether the complaint warrants a response from the Assistant Deputy Attorney General (ADAG).⁵⁰ If not, the Regional Crown may delegate responsibility for response and investigation of the complaint to either the Deputy Regional Crown Counsel or the Administrative Crown Counsel.⁵¹ If deemed "appropriate" the ADAG may request the Regional Crown to specifically send a written reply, personally meet with, or telephone the complainant.⁵²

⁴⁵ Ibid.

⁴⁶ Ann Doyon, *Canada's Missing and Murdered Aboriginal Women*, *The Neechie News*, available at <http://theneechienews.wordpress.com/2010/01/25/canadas-missing-and-murdered-aboriginal-women/>. See also, Amnesty International Report, *Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada*, available at: http://www.amnesty.ca/campaigns/sisters_overview.php.

⁴⁷ Criminal Justice Branch, Ministry of Attorney General Crown Counsel Policy Manual, available at <http://www.ag.gov.bc.ca/prosecution-service/policy-man/pdf/COM1-ComplaintsAndEnquiries-15Sep2004.pdf>

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

This complaint system provides a procedure for an administrator to merely provide information about or discuss a complaint with the Crown Counsel whose conduct or decision-making is at issue in a complaint. The most significant potential acknowledgment available to a complainant happens if the complaint against a Crown Counsel is deemed "serious". However, seriousness of conduct that will travel to the top of the hierarchy (to the ADAG) is not defined in the relevant Manual, and there is no transparency.

Recently, the Frank Paul Inquiry (sometimes referred to as the Davies Inquiry) sought testimony from Crown Counsel with respect to the decision not to lay charges against the police officers responsible for leaving Mr. Paul in the street where he died. Although the Frank Paul Inquiry was set up by the Government of British Columbia and included examination of the prosecutorial decisions within its terms of reference, the Criminal Justice Branch refused to permit Crown Counsel to testify on the grounds that being required to testify in an inquiry would interfere with prosecutorial independence. The Criminal Justice Branch also argued that Crown Counsel are protected by Crown immunity and solicitor-client privilege. These arguments were rejected by both the B.C. Supreme Court and the B.C. Court of Appeal.⁵³ The Government of British Columbia sought leave to appeal to the Supreme Court of Canada but was refused leave on April 6, 2010.⁵⁴

The processes that exist to hold members of the Canadian criminal justice system accountable for their lack of due diligence in addressing the longstanding and continuous issue of the disappearances and murders of Aboriginal women and girls in Canada have been and continue to be inadequate. Judges, police and prosecutors mainly investigate themselves. There is a lack of independent, principled, structured, and transparent oversight and monitoring. There is also resistance on the part of government to scrutiny, even by public inquiries which the government itself has appointed. When violence against Aboriginal women and girls is at issue, the systemic

⁵³ *British Columbia (Criminal Justice Branch) v. Davies*, 2008 BCSC 817, June 24, 2008, online at: <http://www.courts.gov.bc.ca/Jdb-txt/SC/08/08/2008BCSC0817.htm>; *British Columbia (Attorney General) v. Davies*, 2009 BCCA 337, July 23, 2009. Leave to appeal to the Supreme Court of Canada refused.

and institutionalized failure of each component of the criminal justice system - police, prosecutors, and judiciary - feeds into and exacerbates the failures in the other components of the system. Prosecutors are reliant on information given to them by police; judges are reliant on evidence and argument presented to them by prosecutors. This multi-faceted institutional failure warrants serious attention from all levels of government in Canada.

Section 2: Divisions of Powers and Shared Jurisdiction of Federal and Provincial Governments⁵⁵

Commissioner Shelton noted the absence of a representative from British Columbia, and requested more information about federal and provincial responsibilities and the structure of federalism in reference to responding to this particular issue.

In Canada, jurisdiction for Aboriginal peoples, the criminal justice system and social programs is shared between federal, provincial and territorial governments. The Government of Canada also has a special fiduciary duty to Aboriginal people. Consequently, any discussion of the violence experienced by Aboriginal women and girls, as well as the criminal justice system's response to it and the steps that need to be taken to address it, must address the actions and inactions of both the Province of British Columbia and the Government of Canada.

a. Section 91(24) of the Constitution and Fiduciary Duty

Aboriginal peoples have a unique legal and constitutional position in Canada. The Royal Proclamation of 1763 stated: "And whereas it is just and reasonable and essential to our interest, and the serenity of our colonies, that the several nations or tribes of Indians, with whom we are connected, and who live under our protection, should not be molested or disturbed in the

⁵⁴ See online notice of the Supreme Court of Canada's refusal to grant leave at http://scc.lexum.org/en/news_release/2010/10-04-06.2a/10-04-06.2a.html

⁵⁵ Thanks to Shelagh Day and Gwen Brodsky for permission to include observations from their unpublished paper, "Harper's 'Open Federalism' and the Human Rights of Canadians."

possession of such parts of our dominions and territories as, not having been ceded to us, are reserved to them, or any of them, as their hunting grounds;...no Governor or Commander in Chief [should] grant warrants of survey or pass any patent ...upon any lands whatever, which not having been ceded to, or purchased by us, as aforesaid, are reserved to the said Indians, or any of them.”⁵⁶

Since that time, the Government of Canada has been understood to have a fiduciary duty to Aboriginal peoples, which places the Crown in a special position of trust when dealing with the land or interests of Aboriginal people to ensure that Aboriginal peoples are not exploited by third parties.⁵⁷

Section 91(24) of *The Constitution Act, 1867*,⁵⁸ gives sole authority to the Government of Canada over Indians and Lands reserved for Indians. It is under this authority that the Government of Canada has passed many versions of the *Indian Act*, defining who is an Indian, establishing Band Councils and rules for their election, and providing to Indians who live on reserves social programs and services, such as social assistance, housing, education and child welfare programs, or funding for them.

b. Criminal Justice

In her 2002 report, the Auditor General of Canada described the division of authority in the criminal justice system between the federal, provincial, territorial governments, and First Nations communities in this way:

⁵⁶ *Royal Proclamation of 1763*, available at <http://www.canadiana.org/view/42695-36.pdf>

⁵⁷ Parliament of Canada, Mary Hurley, “The Crown's Fiduciary Relationship with Aboriginal Peoples,” 18 Decemeber 2002. Online: <http://www.parl.gc.ca/content/LOP/ResearchPublications/prb0009-e.htm>

⁵⁸ *The Constitution Act, 1867*, (U.K.) 30 & 31 Vict., c.3. section 91(24).

The formal criminal justice system consists of the police, prosecutors, the courts, correctional services, and parole boards. Under Canada's Constitution, the provinces and the federal government share responsibility for the criminal justice system. Parliament is responsible for establishing criminal law and criminal procedure. Provinces have primary responsibility for enforcing the *Criminal Code*, prosecuting criminal charges, and administering trial courts. The Royal Canadian Mounted Police (RCMP) acts as a federal police force. Under contractual agreements, it also provides policing services to all provinces and territories except Quebec and Ontario, who have their own provincial police forces. Further, through various arrangements it provides services to certain municipalities, airports, and First Nations communities. Generally, larger municipalities have their own police forces.

c. Social Programs

Social programs which address the social and economic disadvantage of Aboriginal women and girls have both provincial and federal involvement. Canada is a federal state with separate legislative jurisdictions assigned to the federal government and to the provincial governments under sections 91 and 92 of the *Constitution Act, 1867*. Thus, the federal and provincial governments have constitutionally determined areas of separate lawmaking ability. The federal government has sole authority to make laws in those areas assigned to it --for example, for immigration law, criminal law, Aboriginal peoples, the military, and the geographic areas of Canada's three territories. Provincial governments are understood to have authority to make laws in relation to such things as health, education, and welfare. Municipal governments fall under provincial authority.

However, as the Supreme Court of Canada has repeatedly recognized, “it is rare that all the subjects dealt with in a statute fall entirely under a single head of power.”⁵⁹ That is why contemporary constitutional jurisprudence recognizes that the classes of matters set out in sections 91 and 92 of the *Constitution Act, 1867* are not watertight compartments, and that the

⁵⁹ Ibid.

power of one level of government to legislate in relation to one aspect of a matter does not necessarily take anything away from the power of the other level to control another aspect within its own jurisdiction.⁶⁰ This insight has given rise to various analytical approaches including what is referred to in constitutional interpretation as the double aspect doctrine.

A recent example of the double aspect doctrine is the *Maternity Benefits Reference*.⁶¹ In that case, the Government of Quebec submitted questions to the Quebec Court of Appeal concerning the constitutional validity of ss. 22 and 23 of the *Employment Insurance Act*, which is a federal statute governing eligibility for employment insurance benefits. In essence, ss. 22 and 23 allow a woman who is not working because she is pregnant, and a person who is absent from the workplace to care for a newborn or an adopted child, to receive employment insurance benefits. The Quebec Court of Appeal issued an opinion to the effect that ss. 22 and 23 were unconstitutional because the matters to which they apply are under provincial jurisdiction. On appeal, the Supreme Court of Canada applied the double aspect doctrine to permit provincial and federal government legislation to co-exist. The challenged maternity benefits were regarded by the Supreme Court of Canada as a “social measure” but they “did not amount to an intrusion into provincial jurisdiction, because in purpose and effect they were more about employment,”⁶² and employment insurance benefits are specifically recognized as a federal matter.

The formal division of powers between the federal and provincial governments can be legitimately circumvented by the federal government's ability to spend its revenues in areas otherwise formally within provincial jurisdiction and control. Thus a dominant feature of Canadian political history is the exercise of what is called the federal government's "spending power". By stipulating conditions for provincial access to federal money, the federal government has been able to implement national standards in provincial jurisdictional areas such as health, education, social assistance, and legal aid, and to ensure that such programs exist in all provinces and territories by allocating federal monies for them.

⁶⁰ Ibid.

⁶¹ Reference re *Employment Insurance Act* (Can.), ss. 22 and 23, [2005] 2 S.C.R. 669, 2005 SCC 56, available at <http://scc.lexum.org/en/2005/2005scc56/2005scc56.html>

This means that in some of the areas of provincial jurisdiction that are key to the implementation of economic, social and cultural rights, the federal government has, through the persuasive power of promising funding assistance to the provincial governments, considerable legitimate power to influence policy, programs, and legislation. Consequently, when it transfers funds to the provinces and territories, the federal government shares political responsibility for decisions about the character of state action so funded. It is essential, therefore, that both federal and provincial governments be questioned and be held accountable for social programs instituted at the provincial level.

Provincial governments, of course, retain direct responsibility for the legislation and programs they implement, and for government actions within the provincial sphere of legislative authority under the Canadian Constitution.

As noted the Government of Canada provides social services and programs, or funding for them, directly to Indians living on reserves, while provincial and territorial governments provide services to Aboriginal people living off reserve.

The lines of responsibility with respect to Aboriginal peoples, however, are not always clear or agreed upon, and the lives of Aboriginal women and girls are marred by wrangling between different levels of government over which one is responsible for providing a service, program, benefit, or support that is needed. Aboriginal women and girls are often denied essential forms of assistance or receive piece-meal services because of competing and overlapping federal, provincial, territorial and Band Council responsibilities for providing services to Aboriginal peoples. This issue has been recognized as a problem for many years, but has received prominence recently because of the case of Jordan River Anderson, a young boy from Manitoba's Norway House Cree Nation, who was born with a rare neuromuscular disorder and required care from multiple service providers. He became the centre of a jurisdictional funding dispute which prevented him from leaving the hospital to receive care in a family home. Jordan

⁶² Ibid., paras. 38 and 68.

died in hospital because federal and provincial governments could not agree on who was responsible for paying for his care.⁶³

d. Human Rights Obligations of Federal and Provincial Governments

Canada's human rights framework creates obligations for both levels of government. Some of these obligations are the same for federal and provincial governments; some are different. The federal and provincial governments are bound by the *Canadian Charter of Rights and Freedoms* to protect the rights of individuals and groups to equality (s. 15) and security of the person (s. 7). Canada's governments and courts have agreed that the right to equality requires more than mere neutrality on the face of laws. Women's rights advocates in Canada have argued consistently that the right to equality does not merely restrain governments from discriminating, but invokes government action, specifically to take steps and to allocate resources in ways that will dismantle patterns of inequality in Canada and improve conditions for groups that are disadvantaged, in particular through designing and delivering necessary programs and services.⁶⁴

Section 36 of the *Constitution Act, 1982*⁶⁵ entrenches the agreement of federal and provincial governments to share resources and to create and maintain essential social programs and services

⁶³ Aboriginal Affairs and Northern Development Canada, *Background - Implementation of Jordan's Principle in Saskatchewan*, available at <http://www.aadnc-aandc.gc.ca/aiarch/mr/nr/s-d2009/bk000000451-eng.asp>. See also Cindy Blackstock, "Jordan's Principle: Editorial Update" available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2603509/>

⁶⁴ See, for example, "Montreal Principles on Women's Economic, Social and Cultural Rights", (2004) 26 *Human Rights Quarterly* 760-780, available at http://www.escr-net.org/actions/actions_show.htm?doc_id=426624; see also, Gwen Brodsky and Shelagh Day, "Denial of the Means of Subsistence as an Equality Violation", in F. du Bois, A. Fagan, C. Murray & M. Sullivan, eds., *Equality Law: Reflections from South Africa and Elsewhere* (Cape Town: JUTA Law, 2005).

⁶⁵ Section 36 of The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 states:

(1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

that are of sufficient quality to foster the well-being of Canadians, no matter where they live. It creates obligations for both levels of government.

When international treaties are being negotiated and ratified, it is the federal government on behalf of Canada that negotiates the text and formally ratifies. However, ratification of human rights treaties, which, by definition, implicate all levels of government in Canada, only takes place after consultation with the provinces and territories. As Jamie Cameron notes, “human rights treaties, when signed by Canada, carry the authority and commitment of the provinces as well.”⁶⁶

In short, both federal and provincial governments have obligations under the *Charter*, section 36, and international human rights treaties to provide and maintain adequate social programs.

However, the federal government has a special responsibility. It could be argued that it has a special responsibility under each part of the human rights framework – the *Charter*, section 36, and international human rights treaties - because of its relationship to the nation-state of Canada as a whole. It is the only government that has responsibilities to all Canadians.

But this special responsibility is made particularly clear by treaty law. The federal government is the formal ratifier of international human rights treaties, and it has assumed the obligations

(a) promoting equal opportunities for the well-being of Canadians;

(b) furthering economic development to reduce disparity in opportunities; and

(c) providing essential public services of reasonable quality to all Canadians.

(2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

⁶⁶ Jamie Cameron, “Federalism, Treaties and International Human Rights under the Canadian Constitution” (2002) 48 *Wayne L. Rev.* 1 at 51.

inherent in them. A fundamental principle of international human rights law is that when a State becomes a party to a treaty, that State must execute, in good faith, the provisions of the treaty. This principle is articulated in the Vienna Convention on the Law of Treaties,⁶⁷ and acknowledged by the Government of Canada as applicable to Canada.⁶⁸

The obligation under international human rights treaties is an obligation of result. In other words, the State party is obligated to put in place the measures necessary to realize the rights in the treaty.

However, in recent reviews by United Nations treaty bodies, Canada has been roundly criticized for its failure to fulfill the rights of Canadians. Notably, while at one time, Canada held out the federal transfers and cost-sharing for social programs as its means of fulfilling the Article 11 right to an adequate standard of living in the *International Covenant on Economic, Social and Cultural Rights*,⁶⁹ by 1998 when Canada was reviewed by the Committee on Economic, Social and Cultural Rights (CESCR) it no longer viewed conditioned transfers as necessary to the fulfillment of Article 11 obligations.⁷⁰

However, United Nations treaty bodies have not been persuaded that the federal government can just blame the provinces for its non-fulfillment of human rights obligations; nor have the treaty

⁶⁷ *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations Treaty Series, vol. 1155 p. 331 at Article 26 (entered into force 27 January 1980, ratified by Canada 13 May 1998).

⁶⁸ The Heritage Canada website states: When becoming party to a treaty, a State must execute, in good faith, the provisions of the treaty subject to the reservations it may have made. See “*Multilateral human rights treaties to which Canada is a party*” Canadian Heritage (31 October 2005), available at http://www.pch.gc.ca/progs/pdp-hrp/docs/treat-trait/index_e.cfm.

⁶⁹ Canada, Secretary of State, *International Covenant on Economic, Social and Cultural Rights: Report of Canada on Articles 10–12, December 1982* (Ottawa: Supply and Services, 1983). Cited in Gwen Brodsky & Shelagh Day, “Women and the Equality Deficit: The Impact of Restructuring Canada’s Social Programs” *Status of Women Canada* (March 1998) at 112, online: Government of Canada Depository Services Program <<http://dsp-psd.pwgsc.gc.ca/Collection/SW21-32-1998E-1.pdf>>.

bodies been convinced by the suggestion that complications inherent in federalism make it too difficult for Canada to comply. On the contrary, the United Nations treaty bodies have consistently taken the position that while all levels of government are responsible for compliance, the federal government has a primary responsibility for ensuring that international human rights obligations are fulfilled.⁷⁰ While the United Nations treaty bodies do not care *how* the obligations are fulfilled, because it is the result that they are concerned with, they have nonetheless been dismayed by the federal government's more recent abandonment of attaching conditions to federal transfers to the provinces as an effective means of implementing human rights across jurisdictions.

Both the United Nations Committee on Economic, Social and Cultural Rights (CESCR) and the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) have expressed concerns about changes to federal transfers and the impact on social programs, and have recommended that Canada revisit the decision to eliminate the national standards that were attached to transfers to the provinces for social programs. In its 1998 Concluding Observations, the CESCR stated:

The replacement of the Canada Assistance Plan (CAP) by the Canada Health and Social Transfer (CHST) entails a range of adverse consequences for the enjoyment of Covenant rights by disadvantaged groups in Canada. The Government informed the Committee in its 1993 report that CAP set national standards for social welfare, required that work by welfare recipients be freely chosen, guaranteed the right to an adequate standard of living and facilitated court challenges of federally-funded provincial social assistance

⁷⁰ Gwen Brodsky, "Human Rights and Poverty: A 21st Century Tribute to J.S. Woodsworth" in *Human Rights, Human Welfare and Social Activism: Rethinking the Legacy of J.S. Woodsworth*, J. Pulkingham, ed., (Toronto: U of T Press, 2011), at p. 149.

⁷¹ Concluding Observations of the Committee: Canada, *Consideration of Reports submitted by States Parties under Article 18 of the Convention*, CESCR, 28th Sess., E/C.12/1/Add.31 (1998) at paras. 12 and 19, 13-31; Committee on the Elimination of Racial Discrimination, *Report of the Committee on the Elimination of Racial Discrimination*, 60th Sess., Supp. No. 18, A/57/182002 (2002) and 61st Sess., (2002) at para. 326; and Committee on the Rights of the Child, *Consideration Of Reports Submitted By States Parties Under Article 44 Of The Convention Concluding observations: Canada 1*, 34th Sess., CRC/C/15/Add.215 (2003) at para. 9.

programmes which did not meet the standards prescribed in the Act. In contrast, the CHST has eliminated each of these features and significantly reduced the amount of cash transfer payments provided to the provinces to cover social assistance. It did, however, retain national standards in relation to health, thus denying provincial “flexibility” in one area, while insisting upon it in others. The delegation provided no explanation for this inconsistency. The Committee regrets that, by according virtually unfettered discretion to provincial governments in relation to social rights, the Government of Canada has created a situation in which Covenant standards can be undermined and effective accountability has been radically reduced.⁷²

In the same Concluding Observations, the CESCR made the following recommendation:

Canada [should] consider re-establishing a national programme with specific cash transfers for social assistance and social services that includes universal entitlements and national standards and lays down a legally enforceable right to adequate assistance for all persons in need, a right to freely chosen work, a right to appeal and a right to move freely from one job to another.⁷³

The CESCR also urged Canada to establish social assistance at levels which ensure the realization of an adequate standard of living for all,⁷⁴ and to adjust federal/ provincial/territorial agreements so as to ensure, in whatever ways are appropriate,⁷⁵ that services such as mental health care, home care, child care and attendant care, shelters for battered women and legal aid for non-criminal matters are available at levels that ensure the right to an adequate standard of living.

To a similar effect, in its 2003 Concluding Observations, the CEDAW stated:

⁷² *CESCR*, *ibid.* at para. 19.

⁷³ *Ibid.* at para. 40.

⁷⁴ *Ibid.* at para. 41.

⁷⁵ *Ibid.* at para. 42.

The Committee is concerned that, within the framework of the 1995 Budget Implementation Act, the transfer of federal funds to the provincial and territorial levels is no longer tied to certain conditions which previously ensured nationwide consistent standards in the areas of health and social welfare. It is also concerned about the negative impact that the new policy has had on women's situation in a number of jurisdictions.

CEDAW recommended that:

...the federal Government reconsider those changes in the fiscal arrangements between the federal Government and the provinces and territories so that national standards of a sufficient level are re-established and women will no longer be negatively affected in a disproportionate way in different parts of the State party's territory.⁷⁶

Going further in its 2008 observations, the CEDAW Committee recommended that:

The Committee calls upon the State party to establish minimum standards for the provision of funding to social assistance programmes, applicable at the federal, provincial and territorial levels, and a monitoring mechanism to ensure the accountability of provincial and territorial governments for the use of such funds so as to ensure that funding decisions meet the needs of the most vulnerable groups of women and do not result in discrimination against women. The

⁷⁶ Committee on the Elimination of Discrimination against Women, *Concluding Observations/Comments - CEDAW: Canada. 03/20/2003. A/58/38(Part I), paras. 336-389, at paras. 351-352.*

Committee also calls upon the State party to carry out an impact assessment of social programmes related to women's rights.⁷⁷

In 1998 the CESCR pointed out to Canada that Article 27 of the *Vienna Convention on the Law of Treaties* states that: “[A] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. The Committee reiterated its words in General Comment 3: “States should modify the domestic legal order as necessary in order to give effect to their treaty obligations.”⁷⁸

It is clear then that the treaty bodies hold the federal government accountable for the fulfillment of the rights in the treaties. The federal government does not need to design or deliver all the measures, programs and services that are needed to fulfill the human rights that Canada has embraced, but it does have to ensure that the necessary laws, programs and services exist and adequately fulfill the rights.

The federal government occupies a unique position, not just because it is the formal ratifier of international human rights treaties that are of central significance to Canadians. It also occupies a unique position because it is the only government in Canada that has a responsibility for all Canadians, and because it has the capacity through various means, including the use of conditioned transfers, to ensure the fulfillment of human rights for Canadians wherever they live.

Section 3: Data on Disappearances and Murders of Aboriginal Women and Girls

Commissioners Shelton and Antoine asked for further information regarding the keeping of statistics on disappearances and murders of Aboriginal women and girls, and issues of funding related to the research involved.

⁷⁷ Committee on the Elimination of Discrimination against Women, Forty-second session, 7 November 2008, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada*, CEDAW/C/CAN/CO/7, para. 14.

⁷⁸ *Ibid.* at para. 19.

As the Petitioners noted in their Briefing Paper at p. 9 and following, Canada does not yet keep reliable and consistent statistics on murders and disappearances of Aboriginal women and girls, or on the perpetrators of the violence against them.

It was because of this lack of information that the Native Women's Association of Canada began its Sisters In Spirit project in 2005. Sisters In Spirit has collected information about missing and murdered Aboriginal women and girls across Canada, and has constructed an important, reliable database of information. It has published analytical reports, and has been an essential source of information and support for the families of the missing and murdered Aboriginal women and girls. It is widely recognized that through its careful and sensitive research, Sisters In Spirit brought the issue of murdered and missing Aboriginal women to light, and demonstrated that the governments in Canada need to take action.

Sisters In Spirit was funded in 2005 as a five-year research, education and policy initiative through the policy branch of Status of Women Canada and approved by Cabinet. Sisters In Spirit received \$5 million dollars over five years. This funding ended on March 31, 2010.

In the March 2010 Budget, the Government of Canada allocated 10 million dollars to combat violence against Aboriginal women. This amount represents 0.003565% of the 280.5 billion dollars of planned total expenditure for the fiscal year 2010-2011. The Budget stated that the money was being allocated "to address the disturbingly high number of missing and murdered Aboriginal women," and also stated "[c]oncrete actions will be taken so that law enforcement and the justice system meet the needs of Aboriginal women and their families."⁷⁹

On October 29, 2010, the Government of Canada announced that the 10 million dollars would be spent over two years as follows:

⁷⁹ Government of Canada, March 9, 2010, Budget 2010, Chapter 3.4 Supporting Families and Communities and Standing Up for Those Who Helped Build Canada, available at <http://www.budget.gc.ca/2010/plan/chap3d-eng.html>

1. \$4-million for the Royal Canadian Mounted Police (RCMP) to:

- establish a National Police Support Centre for Missing Persons, including one resource, linked to National Aboriginal Policing Services, specifically dedicated to the issue of missing and murdered Aboriginal women;
- enhance the Canadian Police Information Centre (CPIC) to capture additional missing persons data;
- create a national registry for missing persons and unidentified remains so police have more comprehensive information on missing persons across jurisdictions; and
- create a national Web site to encourage the public to provide tips and information on missing persons cases and unidentified human remains.

2. \$1 million to support the development of school and community-based pilot projects to help heal, move forward and provide alternatives to high-risk behaviour for young Aboriginal women, including young offenders. The overall goal of the initiative will be to reduce the vulnerability of young Aboriginal women to violence.

3. \$2.15 million to the Department of Justice's Victims Fund to help the western provinces develop or adapt victim services for Aboriginal people and specific culturally sensitive victim services for families of missing and murdered Aboriginal women. These funds will also be made available to Aboriginal community groups to respond to the unique issues faced by the families of missing or murdered Aboriginal women at the community level.

4. \$1.5 million to Public Safety Canada to develop community safety plans to improve the safety of Aboriginal women within Aboriginal communities. Community safety plans

will be developed by Aboriginal communities with the support of the Government of Canada to improve community safety and wellness.

5. \$850,000 to the Justice Partnership and Innovation Fund to develop materials for the public on the importance of breaking intergenerational cycles of violence and abuse that threaten Aboriginal communities across Canada. This funding will be made available to Aboriginal organizations and Public Legal Education groups working with Aboriginal groups.

6. \$500,000 for the development of a national compendium of promising practices in the area of law enforcement and the justice system to help Aboriginal communities and groups improve the safety of Aboriginal women across the country. These “best practices” will be identified in a number of fields: law enforcement, victim services, Aboriginal community development and violence reduction.⁸⁰

As the Native Women’s Association of Canada pointed out at the time, the funding in these various envelopes is not in all cases specifically designated to deal with Aboriginal women, or to address serious violence, like murder. Further, there is only enough money to support small projects on a short-term basis. The allocation of funds within the 10 million dollars was decided without consultation with NWAC.⁸¹

At the same time, the Government of Canada informed NWAC that it would no longer fund Sisters In Spirit. When the Budget announcement was made, those involved in Sisters In Spirit,

⁸⁰ Government of Canada, October 29, 2010, “Government Of Canada Takes Concrete Action Regarding Missing And Murdered Aboriginal Women”, online at: http://www.justice.gc.ca/eng/news-nouv/nr-cp/2010/doc_32560.html

⁸¹ Native Women’s Association of Canada, November 9, 2010, “NWAC responds to \$10M announcement from the Department of Justice Canada”, online at http://www.nwac.ca/sites/default/files/imce/Press%20Release_NWAC%20responds%20to%20%2410M_9%20November%202010.pdf

and all of the supporters of its excellent work, were sure that its funding would be renewed. However, the Cabinet did not approve renewed funding for Sisters In Spirit.

NWAC was informed that because of a change in policy introduced in 2008 to the terms and mandate of the Status of Women's Community Fund, no research, policy development or advocacy can be funded, and there would be no further funding for Sisters In Spirit. It appears to be the view of the Government of Canada that there is no need for Sisters In Spirit to continue its research and maintain its database of information on missing and murdered Aboriginal women and girls, because the RCMP has now been funded to collect information. The decision not to continue to fund Sisters In Spirit ignores known facts:

- the RCMP do not yet have clear policy or expertise regarding collecting data about Aboriginal identity;
- the existence of an RCMP database does not preclude the need for, and usefulness of NWAC's database, since NWAC's methods of collecting information and NWAC's community relationships are different, and superior, to those of the RCMP;
- it will take several years for an RCMP database to be fully functioning, even if it is adequately funded.

Status of Women Canada currently funds a project of the Native Women's Association of Canada, which has been titled "Evidence to Action", and which involves training some Aboriginal women and girls to recognize and respond to violence against women and girls in their communities. However, NWAC has been explicitly instructed that it cannot use any Status of Women Canada funds for the continuing collection of data regarding disappearances and murders of Aboriginal women and girls.

The Government of Canada has used funding – the giving, withholding and setting terms for it - as a means of controlling and restricting the activities of non-governmental women's organizations and of NWAC, and the Sisters In Spirit project in particular, because their work has exposed grave and systematic violations of the human rights of Aboriginal women and girls in Canada.

The allocation of 10 million dollars over 2010-2011 is a mere gesture, and can not address the causes and consequences of the violence.

Section 4: Connection to Land Issues

Commissioner Shelton requested information regarding whether and to what extent the disappearances and murders of women are connected to issues linked to the land claims that exist in B.C. She noted that some indigenous peoples have their own police forces and are able to do some policing of the issues.

Connection Between Land Claims Issues and Disappearances and Murders of Aboriginal Women and Girls

There is a connection, if an indirect one. Most of British Columbia is unceded territory, over which there are no treaties. A few First Nations have negotiated recent treaties, most notably the Nisga'a First Nation.⁸² However, most First Nations in British Columbia are mired in interminable and unproductive land claims processes. In the meantime many First Nations communities are poor and their members experience levels of social and economic disadvantage not experienced by other residents of Canada. The Petitioners' Briefing Paper and submissions to the Commissioners on March 28, 2012 outlined the clear connection between social and economic deprivation and the vulnerability of Aboriginal women and girls to violence and their inability to escape it.

⁸² Aboriginal Affairs and Northern Development Canada, *Fact Sheet: The Nisga'a Treaty*, available at <http://www.aadnc-aandc.gc.ca/eng/1100100016428>

First Nations Policing in British Columbia

The Stl'atl'imx Tribal Police Service (STPS) is currently the only self-administered First Nations police service in British Columbia, and all First Nation communities not policed by it are policed by the RCMP.⁸³ In 1999, the STPS was designated under the *British Columbia Police Act* as an authorized police service for the 10 participating Stl'atl'imx communities, which are located around Lillooet and Mount Currie.

However, self-administered First Nations police services are much more prevalent in other parts of the country, particularly in Ontario and Quebec. Don Clairmont in his study *Aboriginal Policing In Canada* reports that as of 2005: "In Ontario, fully 96 percent of the on-reserve population and all but 17 of the 131 First Nation communities in Ontario were covered by First Nations Policing Policy agreements. For Canada as a whole, the comparable figures were 60 percent of the First Nation on-reserve population and 317 of the 644 communities being policed under a First Nations Policing Policy (tripartite) agreement." These agreements are negotiated between federal, provincial and Aboriginal governments.⁸⁴

Research on disappearances and murders of Aboriginal women and girls to date has not noted a difference in treatment of the issue, victims or family members between municipal, provincial, RCMP and First Nations-run agencies. The stories of family members documented by the Native Women's Association of Canada reveal that some individual police officers have been helpful and kind. However, the pattern of response across the country from many different police agencies has been dismissive and inadequate. In the case of Maisie Odjick, it was First Nations

⁸³ *Aboriginal Policing in Canada: An Overview of Developments in First Nations*, Don Clairmont, September 2006, available at http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/Clairmont_Aboriginal_Policing.pdf. See also: The First Nations Chiefs of Police Association in partnership with Human Resources Development Canada, *Setting the Context: The Policing of First Nations Communities*, online at: www.fnepa.ca/Publications/Moduleone.doc

⁸⁴ *Ibid.* p. 8.

police to whom she reported the disappearance of her daughter, Maisie, on the Kitigan-Zibi reserve, and the immediate police response was to deem Maisie “a runaway.”

Section 5: Update Information regarding the Missing Women Commission of Inquiry

Because the Government of British Columbia has held out the Missing Women Commission of Inquiry as a significant means of addressing the issue of disappearances and murders of Aboriginal women and girls, the Petitioners wish to provide the Commissioners with up to date information regarding the Commission.

a. Extension of Deadline for Final Report

The deadline for completion of the Commission of Inquiry’s final report has been extended by the Government of British Columbia to October 31, 2012.⁸⁵

b. Families Denounce Inquiry

In closing statements at the Missing Women Commission of Inquiry, Cameron Ward, the one lawyer funded by the Government of British Columbia, who represents some of the families of the victims of Robert William Pickton, denounced the Inquiry. Mr. Ward said in his final submissions “This commission has failed to uncover the true reasons why this enormous tragedy was allowed to happen and exactly how it was that the criminal justice system utterly failed these women and their families....My clients are disappointed, discouraged and, most of all, angry at the way this commission has unfolded. They feel this commission has perpetuated the attitude of

⁸⁵ Missing Women Commission of Inquiry, *May 31, 2012 – Deadline extended for development of Inquiry report*, available at <http://www.missingwomeninquiry.ca/2012/05/may-31-2012-deadline-extended-for-development-of-inquiry-report/>

indifference and disrespect that they themselves first experienced when they reported their loved ones missing.”⁸⁶

c. Allegations of Sexual Harassment Inside the Commission and Inappropriate Conduct by the Commissioner

The Commission of Inquiry, established to inquire into the failure of the police and prosecutorial services in British Columbia to deal violence against women by a serial killer, Robert William Pickton, has itself been the subject of allegations of sexual harassment, and allegations of inappropriate conduct on the part of the Commissioner, Wally Oppal Q.C. Five former employees of the Commission have made public their allegations that there was a sexualized environment inside the Commission, and the Director of the Commission has been put on paid leave.⁸⁷ In addition, media stories have revealed that inappropriate remarks were made by Commissioner Oppal to a police dinner regarding a rape victim whose case was before him in court, and questions have been raised about the appropriateness of his agreeing to play a role as a victim in a slasher in a movie, while sitting as a Commission of Inquiry to deal with police failures in the serial killing of women in Vancouver.⁸⁸

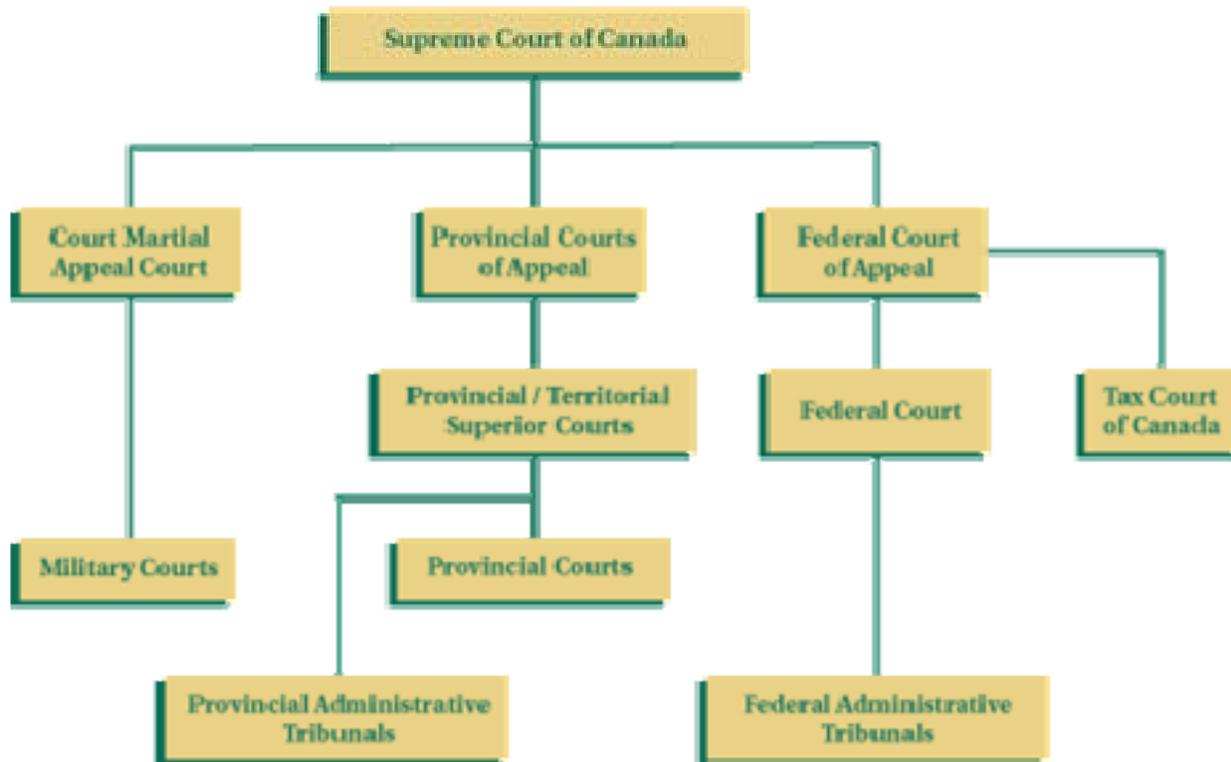
Given the accumulating failures and inadequacies of the Missing Women Commission of Inquiry itself, it cannot be viewed as providing accountability for the police and prosecutorial failures involved even in the Pickton case, or any remedy for the disappearances and murders of Aboriginal women and girls in British Columbia.

⁸⁶ James Keller, The Globe and Mail, “Families of Pickton Victims Denounce ‘missing-evidence inquiry’”, June 4, 2012, online at: <http://m.theglobeandmail.com/news/british-columbia/families-of-pickton-victims-denounce-missing-evidence-inquiry/article4231153/?service=mobile>

⁸⁷ Brian Hutchinson, The National Post, “Women’s Inquiry Puts Director on Paid Leave”, April 7, 2012, online at: <http://www.nationalpost.com/Women+inquiry+puts+director+paid+leave/6423902/story.html>

⁸⁸ Brian Hutchinson, The National Post, “Wally Oppal’s slasher film is an exercise in bad judgement”, May 9, 2012, online at: <http://fullcomment.nationalpost.com/2012/05/08/brian-hutchinson-wally-oppals-slasher-film-is-an-exercise-in-bad-judgment/>

Outline of Canada's Court System



⁸⁹ Source: Canada Department of Justice, Canada's Court System, available at: <http://www.missingwomeninquiry.ca/2012/05/may-31-2012-deadline-extended-for-development-of-inquiry-report/http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/page3.html>

