

**Final Report
of the Community Dialogue Sessions
on the Criminal Justice Findings of the
National Inquiry into Missing and Murdered
Indigenous Women and Girls**

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I. Introduction

This report provides the outcomes of a series of community dialogue sessions initiated by the Department of Justice Canada and carried out by a Métis contractor, Celeste McKay Consulting Inc. (the Consultant). The sessions were organized and hosted by Indigenous justice programs throughout Canada. The process was designed to hear the perspectives of Indigenous community justice workers regarding the criminal justice-related findings and Calls for Justice in *Reclaiming Power and Place*, the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

Six community dialogue sessions (Appendix B) were held from November 2020 to January 2021, involving approximately 160 participants, primarily Indigenous justice workers as well as police officers, a judge, and social workers. A Participant Guide (Appendix D) was created to familiarize participants with the process and with the relevant findings and Calls for Justice of the National Inquiry. Each session was designed in collaboration between the host and the Consultant. Inuit, Métis Nation, and First Nations participants attended from various regions. Sessions were hosted by the Inuvik Justice Committee, the Mi'kmaq Confederacy of PEI, Aboriginal Legal Services, the Native Courtworker and Counselling Association of British Columbia, the Manitoba Metis Federation and the Family Information Liaison Units (FILU). For each session, the Consultant prepared a summary report for the participants' review and validation.

Through these sessions, Justice Canada sought to learn more from Indigenous community justice experts on the opportunities for moving forward in response to the findings of the National Inquiry into Missing and Murdered Indigenous Women and Girls in the areas of victim supports, policing, courts, and sentencing. It was envisioned that this report would inform the co-development of the National Action Plan. In addition to supporting federal justice policy development, these Community Dialogue Sessions are intended to provide participants, as well as community organizations, with an additional tool in support of community justice planning. A key objective of these sessions is to support opportunities for dialogue amongst experts on important justice-related issues.

Given that the COVID-19 pandemic has created unique challenges that were not contemplated during the National Inquiry, participants were also encouraged to consider and share the implications of COVID-19 on their work.

In the course of these dialogue sessions, participants identified numerous concrete measures that could be taken to put the findings and Calls for Justice of the National Inquiry into action at the community level. These recommended actions are set out at the end of each section of this report and in Appendix A.

Participant Observations on the Inquiry

Before turning to the Justice findings of the final report, participants highlighted the historic significance of the Inquiry as the first opportunity for certain truths to be told and heard on such a scale. Participants underscored the importance of honouring and acting on the truths that were shared, stating that the Inquiry's 231 Calls for Justice represent legal imperatives that cannot be

ignored. In this regard, dialogue sessions need to honour the findings and Calls for Justice and not rethink the conclusions of the Inquiry. One participant said, “We have to be mindful that the findings are a result of the family and survivors that lived their experience. We can’t question the truth. Again, I like to ensure things are trauma-informed and dignified.”

When asked to reflect on their involvement with the Inquiry, participants raised concerns related to the process of the Inquiry. Many people were prevented from participating, for reasons such as that their geographic area was not included, or they lived so far away that it was too expensive to attend. Other concerns included last-minute scheduling changes or culturally-inappropriate methods of support (First Nations-focused supports offered to Métis Nation participants, for example).

Nonetheless, the work of the Inquiry was viewed overall as a positive step forward. Some participants indicated that it spurred advocacy efforts and helped to illuminate the national significance of the issue of missing and murdered Indigenous women and girls.

Participants said there have been many inquiries but very little action so far. One participant said that inquiries “are happening to people, not for people.” They said it is disheartening to participate over and over again in creating recommendations when the recommendations are not implemented. Only when recommendations are put into effect do they become meaningful. Further education on the meaning and significance of the Inquiry’s 231 Calls for Justice is needed. Participants acknowledged that there is still a lot of work to be done to implement the findings and Calls for Justice “because there are still so many examples of Indigenous victims and survivors that are still not being heard.”

Overarching Themes

Throughout the dialogue sessions, participants emphasized that the time has come for the Métis Nation, First Nations, and Inuit to exercise self-determination over the services and supports provided to Indigenous women, girls and 2SLGBTQIA+ individuals who are victims and survivors of violence, along with their families. The participants emphasized that Indigenous governments and Indigenous-led organizations are best placed to understand the needs of their communities, already have solutions to these needs, and are more likely to be trusted by and accessible to their community members.

Another common theme was the need for equitable, adequate, long-term support for provision of Indigenous-led services and supports. Taking a substantive equality approach, this means understanding that Indigenous peoples have distinct needs based on the distinct historical contexts experienced by First Nations, Inuit, and the Métis Nation. Short-term and project-based funding is a barrier to long-term capacity building. It creates interruptions in service delivery that are harmful to service recipients. Such disruptions make it that much harder to build relationships of trust and understanding between justice workers and the communities they serve.

It is vital that Indigenous justice service providers and professionals have a deep understanding of the communities they serve, including their histories, cultural norms, and values (including style of communication and protocols) to engage in a culturally-appropriate way. The terms

“cultural sensitivity” and “cultural competency” describe a spectrum of individual knowledge, skills, and experience specific to the First Nation, Métis Nation, or Inuit context. Cultural safety, on the other hand, refers to the institutional structures, policies, and practices that ensure an environment where First Nations, Inuit, and Métis Nation peoples are treated with dignity and respect. A key dimension of cultural safety is that the focus is on the experiences and needs of community members. Thus, for example, the person receiving services defines the extent to which services are culturally safe.

A critical dimension of cultural sensitivity, competency, and safety is understanding and responding to the impacts of pervasive and intergenerational trauma on the lives of Inuit, Métis Nation, and First Nations persons. The National Inquiry strongly underlined the central importance of trauma-informed processes, as did participants in these dialogue sessions.

Representation of First Nations, Inuit, and Métis people within all roles in the criminal justice system was identified as key, along with effective, long-term training and public awareness about Indigenous peoples for everyone who works within the system.

Systemic change is needed to address the socio-economic conditions that increase the risk of victimization and negative interactions with the criminal justice system. These include lack of access to housing and economic security, as well as discrimination and racism that Indigenous peoples face in the justice, Child and Family Services, education, employment, and housing sectors, and in society in general. In undertaking such systemic change, particular attention must be paid to the needs of Indigenous women facing domestic violence, to Indigenous persons with disabilities, to 2SLGBTQIA+ individuals, to Elders and to youth.

The path forward was viewed in varying ways, depending on one’s vantage point. There were clear differences in the experiences and priorities of participants in large, urban, southern centres compared to northern or remote communities, for example. People were engaged with different aspects of the justice system and had varying personal experiences, both positive and negative, of how Indigenous peoples are treated. Participants in the session hosted by the Manitoba Metis Federation emphasized the importance of a distinctions-based approach that recognizes and meets the distinct needs of the Métis Nation, Inuit, and First Nations. In other sessions, participants emphasized the diversity of Indigenous cultures and traditions, and the requirement for programs and services to respect these unique cultures and traditions of the specific communities they serve. All of these factors underline the importance of support for community-based and community-controlled solutions. This would help to ensure that the approach, design and methods for action are meaningful and effective.

There were varying views on whether the justice system is punitive enough when dealing with offenders. Some participants talked about victims’ perspectives being ignored, while others talked about offenders’ rehabilitation and re-entry into the community being forgotten. Participants often emphasized that offenders are also victims in many cases. While there was no consensus on how to address this, some observed that the tension between justice for victims and rehabilitation for offenders was the product of the adversarial and punitive western model of justice. There was widespread support for investing in alternatives based on Indigenous laws, traditions and values.

Participants had a common vision that more needs to be done to create meaningful, long-term change in the criminal justice system. Many positive examples of initiatives that are working well were identified but they need sustained, long-term, equitable funding.

There is rich diversity of expertise, skills and knowledge at the community level that can be mobilized to implement the Inquiry's findings and Calls for Justice. On this basis, Indigenous criminal justice workers view greater community ownership and involvement as essential to effective implementation.

This report draws out many specific recommended actions identified by the participants. In some instances, these recommendations reiterate and reaffirm specific Inquiry findings and Calls for Justice. In other instances, the recommended actions speak to the particular ways that these findings and Calls for Justice need to be operationalized to meet the needs of specific sectors.

In all of the sessions, participants commented on the value of holding such a dialogue session. This was an opportunity for people to dialogue among themselves, sharing experiences, challenges, and successes in their work. This was identified as a rare learning opportunity. Participants underscored the importance of their voices being heard.

One limitation of the community justice dialogues was that only six sessions could be held. Many other perspectives could have been heard, in addition to those of Indigenous criminal justice experts.

The dialogue sessions were likely successful because the host organizations, who were Indigenous justice program leadership, developed the agendas, overall structure, format, and participant list, in partnership with Celeste McKay Consulting Inc., without review or approval by the Department of Justice. In fact, Department of Justice representatives were only invited to dialogue sessions where the host organization decided it was appropriate. Host organizations defined what supports were needed for the health and well-being of participants to ensure a successful conversation. For instance, in the Inuvik dialogue session, an Elder participated, and a fire was held at the community centre following the dialogue session to de-brief among participants in at least one instance. In the FILU dialogue session, two health support workers and an Elder were present to ground the dialogue. Host organizations expressly said that they would like to see this model continued and built upon as the work continues.

Participants frequently noted the distinct needs of different sectors of the communities they served. They were not always in a position to convey these needs in detail. If there were opportunities for further community dialogue sessions, one consideration would be to host some that would bring together Indigenous justice workers and people from distinct sectors of the community, such as youth, persons with disabilities, members of the 2SLGBTQQIA+ community, women, and Elders.

Recommended Actions

- Indigenous peoples, and in particular Indigenous women, girls, and 2SLGBTQQIA+ persons, must be full partners in implementation of the findings and Calls for Justice.
- Funding for provision of Indigenous-led justices services and supports must be equitable, adequate and long-term.
- Greater effort should be made to promote awareness of the Inquiry’s findings and Calls for Justice.
- Indigenous women, girls and 2SLGBTQQIA+ persons need more opportunities to express the truth of their experiences.

II. Victim and Survivor Supports and Services

Throughout all of the community dialogue sessions, participants placed significant emphasis on the experiences, needs, and perspectives of victims and survivors, and the families of missing and murdered Indigenous women, girls, and 2SLGBTQQIA+ persons about accessing supports and services. Many of the findings and Calls for Justice resonated with participants. Below is a summary of the discussions, followed by recommended action identified in this area.

Implementation of the Inquiry’s Findings and Calls for Justice

Participants shared the Inquiry’s emphasis on addressing the root causes of violence against Indigenous women and girls. One participant said this requires a holistic approach to the measures identified by the Inquiry. Participants said it was important to take a step back and look at measures that focus on secure housing, education, mental health and other factors. This participant recommended the Violence Prevention Toolkit created by the Youth Council of the Native Women’s Association of Canada, noting that it is important that Indigenous youth be supported to be leaders in anti-violence work.

In relation to the National Action Plan, participants supported Call for Justice 1.1, which states that the Plan should be supported by “necessary resources dedicated to capacity-building, sustainability and long-term solutions.” One participant spoke about the importance of holding elected officials responsible and accountable for policy and funding decisions that result in denial or discontinuation of services.

Self-determination and Decolonization

In the majority of dialogue sessions, there was an emphasis on decolonization and self-determination in the design and delivery of services and supports. Participants said Victim Support processes should take a decolonized approach in which the needs of victims are understood from a perspective of Indigenous peoples’ cultures, laws and traditions.

Participants noted that there are structural barriers to communities taking a self-determined approach to addressing violence. There is a systemic dependence on Royal Canadian Mounted Police (RCMP) and government agencies to lead projects. Particularly in the North, many government agency workers are not from or connected to the communities they work with.

Participants said that supports and services should be Indigenous-led. For example, Victim Services should be unique to each community, based on the particular needs of the community. Indigenous peoples should have the opportunity to establish their own victim services units in each province and territory, fully and adequately resourced through long-term, sustainable funding. These units should deliver full wrap-around services rather than being project-based. This includes ensuring that not only the individual, but their family and community, is involved in the healing, from a strength-based approach.

Another example was that victims should be able to bring with them anyone who they consider family when dealing with the criminal justice system rather than being limited to choosing someone from their immediate biological family. This would be more in keeping with Indigenous kinship systems and more respectful of the circumstances of Indigenous victims of crime, who may not have as close a relationship with members of their immediate biological family due to historical influences, such as residential schools and the '60s Scoop.

Positive examples were shared of Indigenous-led programming, such as land-based learning in the North, along with a facility for women coming out of incarceration called Thunder Women Healing Lodge. Emphasis was placed on ensuring Indigenous-led programs are well-funded and well-resourced on a sustainable basis so that they are not set up to fail. Too often, this is not the case.

At the dialogue hosted by the Manitoba Metis Federation, participants raised the need for Métis-specific services. Participants said that not enough effort is made to ensure Métis-specific programs and services in the justice system, such as probation officers, policing units, support services for victims, or cultural programming. The lack of accurate justice statistics on the Métis Nation contributes to this problem. One way to overcome this is for greater government engagement with the Métis Nation, including grassroots community members, to identify needs and gaps in services.

Community-based, Holistic Solutions

Reference was made to the National Inquiry's emphasis on the importance of community-led responses, consistent with the agency of Indigenous women and the right of Indigenous peoples to self-determination (See: Findings, Vol. 1a, page 117 and Calls for Justice 1.1 and 1.2 v).

One of the advantages of providing holistic, community-based solutions that move away from a strictly law enforcement-based response to domestic violence is that it allows for alternatives to current practices of mandatory charging and child apprehension. One participant said, "There needs to be an alternative resolution for ways of responding to violence. Families have been broken apart when charges are laid, people are incarcerated, children are sent away. These families don't come back together." They described alternative wrap-around family support

services that are Indigenous-focused and bring together police and social services. This participant said a response like this has been developed in Thunder Bay: “All the different justice services come together as an alternative way of responding to violence.”

One participant described a model in the Yukon developed to address the issue of child apprehension. Under Extended Family Care Agreements, Family and Children’s Services will work with the family to identify an alternative caregiver. If there are safety concerns, the children can be placed with that caregiver rather than being apprehended. The children can go home when it safe to do so, and they do not need to leave their family or community. The participant who shared this example said the community has not had any children apprehended for three years.

Métis Nation, Inuit and First Nations Representation

Related to the need to promote self-determination, participants reported that, too often, Victim Services and other frontline supports are staffed by non-Indigenous people who do not have knowledge about critical issues, such as the residential school system and the ‘60s Scoop. One participant shared an experience of her client who was paired with a man in his 60s. The client was uncomfortable with the pairing because of her past experience and so she did not return to continue the process. Participants said this is a common experience.

Participants have also heard from victims that they often do not feel comfortable accessing services provided by someone from within their community. This can be based on concerns about kinship, relationship with the offender, or confidentiality. One participant spoke of their experience of working in the same community they grew up in. Since they know most clients, they have found that this makes some people feel more comfortable while it makes others feel uneasy. In the North, service is often provided by individuals from outside the community, despite capable and motivated local people who could provide the needed services. Helping to support these individuals would lead to stronger, more sustained supports for victims in these communities. Another solution is to work remotely with other communities as this creates opportunities for people to reach out to services outside their communities but still within the same region or Nation.

Training

Training about Indigenous peoples was reported to be inadequate or even non-existent in some areas. For example, frontline workers in the North often have minimal experience and education about gender violence issues in the communities they serve, and the implications for their work. Participants observed that it would be beneficial to have specially-trained support workers available to assist Indigenous women throughout the whole court process.

Cultural Safety and Language Accessibility

Participants noted that it is not enough to have Indigenous service workers: their mandates must allow them to work in trauma-informed, culturally-relevant, and culturally safe ways. A number of positive examples were noted. In Alberta, Victim Services includes Indigenous outreach

specialists. The FILU worker in Alberta has been able to facilitate referrals to traditional helpers and ceremonies as part of the journey towards decolonization. The Helping Us Grow Group is comprised of five Elders from different areas of the province who support families by performing ceremonies and offering cultural teachings to FILU workers and families. In Newfoundland, an Elder works with FILU and attends different events. Families are very grateful to have an Elder not from their home community with whom to share their stories. FILU in Newfoundland is working to create a roster that will involve more Elders. In the Yukon, the new Cultural Support Team provides culturally appropriate support to FILU families.

Participants emphasized that cultural safety must be instituted in all victim and survivor supports and services, including those provided to the families of missing and murdered Indigenous women and girls. Currently, many programs and services do not take into account cultural and social realities of Indigenous women, girls, and 2SLGBTQQIA+ persons and “lack cultural safety and language accessibility.” Programs are too often designed to facilitate prosecution and conviction instead of meeting the justice, safety and security needs of survivors.

Examples were given of police not responding to reports of sexual violence. In other instances, victims of sexual violence were arrested when they called police because of an outstanding, unrelated order against them. In other cases, participant said that women who attempt to report domestic violence will get charged due to mandatory charging rules. One participant noted that, “The man is usually the primary worker providing wood, food, etc. If this individual is moved to court or jail, it is not necessarily helping the family as a whole.” They said, “This can spiral into revictimization and creates a whole slew of problems in addition to domestic violence.”

Participants shared experiences where victim support workers wanted to engage in a more culturally-appropriate way, such as by bringing in an Elder or holding a smudging ceremony, but were not allowed to do so because of the rules and constraints of their position. While many participants emphasized the need for culturally specific ceremonies and practices, one participant raised the need for culturally-safe services that are not grounded in traditional spiritual practices, for those who do not follow these practices but still need services specifically designed for Indigenous peoples.

Participants shared examples of victims who were not appropriately supported because they spoke an Indigenous language and could only access services and supports provided in English or French.

Referrals to Victim Services in the North, as well as in other jurisdictions, are made by the RCMP. This can impede access to these services where victims feel uncomfortable or unsafe in reaching out to the RCMP.

A positive example was profiled in Manitoba, where the Winnipeg Police Service and RCMP have Family Liaison Contacts. One participant who worked in this role said that her responsibilities included making sure police were reaching out to families and providing updates, working with the community to build relationships, and meeting the demands of families if they needed to smudge or have the support of Elders. This participant said efforts were made to accommodate families who didn't want to meet with an officer in uniform or who wanted to

meet in the offices of an Indigenous organization rather than in the RCMP building. The participant said, “We were employees of Manitoba Justice and Victim Services, so we weren’t members of the police ... It’s not the only model, but it is something to work on and something that can be considered... It did work. It was nice to have a way that the families’ questions/concerns could be heard and responded to.” During the Manitoba Metis Federation session, the need for Métis-specific FILU units was highlighted.

Addressing Existing Gaps in Services

In northern communities, there are gaps in the availability of supports for community safety and victim services. For example, some nursing clinics have sexual assault kits, but others do not. Too often, the victim must be transported by air to an urban centre, where they are required to repeat the details of their assault at each point of transfer. Furthermore, they must wait until they are examined by medical personnel before they can shower. The majority of northern communities do not have counselling for sexual assault, mental health treatment centres, emergency services for children experiencing abuse, or resources for people subjected to domestic and family violence.

Participants noted that too often, Legal Aid is not available, or is provided in a way that is inadequate, leading to limited legal advice where individuals are not clear about the best way for their case to be handled, their own rights and the options available to them. In some cases, participants said the Legal Aid application form itself was too inaccessible to be completed by clients. One participant noted that the Legal Aid application requires so much information that it ends up being “one of the biggest setbacks” within the court process.

The justice system is very compartmentalized. However, victims and families need support throughout the entire justice process. One participant pointed out the lack of access to counselling for victims after trials have concluded. Victims might be reliving their trauma, especially since defence lawyers may bring up irrelevant information during trials that re-victimizes the victims. Participants noted that the processes surrounding a criminal investigation are foreign to Indigenous peoples and that families need help at every stage to ensure their values and traditions will be respected.

The need to access Victim Services where the perpetrator has never been charged was raised. Greater access to existing funding opportunities, such as a Northwest Territories government initiative called the Victims of Crimes Emergency Fund, was also raised. Participants said that when victims struggle to meet basic needs in the aftermath of a violence crime, that can lead to desperate circumstances.

Funding is also needed for families of murdered Indigenous women who leave their communities to attend court and end up facing hardship, including homelessness, due to the costs associated with attending trials. One participant reported that, “There is not a lot of funding for these programs, in Manitoba particularly, so we end up having a lot of folks who become transient (sleeping on couches or elsewhere) to support their loved ones, wherever that might be.” It was noted that because the supports are not adequate, families have the burden of fundraising to meet these needs.

More broadly, participants highlighted housing as a major issue. One participant made the correlation between violent partners and housing costs. For example, many women cannot afford to live in Toronto without their partners paying rent, so they are forced to continue cohabiting with their abusive partners. While transition and emergency homes are important, it is equally important to have affordable housing available to women. It should be easier to apply for fast-track housing.

Supports are required for men, both those who perpetrate violence and experience violence. If holistic, suitable programs are not provided for them, the level of violence in communities will not be reduced.

Funding Insecurity

Participants commented on the ongoing problem of funding insecurity. Programs start and stop because the funding has been cancelled. One participant said, “We put a lot of effort into applying for government funding; we put a lot of effort into making sure our programs work; but the government programming is always short-term.” Participants said that people just start to become aware of a service, and start trusting in the service, “and then they [the government] take it away.” In some regions, underfunding, or an overall lack of government commitment, means positions remain vacant for months or even years when staff turnover. In one case where the Aboriginal Courtworker position has remained vacant, their office is now being used by provincial Legal Aid, leaving the impression that the gap in services is likely to remain.

Public Education on Violence Prevention

The need for greater public education and resources on violence prevention was identified by participants in several sessions. Some described how Indigenous youth, in particular, are caught between a foreign system of law and order represented by the police and courts and the erosion of Indigenous laws as a result of colonialism. Others described how violence has become “normalized.” Public education campaigns can be effective in profiling that violence should not be accepted and that supports are available within the community to address domestic violence.

Vicarious Trauma

Participants talked about the toll taken on support workers who attempt to meet the needs of victims, survivors, and their families on a day-to-day basis. These workers are often working alone, particularly in the context of COVID-19, and particularly in northern or remote areas. They may be women who are oppressed themselves.

Participants noted that many service providers are reluctant to speak out about their own burnout and trauma, particularly as supports are already limited for victims of violence. Where Victim Services workers cannot find places to send victims for counselling, it is unlikely they will be able to access supports for themselves. Service providers need a team and resources to turn to as the cases they work on can be very disturbing, difficult and prolonged.

Meeting the Specific Needs of Indigenous Persons with Disabilities

People with disabilities require accommodation for their specific needs. Too often, this is not considered. More attention should be paid to identifying the exact resource needed and supports required for persons with disabilities. Often basic services and supports are not available for Indigenous persons with disabilities.

Meeting the Specific Needs of Indigenous 2SLGBTQQIA+ Persons

The justice system is still mostly binary, recognizing only male and female, but that is not reality. The non-recognition of people who do not fit into this binary does harm to the affected individuals.

In one session, it was reported that 2SLGBTQQIA+ persons experience the highest rates of violence just for being who they are, and yet their specific needs are not even identified. “The justice system is so far behind in understanding their situations, and they are left out.” In Toronto, there is only one agency that is Trans-led, despite Trans persons experiencing the highest rates of violence.

Meeting the Specific Needs of Youth and Children

Children and youth who have lost a parent to violent crime may need long-term supports to overcome the trauma and meet their need for belonging and positive adult role models. Participants identified the need for child and youth programming to be culturally-based, such as land-based learning. Mentorship programs were also identified as necessary for overcoming loss and claiming identity.

Recommended Actions

- Indigenous peoples should have the opportunity and support to establish and operate their own supports for victims of crime.
- Victim Services should be independent of police.
- All victim and survivor supports and services should be mandated to follow principles of cultural safety.
- All frontline supports to victims and families should employ more First Nations, Inuit, and Métis Nation staff.
- All support workers must have training on the culture and history of the Indigenous peoples they serve, as well as training in trauma-informed approaches.
- Services and supports must be provided in Indigenous languages.

- There is a need for services specifically designed for Indigenous peoples but not grounded in Indigenous spirituality in order to meet the needs of those individuals who do not follow traditional spiritual practices.
- People should be able to access support services even if the perpetrator has never been charged.
- Depending on the circumstances, supports to victims should include financial support to meet basic needs in a time of crisis.
- Greater investment must be made in legal education at the community level, including ensuring that Indigenous victims of crime are aware of supports available to them.
- Supports to victims should include access to legal advice to better understand how their case will be handled, their own rights, and the options available to them.
- The application process for Legal Aid needs to be more accessible.
- Support to victims and families should extend through the entire process, from the time they report harm, through any investigation, trial, or restorative justice process and follow up support after the process concludes.
- Families of murdered Indigenous women should receive supports to address the costs and hardship of leaving their communities to attend court.
- The children of victims of crime should have access to culturally-based healing programs.
- Funding for services needs to be long-term and secure.
- Resources must be allocated to address the disparity in supports for community safety and victim services in northern communities.
- Greater attention must be given to the experiences and distinct needs of persons with disabilities.
- Greater attention must be given to the experiences and distinct needs of 2SLGBTQIA+ people. For example, people should be able to identify by their chosen name and gender throughout the justice system.

III. Policing and Accountability to the Community

Below is the summary of the dialogue as it relates to the findings and Calls for Justice of the Inquiry's report regarding policing and the relationship with the participants' work relating to addressing violence? Following this summary, the recommended actions in this area are identified.

Participants emphasized the need for structural change to ensure effective and appropriate police response to the needs of First Nations, Inuit, and Métis communities. Some of the structural changes related to the ability of officers to understand the communities they serve and to build effective and respectful relationships. Other changes related to a reorientation of police response from law enforcement to community safety. In addition, participants emphasized the importance of accountability to Indigenous peoples. It was also noted, however, that it will be difficult to achieve significant reforms in contexts where resources for policing and community safety are already inadequate, a problem that is particularly acute for many remote and northern communities.

Data Collection

In the Manitoba Metis Federation session, participants reported that the number of missing and murdered Métis women and girls identified in police records seems too low to be accurate. It is likely that police misidentify Métis women and girls – either as First Nations or as non-Indigenous women and girls. If the latter, then the current figures for the total number of missing and murdered Indigenous women and girls underestimates the true extent of the violence. This gap must be addressed through improved police training on the importance of accurately identifying First Nations, Inuit, and Métis victims of crime and development of national protocols to ensure this information is collected in a consistent and respectful way.

Consistent, Nation-wide Standards and Protocols for Receiving Complaints and Investigating Reports of Missing and Murdered Indigenous Women, Girls, and 2SLGBTQIA+

Participants agreed that it is important for police services to adopt standardized protocols to ensure that all reports are thoroughly investigated, as set out in Call for Justice 9.5 (v). They suggested that this could be legislated. Such reforms would reduce the burden on families searching for missing Indigenous family members to the point that they need to fundraise to support their efforts. It would also reduce the number of cases of police declaring accidental deaths without proper investigation.

Participants noted that the police do not devote the same attention and resources to Indigenous victims as non-Indigenous victims. This is consistent with wider public attitudes reflected in media coverage, which tends to be overwhelmingly negative. In one situation, it took the police nine months before declaring that a victim had been murdered, even though there were obvious indications that foul play was involved. This treatment is a disservice to the victim and to the family of the victim.

A number of participants relayed specific stories and examples from their experiences of police treating Indigenous women disrespectfully and failing to properly investigate crimes or to refer women to appropriate services and supports. It was clear that these examples were not simply isolated incidents but a pattern of discrimination and gendered racism in need of redress.

Protocols to Promote Clear Communication

Participants also agreed on the need to establish national protocols related to regular clear communication with families of missing and murdered Indigenous women, girls, and 2SLGBTQQIA+ individuals, as set out in Call for Justice 9.5 (ii).

One participant stated that, “When working with families, communication with a primary family member is important, to the extent that the family member requests. If it’s once a month or once a week, updates for investigations are important for the well-being of loved ones, whether there is [new information] or not. Our families will be waiting, marked on the calendar. Then, they don’t get a call. I understand people get busy, but if this is the case, Special Crimes needs more funding and more assistance to ensure families are receiving updates through the duration of the open investigation.”

Communication with families about missing loved ones and new case developments is potentially very traumatizing. Police need to have proper training in knowing what to communicate, when, and how to do so with sensitivity. It is important that transitional plans be in place so that when one police officer takes over for another, communication with families is not interrupted, and sufficient information is conveyed that the family does not hold the burden of familiarizing new officers with case information.

Practices that Reduce Intimidation and Foster Relationship-building

Participants expressed the positive benefits of police officers meeting with Indigenous people in plain clothes and outside of police detachments. These practices lessened experiences of intimidation for victims and their families and led to increased trust of the police. Another example provided was of police visiting family homes in unmarked cars so that the family does not feel like it is the focus of attention in the community or neighbourhood.

Other police measures that promote relationship-building include taking more time to explain the role of the police and how they will work with the community to keep community members safe. Participants recommended, for example, that police go into schools to meet with Indigenous youth and attend community gatherings so that they can be seen as more than just police officers.

A highly successful partnership between police and Indigenous youth was highlighted: “Here in Ontario, the OPP [the Ontario Provincial Police] had a program that was working amazingly called Project Journey ... It was an incredible project, and I’m sad to say that each year, there was always a funding issue. But it was an incredibly important program for community members developing relationships with their community and with the youth.”

Participants agreed with the Inquiry’s findings about the negative impact of the RMCP two-year cycle for placing officers in communities, particularly in remote communities. Some officers make extraordinary efforts and do good work, but when they get moved out after two years, it breaks the momentum.

It is important for police to understand that they are working in the context of a long history of police being used to oppress Indigenous peoples. Building trust requires extra effort and will not happen quickly.

One positive practice identified by a participant is that of holding monthly communication meetings with the police. The RCMP share updates about what they have experienced or are working on. Community members also have a chance to raise concerns with the First Nations government, which will then discuss those issues with the RCMP.

Another positive example was provided from the Yukon, where the RCMP has designated three officers to work in the Kwanlin Dün community so that if a community member calls the police, they always get the same officers.

Equity in Resource Allocation of Police Services

Many Indigenous communities either have no local police presence or have only a small detachment with skeleton staffing. Because the detachments are understaffed, there is typically only time for reactive policing rather than more time-consuming efforts to improve community safety. Participants provided examples of northern communities where one policing unit is responsible for several communities. The result is that if a serious incident occurs, police may need to be flown into a community to deal with the situation. This creates a huge disadvantage for Northern communities.

One participant stated that First Nations Police Services do not receive the same levels of funding as other police. The participants said salary levels need to be equal for police officers who work in Indigenous police services compared to non-Indigenous services. One participant gave the example of unequal funding levels between the Ontario Provincial Police and the Nishnawbe Aski Police Service.

A Distinctions-based Approach to Policing in Métis Nation Communities

At the Manitoba Metis Federation dialogue, participants noted that there is a great deal of focus on First Nations policing and a presumption that given the close physical proximity of First Nations and Métis Nation communities, First Nations services are culturally appropriate for Métis Nation communities. However, this is not the case and differences between the two should not be overlooked. For example, services available to First Nations members may not be available to neighbouring Métis Nation community members. It was noted that some Métis Nation communities have significant social service needs, some of which originate from the fact that there are still a large number of displaced families.

Federal legislation currently under development that recognizes First Nations policing as an essential service and aims to increase involvement of First Nations policing in First Nations communities must be assessed for its impacts on Métis Nation communities. There should be a similar development to provide policing services in Métis Nation communities in a more culturally relevant way than the RCMP is currently able to provide. This requires permanent, adequate funding.

Cultural Sensitivity, Competency or Safety Training

Participants felt strongly that police need to better understand the histories and cultures of the specific communities that they serve. They called for more police training but were concerned about the effectiveness of very short and often generalized “cultural sensitivity” or “cultural competency” training.

Participants noted a number of problems related to insufficient knowledge or understanding of First Nations, Inuit, and Métis cultures. For example, interpreting gestures and body language as implying disrespect or dishonesty where someone familiar with the culture would see something very different. Too often, victims do not feel respected or that they have been treated with dignity. Participants acknowledged that the RCMP has changed some of its policies and has increased efforts to educate its members and improve communication with Elders and community leaders. They also agreed that more needs to be done.

Participants in the Manitoba Metis Federation session emphasized the need to take a distinctions-based approach to training of RCMP and police officers. Participants said that the four-day cultural competency course offered to the RCMP provides information on the residential school system, Métis culture, and First Nations culture. The component on the Métis Nation is a half-day session, representing a very small fraction of the overall training. The result is a cursory overview without explaining the specific issues of the Métis and the distinctions between the Métis Nation and other Indigenous peoples.

The timing of this training is also important. Participants said that such training needed to be immersive, where officers would have a chance to spend a significant amount of time with community Elders, in order to gain respect and acceptance by the Indigenous community. Elders should be compensated for this work. Others talked about the importance of training occurring prior to placement within a community. Participants also mentioned that training could not be a one-time occurrence but should be an ongoing effort in order to create effective policing. Participants said that entrenched racism can only be countered with continuous, intensive training.

Participants also identified the need for training to include how to work with Indigenous persons with cognitive challenges. Furthermore, participants said that there is a need for Indigenous language training and translation services to ensure that victims and family members who speak an Indigenous language can be well understood.

Some participants questioned the potential for cultural competency training of individual officers to effect meaningful change if the systemic problems within police services are not addressed. An individual police officer may be kind and considerate, but they may also be part of the police force that inflicts violence on Indigenous peoples. One participant compared individual cultural competency training to paying someone’s debt: “If you haven’t changed the terms of the engagement with the economy, they are just going to get in debt again.” One participant stated that there are good police officers, but they work in a structure created by the government – and if they don’t follow orders, they could lose their jobs.

Hiring and Retention of Indigenous Police Officers

Participants expressed widespread support for Call for Justice 9.3, which states that police services should take measures to hire and retain more Indigenous police officers, especially more Indigenous women.

More Indigenous officers should be recruited because they understand the “dynamics and are able to embody a more effective policing strategy.” Participants also suggested that establishing Indigenous teams within police services could promote change throughout the organization.

Participants said that there should be more Indigenous women in the RCMP, which could be achieved by creating programs to recruit and retain Indigenous women police officers. More female RCMP officers are needed because “many violated women feel more trust in women, telling their story, because they would better understand.”

A participant mentioned that some Indigenous police officers are caught between two worlds. They are Indigenous, but they must wear a “uniform that represents the Crown corporation” and their “identities as Indigenous people are often overlooked because of the uniform that they wear.” There is “conflict and tension in the community and they often have to go against Indigenous values, beliefs, and communities” in carrying out their duties. Officers in these complex situations should receive help and support because “at the end of the day, the uniform comes off, but you don’t stop being Indigenous.”

Establishment of Independent Units to Investigate Allegations of Police Misconduct

Participants expressed support for Call for Justice 9.6, which says that federal, provincial, and territorial governments should establish independent units to investigate allegations of police misconduct, including discriminatory behaviour and failure to properly investigate cases involving Indigenous peoples.

Participants said all allegations against police officers should be adequately investigated. One participant said, “Complaint processes around the police are critical. They need to be visible and independent. There’s no point in having police having oversight over themselves. We need families to have the ability to take this route. It is a human right.”

Greater Representation on Police Boards and Other Oversight Mechanisms

Participants identified the need for greater and more meaningful Indigenous participation on police boards and other oversight mechanisms. For example, participants noted that there are committees working with the RCMP on behalf of Indigenous peoples that Indigenous community members do not even know about, making them inaccessible and ineffective. Affected communities need to know who the committee members are and what their mandate is.

One participant described a court watch program they heard about during the Inquiry. A woman from up north said that an independent advocate for Indigenous peoples observed the court process to ensure the victim was getting proper support and also identified gaps in services. The

participant suggested that there should be a program called the “cell watch program,” where someone (maybe an Elder) would visit Indigenous people in police detention to see if they are suffering from any mental or other health issues because the police often overlook those.

Another participant noted that an Indigenous Police Advisory Board has been created in Sudbury that operates successfully in partnership with Indigenous peoples’ organizations. This advisory board was talked about in the community for a very long time before it was established – described as “25 years in the making.” Similar advisory boards need to be created in other jurisdictions.

Police Training Related to Mental Health Issues, Including Addictions and Domestic Violence

Systemic changes related to less policing also focused on the need for training in the area of mental health issues, including addictions, as well as in relation to domestic violence calls. Police often cannot identify when people are in a mental health crisis and end up responding with excessive force. The result is too often incarceration and the breakup of families. “Mental health education has to be a priority” so that police can identify when it is appropriate to call for extra supports to deal with emergency situations.

Participants discussed a recent police killing of an Indigenous woman with mental health challenges. They said her death shows how people who need mental health services and who reach out to police for support are sometimes treated like criminals and end up being killed by the police. Situations like this set back by years the relationship between the Indigenous community and police.

Measures to Shift from Strict Law Enforcement to Community Safety Models

Participants expressed varying views about the wide range of functions that police play with respect to diverse community safety issues, including child protection and wellness checks. Participants generally agreed that a strict law enforcement-based approach to policing does not meet community needs. Some felt that police needed more training on how to take more constructive approaches, while others felt that police should not be involved in social services and that alternatives to police involvement need to be better supported.

For example, one participant expressed opposition to the involvement of police in Child and Family Services interventions. Some participants opposed expending additional resources on policing, saying the communities are under-resourced, not police. They said that increased police resources and funding do not lead to increased protection. They said the police do not have the capacity, and they are not set up in a way to provide care. An additional issue noted is that, in many communities, police services do not perform preventative measures, such as home safety audits, which would likely deter or decrease crime. Instead of increasing police resources, resources should be diverted to communities to enable them to exercise sovereignty in keeping themselves safe. Resources should be devoted to grassroots, harm-reduction services that are keeping people alive. A number of participants commented that many Indigenous people will not call the police in an emergency.

Others said it was not realistic to attempt to reduce the involvement of police. In the experience of these participants, people tend to call 911 first when they require assistance. A police officer is most likely to be the first responder. It is rare that people in crisis will have immediate access to a social worker.

These participants said that a better solution would be to increase the understanding of police officers about how to address community needs from a social-services perspective, rather than one of strict law enforcement. A participant stated that, “There is also a need for social supports and police to work together. To bring in professionals afterwards can be too late.”

Some positive examples were provided. For example, a participant said that police in Brampton, Ontario listened to the community and suspended a program in which officers were assigned to provide a constant police presence in schools. Removing the police from the sphere of young kids’ lives was viewed as a big win that should be followed in other jurisdictions. In one region, there is an Aboriginal liaison worker within the RCMP. Participants said that every area should have a person chosen by the community to assist the RCMP with responding to mental health or assault calls and ensuring that victims feel supported and heard when dealing with the RCMP. The funding for such a position could come from the RCMP.

Increased Collaboration by Police with First Nations, Métis Nation and Inuit Frontline Workers, Particularly Regarding Domestic Violence Cases

Concerns were raised that the police focus on law enforcement, and their limited discretion in terms of alternatives to laying charges, leads to responses that are often not in the best interest of Indigenous women and families. The police and the justice system become frustrated because from their perspective, victims are not “following through” on charges, but they are not looking at reasons why the victim may not want the perpetrator to be charged. This difference in perspective leads to over-criminalization and distrust of the police.

Some participants related incidents where police refused to intervene or failed to recognize and uphold the rights of the victim. An example was given of police demanding the woman leave the apartment while allowing her partner to remain, even though it was her apartment. In another instance, after a man had smashed the windows and doors, creating a dangerous and threatening environment that could potentially escalate further, the RCMP told the victim, “You live common law: he has every right to be here.” After experiences like these, victims stop calling the police.

Women who call the police to report domestic violence are sometimes charged. Some of these women are simply trying to protect themselves. Child and Family Services eventually gets involved, and then these women have to struggle to keep their children as well. Participants noted that Child and Family Services does a lot of harm to Indigenous children. Children are often placed in care outside of their communities.

Another issue is the common practice of overcharging. An example was provided of police routinely laying three similar charges for one offence, resulting in the Crown staying a couple of the charges before the case proceeds to court.

Further, victims do not have enough say in whether charges are laid, which puts them further at risk of victimization. For example, with no-contact orders, charges are automatic. Participants said that there are situations where victims may want to avoid charges in order to keep the family together. One participant stated, “The victim should have autonomy.”

It was also noted that some police have the practice of double charging, where both parties in the context of domestic violence are routinely charged. This practice can further discourage women from seeking police intervention, both because they fear being charged themselves and because they do not want the perpetrator charged.

Participants recommended that a policy be developed in which police would collaborate with Indigenous-led governments and services to determine the most appropriate means to enforce a no-contact order. In the Metis Justice Institute’s work with court diversion, they see police reports after the fact and often recognize that there were better alternatives to the course of action taken by the police. It would be better to have input in advance. Inuit and First Nations could similarly work in partnership with police services to produce better outcomes for their communities.

Community-based Safety Officers as One Alternative to Police

At several sessions, participants raised the idea of greater reliance on community-based safety officers as a positive alternative to police. Participants suggested that more resources be allocated to hiring and training community-based safety officers, who are typically less intimidating to approach for Indigenous women and the community as a whole. Because they are community members themselves, there is a greater level of trust and cultural safety in the way services are delivered.

A few examples were highlighted. The Kwanlin Dün First Nation in the Yukon has a Community Safety Officer program operating out of the First Nation community justice program. The Community Safety Officers live and work in the community. One of the participants said that the local Child and Family Services team is able to call on community safety officers to check in on families without having to resort to calling the police. The community safety officers would make sure the family is okay and connect them to resources they might need. This community model was established in response to the call for greater cultural safety. It started as a one-year pilot project and, based on its success, is now a permanent program and has been in operation for five years.

A positive example highlighted at the Aboriginal Legal Services session was a pilot project called the Guardian Angels. It ran for only one or two years in the 1990s. Participants said these kinds of projects should be permanently funded even if they are not always perfect. The police are far from perfect, but they are always funded.

The Bear Clan Patrol was also mentioned as a very helpful service when a participant’s cousin went missing. It is a group of Indigenous community members who provide a visible community presence in neighborhoods with predominately Indigenous residents. They have established trust in the community and provide supports to police in missing person investigations at the request

of community members. It would be helpful if the program was available across Canada and funded on a permanent basis. It is a great bridge because Indigenous people will approach the patrol for help because they feel safe – it is effective because it is “grassroots and not connected to the police service.”

Recommended Actions

- National protocols should be developed in collaboration with Indigenous peoples to ensure consistent and accurate recording of the Indigenous identity of missing persons and victims of violent crimes.
- Police services in Canada should adopt a consistent, nation-wide approach for receiving and investigating reports of missing and murdered Indigenous women, girls, and 2SLGBTQQIA+ individuals. [Call for Justice 9.5(v)]
- Police services should adopt standards and protocols for communication with families of missing and murdered Indigenous women, girls, and 2SLGBTQQIA+ persons. [Call for Justice 9.5(ii)]
- Police should adopt practices for meeting with Indigenous victims of crime, families, and others that minimize intimidation, such as wearing plain clothes and meeting outside the police detachment.
- Police responsibilities should be defined to include building positive relationships with the communities they serve.
- Particular attention should be paid to the importance of building better relationships with Indigenous youth. [Call for Justice 9.2(ii)]
- Police officers should receive detailed orientation to the communities they are serving that includes substantive and meaningful cultural competency training specific to that community.
- Indigenous language training should be mandatory for police officers serving Indigenous communities. [Call for Justice 9.3(ii)]
- Police services should take measures to hire and retain more Indigenous police officers, especially more Indigenous women police officers. [Call for Justice 9.3]
- Police departments or detachments serving multiple Indigenous and non-Indigenous communities should designate individual officers to be a consistent point of contact for each Indigenous community.
- Greater resources need to be provided to ensure equity in the police services available in Indigenous communities, particularly those in the North or remote areas. [Call for Justice 5.5]

- Greater attention must be paid to the distinct policing needs of Métis communities.
- Police need better training and awareness of mental health issues, including addictions.
- In a wide range of areas where police currently play a central or leading role – including wellness checks, child apprehension, and other responses to individuals and families in crisis – measures must be taken to ensure that the response is based primarily on safety, health, and wellness rather than law enforcement.
- Police should collaborate with Indigenous frontline workers in responding to domestic violence cases.
- More resources should be provided to hire and train community-based safety officers as an alternative to police.
- Greater and more meaningful Indigenous participation is needed on police boards and other oversight bodies.
- Federal, provincial, and territorial governments should establish independent units to investigate allegations of police misconduct, including discriminatory behaviour and failure to properly investigate cases involving Indigenous peoples. [Call for Justice 9.6]

IV. Courts, Indigenous Justice and Restorative Justice

Many of the themes identified by the Inquiry’s findings and Calls for Justice were raised by participants. This included the need for more alternatives to criminal prosecution, where appropriate, and alternative models for legal processes that are responsive to Indigenous values and needs. Participants also talked about reforms to conventional courts and court processes to ensure access to justice for Indigenous peoples. Reforms discussed in the dialogue sessions included hiring and retaining more Indigenous judges, Crown attorneys, lawyers, and justices of the peace; making the courts a culturally safe space; increasing investment in legal education; and increasing the supports available to both victims of crime and the accused. Participants also talked about the importance of increased internet access for Indigenous communities, particularly in northern and remote areas.

Negative Experiences for Victims of Crime

Participants voiced concerns that, too often, conventional courtroom processes are not victim-friendly. One participant said that, in a perfect world, we would ask the victims what they need. Many examples were shared about how the court process can retraumatize or even lead to the criminalization of the victim. For example, one participant raised concerns that in some courthouses the victim may have no choice but to come into close proximity with the offender when the victim appears as a witness. Another example was given of a victim who initially failed to appear in court to testify. After a subpoena was issued, the victim was brought to court in handcuffs. In another instance, a victim who was in court to testify was instead arrested on an unrelated charge. The participant shared that “as a victim, it is frustrating. You get left feeling

there is no help for you. It is difficult to trust the system. I come into the system and get in trouble ... it is very hard.”

Participants also raised the issue of court delays causing hardship for Indigenous victims. One participant shared her own experience of being violently assaulted and the lengthy court process that followed. She said, “I wished that things like this can be dealt with right away – not 10 months down the road. The victim carries so much of the feelings and emotions and you keep rewinding back to the moment of the assault. Going through this for the first time of my life, I said ‘I can’t do this. I want this to be done forever and I want it to be over.’”

For women who do report a crime against them, the decision by police to lay charges can create expectations that justice will be done. However, if the case does not proceed to prosecution, or is not successful at trial, the failure to see justice done can be retraumatizing to victims. One participant gave an example of a young woman who made allegations of sexual assault to the police. The officer who took her statement was Indigenous, trauma-informed, and aware of the impacts of intergenerational trauma. The officer approached the Crown to begin the process of bringing charges against the offender. However, the Crown decided not to proceed with the case. The young woman felt invalidated. The woman is now an accused person who “has zero faith in the criminal justice system process she finds herself in.” This situation is “putting another generation of mistrust in the police agency,” even though it was the Crown that decided not to proceed with the case.

Participants pointed out that when the accused feels they have not received justice, they have access to an appeal. However, victims who feel that justice was denied, or that they were mistreated by the system, have no recourse.

Restorative Justice Processes

Throughout the dialogue sessions, there was widespread support for increased access to restorative justice processes. Participants said that restorative justice processes give victims more of a voice, lead to faster resolution of cases, promote healing for those affected and the wider community, and can help address the systemic causes of crime and criminalization.

A participant underscored the importance of focusing on justice rather than crime and punishment. The current system is not achieving this, and it is institutionalizing people, which in turn leads to re-offending. Individuals who are experiencing inter-generational trauma need real help and sending them to prison is not the answer. There need to be more community-based, trauma-informed, culturally-relevant ways to hold people accountable. This perspective was echoed by others, including a participant who said that victims are looking for healing, but “if we’re being honest,” there’s no healing possible in the courtroom: “It can be harsh, it can be punitive, and there’s often times that just no justice is served whatsoever.”

Participants talked about the importance of restorative justice processes as a way to create positive change for the community as a whole, recognizing that offenders, as well as victims, are in need of help. They said, “I often believe offenders are people who were never helped. With restorative justice, they can get that help. It’s true justice in the sense that it’s participatory. We

have so many families that attend [conventional trials] and don't feel like it's justice. But if they can sit down and participate, it can be very meaningful for them." Another participant shared that restorative justice works because "there is healing. People do make amends, just not right away or when we expect it or when we want it."

Participants welcomed increasing focus on restorative justice processes where the sentences are less harsh, and there are greater opportunities for community service. Participants were particularly concerned over the number of Indigenous women going to jail for minor offences: "These women have children. They should be going back to their community and involve themselves in diversion programs."

Restorative justice processes were viewed as a more appropriate way to respond to situations where women have been charged because of acts of survival, such as acts of violence committed in self-defence or involvement in criminal activities driven by economic desperation. A restorative justice process could focus on the measures needed to provide them greater economic and physical security. As one participant stated, the questions that need to be asked are: "How do we build that person up so that her children have a different outlook? How it is that things need to change?"

One participant emphasized the importance of traditional knowledge systems and knowledge keepers in restorative justice. If the purpose is to prevent reoffending, the perpetrators also need the opportunity to heal and the best way to do this is to get them back on the land and having conversations with Elders. Participants also said that Elders need to be supported to play this role, including appropriate financial compensation for their expertise, and training where desired.

Healing circles were viewed positively by participants. The focus of the circles should be on the needs of the victims, and on the offender taking responsibility. Circles could include ceremony, prayers, and drumming, to set the tone. An example was provided of a sharing circle where people could speak for as long as they needed to without being interrupted. When victims of crime see that their needs are being respected, and the offender is expected to take responsibility, they feel more encouraged to participate.

Sentencing circles (held after criminal conviction rather than as an alternative to a trial) were identified as one form of restorative justice that has good outcomes, leading the participants to connect at a very personal, authentic level. They noted that sentencing circles create a vulnerable place, which leads people to be real and open up.

Overall, participants shared the many benefits of restorative justice for not only Indigenous peoples but for society at large. At the same time, significant challenges around restorative justice processes were also identified. Participants said that inadequate resources for healing processes, combined with a lack of educational awareness about the purpose of restorative justice programs, can lead to victims and families feeling disappointed or frustrated because they do not see justice being done or the perpetrator's behaviour changing. One participant stated that it is sometimes difficult to find a balance between the rights and needs of the victim and of the accused.

Participants voiced some challenges they have encountered during sentencing circles. One participant said that there is a disconnect sometimes because whichever police officer is available that day attends the sentencing circle rather than the officer who was present at the crime scene.

One participant commented that restorative justice systems are “only as good as the ties or connections” that are made between lawyers and justice co-ordinators. They expressed concern that justice co-ordinators, like Victim Services workers, are not seen as “go-to people.” The accused may not be informed of the option and the case may never be referred to a justice co-ordinator.

One participant said that restorative justice processes are not appropriate for violent crimes, but there need to be other alternatives to conventional processes to ensure healing for the victim, the community, and the offender.

The issue of funding equity was raised in the Métis Nation context. One participant stated that, “When we talk about expansion of restorative justice programs, including community-based and Indigenous-specific diversion programs, those programs come through Indigenous justice program funding from the federal government. The amount of money this program has given across Canada to the Métis programs is something like 0.04% of the funding. Not even close to 1% of the funding provided for restorative justice.”

Community-based Courts and Court Alternatives

Many participants raised the need for community-based courts and court alternatives. Participants agreed on the need for alternatives to the Western court system so that victims and the accused are better understood, are not subjected to further traumatization, and have a stronger sense of justice being served.

Discussion took place about the impact on access to justice of victims having to travel to southern communities to participate in court processes. A solution to the inaccessibility of courts in rural, northern, and remote areas is to institute community-based courts.

Community-based courts have a positive educational effect, as well as providing an opportunity for healing. Recently, a court twice went to a First Nation community to deliver a verdict. The judge was very respectful about the need to work with the community. There was a letting-go ceremony with the family “so that they can feel grounded or find some peace with how they move forward.”

One participant shared an example of a judge stepping in and ordering the accused perpetrator to receive treatment while the case was on remand. The participant said more judges and officials need to be prepared to take unconventional approaches like this.

One participant noted that a Domestic Violence Treatment Option court is planned for Inuvik and that this appears to be a positive direction. However, they also expressed concern about “taking something that is very southern” and instituting it in the North without first making sure

that it is culturally-appropriate. It will be important to ensure that the Domestic Violence Treatment Option has been reviewed by the community where it is to be used and seek the community's perspective and input. They noted that unless the option is supported at the community level, it will not make a difference.

Indigenous justices of the peace were seen as positive solutions to bringing the justice process closer to the community. Participants said that in Manitoba, the Indigenous justice of the peace program, which had been very positive, has been reduced in numbers and powers. The result has been an increase in Indigenous defendants pleading guilty while waiting for a trial by judge.

The Metis Justice Institute would like to establish a Métis Nation-specific court that deals with child protection issues. It would focus on increased Métis Nation family and community responsibility over, and involvement in, taking care of children from the community. It was suggested that this could lead to increased reliance on Métis cultural ways of care and increased supports to parents aimed at keeping families together. The development of alternatives, such as diversion programs and community-based sentencing, is hindered by a lack of research on and support for Métis Traditional Laws.

Changing the Way Circuit Courts Operate

Concerns with circuit courts were raised by participants, particularly the need for the courts to spend more time in each community, and for the time to be better organized. Typically, only one day is scheduled in each community. Because this does not allow enough time to hear each case, cases are frequently held over. If the circuit court spent several days in the community, it might be possible to organize the docket to resolve a case in a single visit rather than it being stretched over multiple visits.

Another participant commented that while trials themselves may be drawn out, the amount of time lawyers, witness co-ordinators, Victim Service workers, and probation officers spend with their clients is very short because the circuit court's time in the community is so compressed. Many court workers only have time to meet with their clients once, which means that no relationship is ever established, and inadequate instructions are often conveyed by the client to the lawyer. "What I'm hearing is that court parties go in and out of communities really, really quickly. Lawyers and witness co-ordinators don't have as much time to spend with the victims as I think they should, and Victim Impact statements are really, really rushed if they get done ... The rushing in and out of communities does not give clients enough resources."

Participants also said that circuit courts sometimes meet until late in the evening, taking only short breaks, which raises questions about the quality of support community members are receiving after such a long day.

While acknowledging that it may never be affordable to have judges make lengthy visits to communities, one participant questioned whether other court workers could travel separately and spend more time in each community before the court convenes. Another participant noted that because of COVID-19, circuit courts had initially started using video as an alternative to visiting communities but have now gone back to in-person trials. The participant asked whether the

technology could be used to supplement visits to make better use of the court's time and "as a solution to decrease the rush in, rush out."

Increase in Indigenous Judges, Crown Attorneys, Lawyers and Justices of the Peace

Participants voiced agreement for the Inquiry's finding that there should be more Indigenous judges and lawyers in the courtroom. Participants stated that this would go a long way toward making Indigenous people feel better supported.

Participants agreed with the Inquiry that Indigenous people face many hurdles to becoming lawyers. It is extremely difficult for Indigenous students to pass the bar, a situation described as "appalling." One participant said that "Indigenous candidates to the bar, almost 100% fail if not once, twice" and "there are huge barriers for Indigenous people to become lawyers." It was noted that much of the bar exam focuses on areas of law that are not relevant to why most Indigenous people want to enter the profession. Another participant stated practicing Indigenous lawyers face high levels of discrimination and harassment by lawyers who are senior to them, based on sexism and racism. Not only should there be more Indigenous lawyers, but those who are currently practicing should be better supported.

One participant has a brother who recently became a lawyer in Nova Scotia. He has 200 clients, and he is overwhelmed because his clients want Indigenous representation, but he is the only Indigenous lawyer in his area.

Even if their cases qualify for legal aid, Indigenous people sometimes prefer to self-represent or approach an organization like Aboriginal Legal Services for representation because they do not trust other lawyers. They do not feel like they are being acknowledged or represented in the way that they would like; the justice system does not seem like a "representative process," and "people are not feeling heard" or that their side of the story is being told properly.

Cultural Safety in the Courts

The need for cultural safety in the courts was raised by participants in several different contexts. At the outset, Indigenous culture should be incorporated into the court system, especially given the disproportionately high number of Indigenous people within the court system.

The issue of one court serving a number of different communities with different cultural backgrounds was highlighted. In these cases, there can be a disconnect since the individuals from the different communities practice a variety of different cultures.

Further, the justice system moves too quickly to ensure everyone "in the system is familiar with culture, Gladue, systemic factors, and that they don't view offenders as a charge but as a person who has gone through a lot of trauma."

Another needed change is to ensure that translators are available in the courtrooms. When people cannot understand the proceedings, this is an obvious impediment to justice.

Participants conveyed that victims or offenders probably do not want to swear on a bible when they or their family members went to residential school. They stated that it is important to educate the justice system about the residential school system. They felt like justice workers were “thrown into the ring without boxing gloves” to do their jobs. One participant noted with concern that a northern circuit courthouse is located in an old residential school, and some Elders are re-victimized every time they go to court.

Participants shared a number of examples of progress toward making more culturally safe spaces within courts. For example, one participant said that there is an effort being made to connect families of murdered Indigenous women and girls who must attend court with Elders and Knowledge Keepers in Manitoba. In particular, participants suggested that in order to make courtrooms more culturally safe, grandmothers should be available to support survivors, especially young girls, who are victims and/or survivors of human trafficking.

Currently, all court locations in Manitoba have an Eagle feather that families can use. Other courts are set up in a circular way identified with the Medicine Wheel. There is a smudging room in Winnipeg courts that Indigenous families can use before/after court or sentencing. One participant reflected that, “It’s not as common as it should be, but we are trying to move in that direction.” Also in Manitoba, there is a community where Elders provide advice to the judge. However, because this is not a mandated program, it takes place at the discretion of the judge.

Another participant recounted supporting an Indigenous woman who gave an impact statement concerning sexual assault by her father. The court allowed the participant to smudge in the courtroom to cope with the triggering, stressful situation. The judge left his bench to smudge with them, thanked them and said that he would inquire about making smudging available to all Indigenous people in the court.

Some participants were concerned that the use of Indigenous cultural traditions in court, if done carelessly and without proper knowledge and guidance, can become another form of cultural appropriation rather than cultural sensitivity. One participant said that the use of an eagle feather to swear an oath felt like colonization of the feather. Another participant said that although every courthouse in Alberta is required to have an eagle feather, the feather is in the control of court personnel who often do not even know where to find it. The manner in which such efforts are instituted matters – it must originate from Indigenous peoples themselves and be carried out in accordance with cultural norms and practices.

In a similar vein, it was noted that just because a court is based in an Indigenous community, or is set up to serve the Indigenous community, that does not necessarily mean that it will be based on Indigenous values or traditions of justice. One participant said that “Gladue court is not Native court – it’s not our process or our system.”

A positive experience was shared involving having a panel of Elders in the courtroom, as part of the Indigenous court model in Ontario. The Elders have their own table, and sit directly in front of the judge, with the Crown on one side and the defence on the other. The client sits directly in front of the Elders. It helps because the Elders are familiar with the client, the issues, the family,

and the community. Participants suggested that the government should provide resources for this model to be replicated in other communities.

One participant shared a positive experience where a Métis Justice worker was asked to make a presentation in court on the significance of the Métis sash. The judge, Crown, lawyers, and sheriffs were all in the courtroom and were very attentive.

One participant described the positive experience of being part of planning for a new Aboriginal Family Court in New Westminster, British Columbia. They saw the new court as an opportunity to ensure families have access to Elders, healing plans and cultural supports. They commented that Indigenous peoples need greater access to such processes.

Participants in different dialogue sessions noted that the practices and protocols that can make a courtroom culturally safe will be different for different Indigenous Nations in different regions. For example, a participant said, “It is important to be aware of the culture of the people who are coming into court. We have to be understanding about the differences in cultural practices and not [apply] a generalized version.”

Another participant described a satellite Indigenous community court they had attended. The seats were placed in a circle, and there were only a few lines of chairs. The displays were all Indigenous art. They said the only problem with the court was that the judge was not Indigenous. This was viewed as an example that can be replicated in other communities, but with an Indigenous judge. Even though non-Indigenous judges may try to incorporate the culture, “unless you’ve lived it, you will never understand it.”

Participants emphasized the importance of people who work in the justice system knowing the local community and its cultural practices in order to be effective supports for Indigenous peoples. They said, “I can see the difference in the way the people I work with act around me, being from the same community and knowing me, and the people who come in from different regions. A formed relationship built on trust is very important.”

More Assistance for Victims and Accused People

Some participants underscored that FILUs provide an essential service for families who have to go through the court process in relation to a murdered family member. As such, FILUs should have a permanent role as a support and service for families. One participant summed this up by saying, “FILU is only going to be around until 2023, but I think the work we do is important and needed. It should be funded indefinitely, and I would like that to be made clear in the report you submit to the justice department.”

Participants emphasized the importance of Indigenous people receiving help in navigating the court system and ensuring that their rights are respected. One participant commented that, as someone who has observed court processes in the North, they are “astounded” by what happens. They described instances in which it was clear that the defendant did not understand the process. The participant asked, “What good is the sentence you’re imposing in a situation like this?”

Others suggested that there should be more court workers who truly understand Indigenous language and culture and who offer a more client-centered approach. Specifically, there is a need for Métis Nation court workers with a recognized designated place in parallel with a specific designated place for First Nations court workers.

In some jurisdictions, there is no courtworker program, which is an important gap that needs to be filled. It is very hard being one of the few Indigenous staff. One participant said that courtworkers work 24 hours a day for their clients, and their clients trust them. As consequence, they said, Indigenous courtworkers “should have more control over how they provide support and programs.”

In Ontario, courtworkers are overworked and overstretched; they are involved in child welfare issues as well as criminal matters. Courtworkers don’t always have access to their clients, which is frustrating and a disservice to their clients. Courtworkers spend a lot of time trying to get information about their clients.

Efforts need to be made to ensure that the workplace provides adequate funding and support in an environment where cultural safety is assured for Indigenous courtworkers. Recruitment of courtworkers is important, but more crucial is the need to ensure courtworkers are retained once hired.

One participant said that in the Northwest Territories, an outreach worker is employed to offer up to three hours of service on non-criminal matters. The participant commented that similar expert advice should be available to complainants and defendants in criminal cases as well.

An additional recommendation was the establishment of an Elders Board to help people appearing before courts. In addition to explaining how the court system works, the Elders would help people speak for themselves in the process. This would help address systemic barriers such as the impacts of Fetal Alcohol Spectrum Disorders (FASD). The Elders Board would also help perpetrators understand the ramifications of their actions. In this way, the Elders Board would integrate traditional Indigenous approaches to justice. One participant noted that they would like the opportunity to serve on such a board and felt that their experiences would be very helpful to share with people coming to terms with the court process.

Participants discussed how their clients need more one-on-one support from culturally-competent support workers. One participant noted that a lot of justice workers in the North originally come from the South and have little experience working in small communities or within Indigenous communities. They do not understand the cultural differences among Indigenous peoples throughout the large region. In addition, they often come in with the “saviour mentality.” The participant stated, “I try to articulate that these are more than just files we need to push through. These are people, and this is the outcome of the intergenerational trauma of 500 years of oppression. It is a privilege to work with people in trauma and to understand the historical roots.”

The following example was shared by a participant: A support worker asked the judge to be allowed time to sit with a young accused perpetrator who seemed very hardened and unreachable. When the judge gave the support worker the opportunity to sit with the defendant

and let him know he was cared about, the defendant broke down, cried, and apologized. He committed to trying to do better. The participant concluded that making these connections, despite the way people have been conditioned, requires more than a three-hour cultural-sensitivity training video.

Participants also raised numerous concerns about the lack of support for defendants when they are released on bail. Youth, for example, often have nowhere to go. They must choose between remaining in jail or being released into homelessness. In Prince George, for example, youth who are released on bail often have no means of transportation back to their communities.

Legal Education

Participants identified the need for more investment in legal education, for communities, and for everyone involved in the court system.

A number of participants gave examples of how conventional court processes fail Indigenous families, not only because they lack cultural competency, but because the laws themselves are not properly understood or applied. One participant said, “The fact that some lawyers and judges don’t know anything about section 10 of the *Child Welfare Act* [concerning customary care agreements] is troubling.” Pointing out that some communities also do not understand these provisions, the participant said, “We need to educate for people at all levels about these systems that exist so that we can avoid families from being broken.”

One participant said that, particularly in the North where English is a second language for a lot of people, there is a real problem with lack of understanding about how the court system works, the rights and responsibilities of victims, and the meaning of legal terminology. They reflected on the experience of attending a three-day training about accompanying child witnesses in court. They said that this experience really underlined the importance of being able to provide clear and accessible explanations of the court system. They said that there should be a national campaign to familiarize the public with the justice system.

Increased Internet Access

Participants identified the need for everyone to have access to high-speed internet. Access to the internet is essential to keep people connected and to ensure access to justice information and, increasingly, services. Not having access can make people feel even more isolated. However, in many communities, high-speed access is not available or too expensive. Addressing these access issues would ensure Indigenous people living in rural or remote areas have access to the same resources available to individuals in or near urban settings.

Recommended Actions

- Greater effort must be made to reduce delays in the court process.
- There should be greater access to restorative justice processes.

- Where appropriate, more cases should be diverted to alternative processes outside the court system.
- More community-based courts should be established.
- More Indigenous justices of the peace should be hired and provided with a suitably broad mandate and jurisdiction.
- When cases are heard in circuit court, courtworkers should have sufficient time and opportunity to meet with clients beyond the limited time the courts spend in the community.
- There should be more Indigenous judges, Crown attorneys, and lawyers.
- All courts should adopt culturally safe practices.
- Greater attention needs to be paid to the rights and needs of victims during court processes.
- Victims of crime should also have access to legal advice.
- The FILU programme should be maintained and expanded to provide support to families throughout the justice process.
- Indigenous persons accused of crimes should have access not only to legal assistance but also to an advocate to help them understand and navigate the court process.
- Supports are needed for defendants on bail awaiting trial.
- There needs to be more investment in legal education, for communities and for everyone involved in the court system.
- High-speed internet access should be provided in all Indigenous communities to ensure access to legal resources and the ability to participate in online legal proceedings.

V. Sentencing

Throughout the dialogue sessions, participants emphasized the importance of all Indigenous accused having access to Gladue reports. Where access is currently provided, it is typically in respect to sentencing or bail. Participants emphasized that Gladue reports are beneficial at the outset of the process, as they could contribute to diversion or to the terms by which pleas are negotiated. The current challenges to having Gladue reports prepared in an appropriate and timely manner were discussed. This is an area of reform that is gravely needed in order to ensure access to justice for Indigenous peoples. Participants emphasized repeatedly that Gladue reports should be written by First Nations, Inuit, and Métis writers.

Participants proposed that mandatory minimum sentencing be applied to fewer crimes. Sentencing should focus more on healing and rehabilitation, which requires a greater level of investment in healing programs for offenders. The system needs to be held accountable for ensuring rehabilitation opportunities are available, that women offenders have access to their children while in custody, and that victims and families are notified in advance of release of convicted offenders. Participants also underscored that sentencing must consider the needs of offenders with physical and mental disabilities.

Access to Gladue Reports

One participant stated that they always insist on a Gladue report when an Indigenous woman is being sentenced because it is an opportunity for the judge, the Crown, and the defence, who are usually non-Indigenous, to look through a window into the past three generations that shaped the experiences of the accused and that brought them into the criminal justice system. “It lets them look at the challenges placed in front of these women to where she is today, in front of the criminal justice system.” A Gladue report “allows the judge the opportunity to delve into her life and look at the circumstances that brought her to that point, whether that’s partly imposed by the *Indian Act*, colonization, intergenerational trauma from residential schools, or lack of decent housing in First Nations communities.”

It was suggested that the Truth and Reconciliation Commission’s report should always be taken into account when the offender or victim is Indigenous, because Indigenous peoples “were the original victims, so when we act inappropriately, we are dealing with long-term systemic issues.”

A Gladue report presents a bigger and clearer picture to the criminal justice system, and “allows for a piece of compassion to be shown to the offender in an otherwise harsh system. When offenders see that there is compassion shown to them, it’s often the first time in their lived experience that they have felt compassion onto them.”

One participant noted that Gladue reports contain a lot of tools and open a lot of doors. For example, Gladue reports may lead to a referral to a wellness court. Gladue reports “help with community building ... it is a tool that everyone can learn from, right from the judge to the lawyer, to victims’ services, to the sheriffs ...” Gladue reports should be diving deeper into past trauma, because to stop future behaviour, the past that brought the perpetrator there must be addressed.

A participant who has been a Gladue writer for nine years stated that the reports can be very healing for people. Questions about their family’s history help the clients to know more about themselves. It is difficult for clients to talk about their past experiences, but the report writing process can be a healing tool. The participant provided an example of a client who felt like she had burned every bridge with her family and alienated everybody. The client felt alone. The client’s aunt was interviewed for the Gladue report and said that she understood what the client had gone through, and that the client was always welcome. When the client read the report, she was overwhelmed with emotion and was grateful that she still had the support of her aunt.

One participant stated that if Gladue reports were done on a more consistent basis, it would help defendants explain their actions in court and enable sentencing to better account for their specific needs. When this does not happen, defendants are set up for failure. One participant stated that “The system itself becomes a perpetrator of injustice and violence in the way it sometimes treats people who are caught up in its net.”

Many Indigenous people do not know about the Gladue principles. A lot of people in the system say, “I wish I knew about Gladue before and maybe I wouldn’t have a criminal record.” The justice system should be responsible for ensuring Indigenous people know their rights and the alternatives available to them. One participant said they get calls from inmates asking about Gladue reports because the Indigenous inmates are only learning about the option after having been sentenced. Another participant suggested that the Gladue principles should be part of bar exams because many lawyers are not aware of them.

A participant stated that the police are best placed to ensure that Indigenous people know about the Gladue principles since police are usually the first point of contact between Indigenous people and the criminal justice system. The police can provide information to Indigenous individuals about how the police system can help the person receive a Gladue report. Another participant expressed hesitation about giving the police more to do and suggested this role be assigned to courtworkers instead.

One participant showed a poster from 2009 with information about the Gladue principles. This was an initiative funded by the Law Foundation of Ontario. The posters were later taken down because the judges and Crowns thought that it would make Indigenous people uncomfortable because the judge in the poster was white. The participant stated that “It was not clients who were offended; it was the judge and Crowns who were offended.” It is time to revisit the idea and make such a campaign more representative and inclusive. Such efforts could also advertise the availability of sentencing circles and be developed in consultation with Indigenous peoples in order to build positive relations.

Educational efforts should also extend to community members. One participant noted that the families of victims are often hurt by the presentation of a Gladue report – they perceive that the Indigenous identity of the perpetrator is being used as an excuse or that Indigenous identity is being defined in a negative way that equates with criminality. This compounds the harm they experience as an Indigenous family. This could be remedied by an enhanced understanding of the purpose of Gladue reports.

Some participants identified that defence counsel in northern Manitoba do not tend to order Gladue reports for Métis Nation citizens involved in the criminal justice system. Rather, there is simply a reference made to the judge that they should take Gladue factors into consideration. For example, one participant said that, “My experience in the court is a lot of time the defence lawyers don’t want to put in the time for Gladue reports, and they will often tell the client that it won’t help or that it can affect the length of the court process. They should be told that they are entitled to the Gladue report and be allowed to make an informed decision. That also comes into play with Legal Aid; if there were a few more Indigenous workers maybe they would push it a little harder.” Participants suggested that the reluctance to engage with Gladue reports is often

due to heavy caseloads and a focus on moving offenders through the court system, even if this is not in the individual offender's best interests.

Another participant stated that New Brunswick unfortunately does not participate in Gladue reporting. Instead, they use an Indigenous pre-sentencing report that gives each community a narrative. This alternative is "a cut-and-paste and doesn't serve the same purpose" as a Gladue report. It is a disservice to the women they serve because the women's stories are put through a "non-Indigenous lens and then through a non-Indigenous template." The government may claim that there are plenty of resources to support Indigenous peoples in the criminal justice system, but it is not enough. When the accused does not have access to a Gladue report, they are denied a resource that could change the outcome of sentencing.

Concerns were raised about the fact that Gladue reports are focused on the individual and that this can become a problem in the context of family violence. In one case, a client charged with abusing his partner had a Gladue report prepared. The partner was concerned about the Gladue report and advocated to be able to make a victim impact statement. Faced with competing interpretations, the court appears to have given greater weight to the impact statement and the client was given a harsh punishment. In many cases, Gladue report writers cannot talk with partners in the preparation of the report because of a no-contact order. While this can be a useful safety mechanism, it is also a barrier because, in some cases, the parties involved have children, and the relationship continues. If only the individual is considered, the needs of the person's family are not considered at all. Nonetheless, one of the positive outcomes of Gladue reports is that the hardships offenders have endured are set out, which can even have the effect of offenders taking pride in what they have accomplished despite the life challenges they have faced.

Another participant commented on the impact that Gladue reports can have on the family of the offender: "If these reports are something that is going to be considered for all Indigenous offenders, then there needs to be some action made within the reports. You can't leave a family left to deal with the traumatic things that are disclosed ... These things may not have been disclosed previously ... These things are sensitive and need to be considered. It shouldn't be looked at as mere information."

Participants also expressed concern that even where a Gladue reports leads to a recommendation for appropriate alternative sentencing, these options might not be realistically available. Participants said a report may recommend the person take anger management, get a high-school certificate, or go to a sweat lodge, but the person never gets any support to meet these conditions.

Method of Reading Gladue Reports

Participants emphasized that Gladue reports should be read in private and not in open court. Even the presence of a reporter in court affects the openness of victims and offenders. This would make the offender feel safer. For women in particular, participants stated that women experience a high level of shame and may not want to participate in statements that will be read out publicly. This applies to pre-sentencing Gladue reports and to victim impact statements. Participants said there should be an option for the statement to be entered into the record without being read out loud, or for them to be read only in the presence of the judge. The women should

be able to decide. Participants also said that Gladue reports should be sealed and confidential because they can be used against clients if they are not kept securely.

Gladue Reports

More First Nations, Inuit, and Métis Nation Gladue writers need to be hired. Clients may not be comfortable or willing to be candid when dealing with non-Indigenous Gladue writers. Indigenous writers are also better placed to help clients understand the importance of the report and how it can help them. Letting clients choose their report writers fosters an environment of safety and comfort. The report writing process can feel intrusive, so it is helpful to have Indigenous writers who understand the realities of the clients.

In Manitoba, Gladue reports are often prepared by probation officers hired by the provincial government. These officers are too often ill-prepared to write these reports in a culturally appropriate way, given that they do not come from the community or have familiarity with the community. The result can be that the Gladue reports actually have a negative effect.

Participants raised concerns that Gladue reports are often written by individuals with limited understanding of Indigenous cultures. One participant stated that “the Gladue reports here are becoming more of a pre-sentencing report rather than the cultural consideration it was intended to be.” Another said their clients are told, “It’ll take a long time, why wait for a Gladue report? Just plead guilty and move the process along.” At the same time, participants said that the courts have come to rely heavily on Gladue reports because they recognize the gaps in their knowledge and understanding about Indigenous communities and have no other way to fill this gap.

Gladue reports should be developed based on the individual person’s case. The Metis Justice Institute has tools available that guide Gladue writers through an essay assignment that is specific to the individual’s charges. Under each charge is a list of questions the writer is prompted to ask, which helps to focus the Gladue report on pertinent factors. It is also important that Gladue reports are undertaken in a trauma-informed way. This can be better achieved by being community based and by having community profiles completed of Métis communities. This has been done in First Nations communities but not yet in Métis Nation communities.

Participants said that Gladue reports are quite subjective and, if the writers are not from the community, they may not have the cultural understanding or enough information about the situation to be able to complete the reports in a way that actually benefits the offender. One participant said, “You need to have Indigenous people writing these reports, writers from an Indigenous world view. These writers have to be able to write their story and write it well ... You can’t have a PO [parole officer] writing a Gladue report for an Indigenous person.”

One participant said that, in their experience, poorly-prepared Gladue reports can cast the offender in such a negative light that it leads to longer sentences. They have seen examples where Indigenous women have committed a first-time offence or a minor offence and received longer sentences than usual based on a poorly-prepared Gladue report. This risk was greater for Indigenous women than Indigenous men, sometimes because the report writers do not have the skills to reflect the unique experiences of Indigenous women and girls.

Participants noted that a shortage of Gladue report writers has led to over-reliance on pre-sentencing reports instead. This is a significant problem because pre-sentencing reports, which set out a history of past criminal activity without any context, can have the opposite effect of what was intended by the Gladue principles.

Mandatory Minimum Sentencing

Participants said that fewer crimes should be subject to mandatory minimum sentences. Mandatory minimum sentences severely limit the ability of the court to respond to the specific circumstances of each offender and thus make the Gladue report seem pointless. One participant said they “felt terrible when the stories are shared with me and then they get 30 days of jail time anyways.” Women offenders do not feel like sharing their stories because they do not see the point of retraumatizing themselves when they must serve a mandatory minimum sentence in any event.

Another problem with minimum sentences is that “sentencing is a very individualistic exercise ... There is not necessarily one particular sentence that is appropriate.” Each case is different, and factors unique to each case should determine the appropriate sentence. Minimum sentences that do not consider Gladue reports can contribute to systemic biases against Indigenous offenders. Minimum sentences can be disproportionately harsh, and they should be challenged.

Healing and Rehabilitation

Greater investment should be made in healing programs to ensure convicted offenders have access to healing and rehabilitation. Participants noted that funding for support services should be provided for offenders so that they can try to overcome the impact of intergenerational trauma and other factors while they are serving their sentences. A participant reflected that, “Otherwise, they come out of the institution and are still dealing with the same problem, the only difference being that they were removed from it during the time they served.”

In one session, participants distinguished between defendants getting a more lenient sentence, which doesn't necessarily help anyone, versus defendants getting an appropriate sentence that can provide them with the supports needed to prevent reoffending. One participant gave the example of perpetrators sent to jails in the South who come back to the North more violent than before their incarceration. They said that healing and counselling should be used more often in lieu of prisons. For example, for small offences, people can be sent to spend time in communities, learning the culture, language, chopping ice, and learning from the Elders about the land and animals. This will be very beneficial for people who may not have had family or parents growing up.

One participant talked about the importance of land-based healing programs and their experiences, with successful programs being cancelled because they do not fit within the confines of project funding. They said, “Adequate funding for land-based healing is not available. There are amazing programs that are happening, but they do not persist. They work, but they are just a project.”

Participants recognized the need for cultural and educational supports to be part of the sentencing of offenders in order to have a rehabilitative effect. In one session, participants expressed frustration that powwows were discontinued in provincial jails due to limited funding, but there was plenty of funding for non-Indigenous programs, including Christian ones. Other concerns related to the barriers experienced in trying to secure permission for Elders to visit incarcerated individuals. Some participants also said that probation and addiction centres are not doing their part in building and maintaining relationships. Instead, they are content with doing the bare minimum or simply checking off boxes, while expecting First Nations communities to do the heavy lifting.

In the Manitoba Metis Federation dialogue, a concern was raised that rehabilitation supports are First Nations focused. “The programs and services that we find in the institutions are all First Nations oriented and based, [such as focusing on] ...First Nation smudging, sweats, and other cultural practices specific to these groups.”

A greater emphasis on trauma-based services and trauma-based therapies is required for Indigenous offenders. One participant suggested that there should be cultural and traditional types of therapy, as well as new therapies such as neurofeedback. This was viewed as an important part of interrupting the cycle of trauma.

Participants also suggested that the imbalance in services offered to federal and provincial offenders should be corrected. The courts offer more services to federal offenders, and some offenders say, “I would rather go to federal; there is more there.” It’s important to “keep your own people in your own community.”

There is an urgent need to reduce over-incarceration of First Nations, Métis Nation, and Inuit people in federal custody. One participant commented on the importance of sections 81 and 84 of the *Corrections and Conditional Release Act*, which support early release or community-based release for Indigenous offenders in federal prisons. Specifically in relation to Métis offenders, participants said that there are additional challenges because there has been so little support for the Métis Nation to establish community-based alternative sentencing and supports for conditional release. Furthermore, even where such opportunities exist, they need to be supported with proper interventions in the prison system so that Indigenous offenders can qualify. Participants also emphasized that greater attention needs to be paid to even earlier preventative interventions so that incarceration does not happen in the first place.

Access to Children while Incarcerated

Participants spoke about the gendered impact of incarceration on Indigenous women who need assistance in maintaining connections to their children while serving their sentences.

One participant said that many incarcerated Indigenous women cut off contact with their children because the women feel that their children would be ashamed to have a parent in jail. This participant developed a program that helps reconnection between children and an incarcerated parent. It would be very beneficial if the program evolved to support youths with incarcerated parents and encourages reconnection with their parents.

Participants said it has been well-documented that women are less likely to be repeat offenders if they develop a relationship with their children before their release. If family connection is secure, the rate of incarceration would drop. For example, one incarcerated young woman who was helped to maintain contact with her child got a different perspective that kept her out of a criminal lifestyle.

Needs of Offenders with Physical and Mental Disabilities

The dialogue sessions highlighted the need for sentencing to take into account physical and mental disabilities of Indigenous offenders.

One participant highlighted the fact that many Indigenous youth are diagnosed with FASD. For individuals with FASD, it may be inappropriate to subject them to the laws applicable to the general population because of their cognitive disabilities.

One participant told the story of a defendant with FASD who lost their housing when they went to prison. When they were released, they had to wait more than three months for housing. Meanwhile, most of their possessions had been removed from their old house and left outside to be destroyed by rain. They now live six miles out of town and must walk into town to meet with their probation officer. The participant who told this story said that the sentencing process needs to factor in the consequences for mental health and access to housing and community support. The Gladue process should allow this to happen.

Participants also raised the positive example of the FASD specialized court in Manitoba. Participants suggested that there should be training and information available in the North to ensure that persons with FASD are recognized and treated appropriately when they come before the courts.

Another example of a young woman with disabilities who was the victim of sexual assault was highlighted. She lived in a remote community and was raised by her grandparents, whose first language was Cree. They had a hard time understanding and coping with her disabilities. When this young woman reached the age of consent, she was charged with a crime similar to the one that had been committed against her. The court did not recognize her disabilities and related diagnoses, and the system did not provide her with access to appropriate resources.

Post-sentence Reports

Participants suggested that post-sentence reports would be a positive way to hold the system more accountable for providing appropriate rehabilitation opportunities. These reports would examine how the sentence was spent, detailing what has been accomplished or achieved. The idea would be to show how the perpetrator has grown and healed. This would also be a mechanism for accountability within the system. The participant stated, "If the reports are not adding up to what they should be, then we know what still needs to be done and can look at overhauling the system."

Notification of Pending Release of Convicted Offenders

Participants voiced concerns that affected families are not often notified of pending release of convicted offenders. One participant said, “There is a lack of communication between the correctional facility and family when an offender is released. The family deserves to be informed about what is going on with their loved one. Children of victims grow up and know the story. It can be very upsetting when they are in adulthood and learn the person got out of jail.”

Participants said that it should be automatic that all families are notified when the offender is released. The families should not have to rely on Victim Services or FILU to receive this information. A useful resource mentioned by dialogue participants is a portal with Corrections Canada that includes updates about early release or sentence completion.

Recommended Actions

- All Indigenous accused should have access to a Gladue report as early as possible in the criminal justice process.
- Gladue reports should not be read out in open court.
- Greater community education is needed about Gladue reports and their role in the justice system.
- More First Nations, Inuit, and Métis Nation Gladue writers should be hired.
- Gladue report writers should receive training in cultural competency and trauma-informed approaches.
- Fewer crimes should be subject to mandatory minimum sentences.
- Greater sustained investment should be made in healing programs to ensure convicted offenders have access to healing and rehabilitation.
- More programs are needed to help women offenders maintain connections to their children while serving their sentences.
- Sentencing must take account of physical and mental disabilities.
- Post-sentence reports should be implemented to hold the system more accountable for providing appropriate rehabilitation opportunities.
- Victims and affected families should always have the choice of being notified pending release of convicted offenders.

VI. Impacts of COVID-19

These dialogue sessions took place within the context of a burgeoning pandemic, COVID-19, which has had a significant impact on the work of Indigenous criminal justice workers and the communities they serve. These impacts introduced new stresses and new challenges to accessing justice that had not been considered at the time of the Inquiry. These impacts are significant, not only in the immediate context of the dialogue sessions but also for the lessons learned that can be applied in the future.

Existing Inequalities Exacerbated

The dialogue sessions highlighted the fact that COVID-19 has exacerbated existing inequalities facing victims and survivors in accessing services and supports, as well as the conditions of isolation that leave Indigenous women, girls, and 2SLGBTQQIA+ individuals vulnerable to violence and involvement in the criminal justice system.

Loss of Safe Spaces

COVID-19 has increased barriers for Indigenous people to access in-person services and supports, which are essential for people involved with the criminal justice system. Numerous sessions reported that safe spaces are now unavailable. For example, a case worker said that they previously conducted interviews in the court building, which was a safe space for women in dangerous situations in the community. However, working virtually means that women are being interviewed in the presence of their partners, pimps, or abusers. This makes it difficult to obtain the required information. There should be safe spaces in public for people who find themselves in such a situation.

Disruption to Court Systems, Gladue Reports, Sentencing Circles, and Youth Courts

The pandemic has disrupted the court system, including halting the completion of Gladue reports and the operation of sentencing circles and Aboriginal youth courts in some jurisdictions. Responses to COVID-19 have limited the number of people allowed in the courts. For example, in an ongoing case, the court planned to allow only six people to attend. Indigenous families are often huge, and victims appreciate the presence and support of their families when they are testifying. Thus, the justice system is failing to support victims when it limits the presence of their families. However, another participant indicated that the smaller capacity of courtrooms has actually allowed for a more candid proceeding to take place.

The pandemic has also impacted the ability to arrange bail because it is impossible to meet the clients. Many more people are being remanded, and “It’s not fair ... for an individual who is accused, who are sometimes victims, and that’s an issue because not only are they possibly becoming exposed to the virus, they are also becoming institutionalized.”

Increased Mental Health and Addiction Issues, Domestic Violence, Homelessness, and Child Apprehension

Participants shared their experience that the COVID-19 pandemic has caused an increase in mental health and addiction issues, domestic violence, homelessness, and child apprehension.

Justice Delayed, Justice Denied

Participants reported feeling as though the COVID-19 pandemic has put justice on hold. The list of victims requiring support continues to grow as case action is repeatedly delayed. These delays heighten the anxieties and mistrust already experienced by victims. An important component of healing is the opportunity to move on from what has happened. When justice is not timely, victims may become reluctant to pursue the complaint because “there is only so long that someone can have their victimhood hang over their head.” One participant expressed the consequences as: “Justice delayed is justice denied.”

Reduced Access to Legal Aid

One participant noted that Canada Emergency Response Benefit (CERB) payments have increased the tax levels of some clients such that they do not qualify for Legal Aid anymore. This has led to increased self-representation, with some defendants depending more on the services of courtworkers as they try to negotiate the court system without a lawyer.

Impacts on Networking

One impact of COVID-19 identified by participants is the disruption of relationship-building with local referral networks. This work has slowed down – it is now more difficult to receive referrals to support Indigenous community members. Another participant highlighted a networking opportunity created by COVID-19 to deliver hampers and personal protective equipment in partnership with other community organizations. This helped to reinforce to community members that justice workers were still there for victims and their families.

Decreased Access to Travel

Because service providers in the North often travel to other communities to meet with their clients, the COVID-19 pandemic has greatly impacted their ability to provide support. Travelling to communities poses risks to public health. There is no budget to cover the exponential increase in travel expenses that would be incurred if service providers were to self-isolate in each community they visited.

Decreased Access to People in Prison

The pandemic has also made supporting people in jail more difficult. One participant stated that before COVID-19, they were allowed to go into jails to smudge once a week, but not anymore. Participants also noted other ways in which the COVID-19 pandemic has affected their work and clients. For example, some sexual offenders doing federal time were released without going

through the proper programming prior to their release. This perpetuates a harmful cycle because there is no healing for the offenders, the victims, or the community. This is a failure of the justice system.

Social Isolation

During the COVID-19 pandemic, victims face increased isolation due to physical distancing. Healthy coping mechanisms, such as engaging in community gatherings, are being put on hold. In addition, many victims are isolated with family members or intimate partners who have abused them and, as a result, are at greater risk of being further victimized.

Participants also noted that the work of supporting victims is never easy and doing the work in isolation makes it all the harder. One participant noted that working from home on these issues, with their children around, was especially difficult. Support workers have lost their connections to the individuals and communities they rely on for their own support. One said, “We always talk about being in an isolated community, but sometimes the more isolated we are the more connected we are. When in small communities, you are in closer proximity than in larger areas.” One participant said it made her very sad not to be able to hug her friends and co-workers.

Internet and Communications Technology

Mechanisms for continuing work during the pandemic rely on communication technologies that are not accessible to all. This is a significant barrier. Restrictions on gatherings have led to workshops being cancelled. Annual healing camps in the Yukon were postponed. One family wanted to go to a trauma family treatment centre and because of COVID-19 was unable to do so. Dialogue participants said people are waiting in limbo to get help.

Existing inequalities have a significant impact on the ability to find alternative ways to support victims during the COVID-19 crisis. Many victims do not have phones or access to the internet or long-distance calling. The shift to video conferencing and reliance on online resources excludes them. Barriers to meeting with clients cause further delays in achieving justice.

Participants did note that the increasing use of communications technology during the pandemic could have positive benefits for the North. The migration to these technologies could make it possible for people from small communities to be more engaged in national dialogues. Participants noted that people from the North have expertise and experience that needs to be heard. In another region, virtual trainings were well-attended and reached a broader audience. The infrastructure and other systems necessary for equal access to these opportunities need to be prioritized.

Recommended Actions

- Temporary measures need to be established within the court system to ensure safe spaces can be re-instituted even in the face of physical distancing measures. The essential services provided by courtworkers and others need to be available to Indigenous victims.

This includes Gladue reports and operation of sentencing circles and Aboriginal youth courts, wherever possible.

- Efforts must be made to ensure supports for people released from prison are put in place so that a harmful cycle is not perpetuated.
- Once the pandemic has been resolved, it will be important to ensure disruption to services and supports are remedied as quickly as possible, in partnership with First Nations, Métis Nation, and Inuit peoples and organizations.
- All Indigenous communities must have access to high-speed internet connectivity, which is particularly inaccessible in northern communities. More emphasis also needs to be put on ensuring access to cellphones and computers for community members, including those at risk of violence. Otherwise, social isolation and vulnerability to violence is increased.

VII. Conclusion and Next Steps

This dialogue process initiated by the Department of Justice Canada provided the opportunity for 159 Indigenous community justice workers to have their voices heard. The six dialogue sessions were held virtually in various regions between November 2020 and January 2021.

The detailed nature of this report reflects the richness and diversity of perspectives shared on the thematic areas of: victim and survivor services and supports; policing and community accountability; courts, Indigenous justice and restorative justice; and sentencing.

The recommended actions proposed by participants can inform implementation of the findings and Calls for Justice in the report of the Inquiry into Missing and Murdered Indigenous Women and Girls. The participants felt very strongly about the importance and urgency of this task. While there was a definite need for more dialogue, this was clearly coupled with the need for concrete action directed toward the reforms recommended by the Inquiry and by the families of missing and murdered Indigenous women and girls who informed that work. To honour those who have gone missing or been murdered and to honour their families and communities requires future efforts to build on that work in a constructive and purposeful manner.

Participants called for a comprehensive, holistic approach that will meet the needs of Inuit, First Nations, and Métis Nation victims, offenders, their families, and their communities. This requires taking into account the perspectives of women, youth, Elders, persons with disabilities, and members of the 2SLGBTQQIA+ communities. Systemic change must underpin the path forward.

Appendix A – Recommended Actions by Theme

Overarching Themes

- Indigenous peoples, and in particular, Indigenous women, girls, and 2SLGBTQQIA+ persons, must be full partners in implementation of the findings and Calls for Justice.
- Funding for provision of Indigenous justice services and supports must be equitable, adequate and long-term.
- Greater effort should be made to promote awareness of the Inquiry’s findings and Calls for Justice.
- Indigenous women, girls, and 2SLGBTQQIA+ persons need more opportunities to express the truth of their experiences.

Victim and Survivor Supports and Services

- Indigenous peoples should have the opportunity and support to establish and operate their own supports for victims of crime.
- Victim Services and family supports should be independent and not associated with any government or police institution.
- All victim and survivor supports and services should be mandated to follow principles of cultural safety.
- All frontline supports to victims and families should employ more Indigenous staff.
- All support workers must have training on the culture and history of the Indigenous peoples they serve, as well as training in trauma-informed approaches.
- Services and supports must be provided in Indigenous languages.
- There is a need for services specifically designed for Indigenous peoples that are not grounded in Indigenous spirituality in order to meet the needs of those individuals who do not follow traditional spiritual practices.
- People should be able to access support services even if the perpetrator has never been charged.
- Depending on the circumstances, supports to victims should include financial support to meet basic needs in a time of crisis.
- Greater investment must be made in legal education at the community level, including ensuring that Indigenous victims of crime are aware of supports available to them.

- Supports to victims should include access to legal advice to better understand how their case will be handled, their own rights, and the options available to them.
- The application process for Legal Aid needs to be more accessible.
- Support to victims and families should extend through the entire process, from the time they report harm, through any investigation, trial, or restorative justice process and follow up support after the process concludes.
- Families of murdered Indigenous women should receive supports to address the costs and hardship of leaving their communities to attend court.
- The children of victims of crime should have access to culturally-based healing programs.
- Funding for services needs to be long-term and secure.
- Resources must be allocated to address the disparity in supports for community safety and victim services in northern communities.
- Greater attention must be given to the experiences and distinct needs of persons with disabilities.
- Greater attention must be given to the experiences and distinct needs of 2SLGBTQQIA+ persons. For example, people should be able to identify by their chosen name and gender throughout the justice system.

Policing and Accountability to the Community

- National protocols should be developed in collaboration with Indigenous peoples to ensure consistent and accurate recording of the Indigenous identity of missing persons and victims of violent crimes.
- Police services in Canada should adopt a consistent, nation-wide approach for receiving and investigating reports of missing and murdered Indigenous women, girls, and 2SLGBTQQIA+ individuals. [Call for Justice 9.5(v)]
- Police services should adopt standards and protocols for communication with families of missing and murdered Indigenous women, girls, and 2SLGBTQQIA+ people. [Call for Justice 9.5(ii)]
- Police should adopt practices for meeting with Indigenous victims of crime, families, and others that minimize intimidation, such as wearing plain clothes and meeting outside the police detachment.

- Police responsibilities should be defined to include building positive relationships with the communities they serve.
- Particular attention should be paid to the importance of building better relationships with Indigenous youth. [Call for Justice 9.2(ii)]
- Police officers should receive detailed orientation to the communities they are serving that includes substantive and meaningful cultural-competency training specific to that community.
- Indigenous language training should be mandatory for police officers serving Indigenous communities. [Call for Justice 9.3(ii)]
- Police services should take measures to hire and retain more Indigenous police officers, especially more Indigenous women police officers. [Call for Justice 9.3]
- Police departments or detachments serving multiple Indigenous and non-Indigenous communities should designate individual officers to be a consistent point of contact for each Indigenous community.
- Greater resources need to be provided to ensure equity in the police services available in Indigenous communities, particularly those in the North or in remote areas. [Call for Justice 5.5]
- Greater attention must be paid to the distinct policing needs of Métis communities.
- Police need better training and awareness of mental health issues, including addictions.
- In a wide range of areas where police currently play a central or leading role – including wellness checks, child apprehension, and other responses to individuals and families in crisis – measures must be taken to ensure that the response is based primarily on safety, health, and wellness rather than law enforcement.
- Police should collaborate with Indigenous frontline workers in responding to domestic violence cases.
- More resources should be provided to hire and train community-based safety officers as an alternative to police.
- Greater and more meaningful Indigenous participation is needed on police boards and other oversight bodies.
- Federal, provincial, and territorial governments should establish independent units to investigate allegations of police misconduct, including discriminatory behaviour and failure to properly investigate cases involving Indigenous peoples. [Call for Justice 9.6]

Courts, Indigenous Justice and Restorative Justice

- Greater effort must be made to reduce delays in the court process.
- There should be greater access to restorative justice processes.
- Where appropriate, more cases should be diverted to alternative processes outside the court system.
- More community-based courts should be established.
- More Indigenous justices of the peace should be hired and provided with a suitably broad mandate and jurisdiction.
- When cases are heard in circuit court, courtworkers should have sufficient time and opportunity to meet with clients beyond the limited time the courts spend in the community.
- There should be more Indigenous judges, Crown attorneys, and lawyers.
- All courts should adopt be culturally safe practices.
- Greater attention needs to be paid to the rights and needs of victims during court processes.
- Victims of crime should also have access to legal advice.
- The FILU programme should be maintained and expanded to provide support to families throughout the justice process.
- Indigenous persons accused of crimes should have access not only to legal assistance but also to an advocate to help them understand and navigate the court process.
- Supports are needed for defendants on bail awaiting trial.
- There needs to be more investment in legal education for communities and for everyone involved in the court system.
- High-speed internet access should be provided in all Indigenous communities to ensure access to legal resources and the ability to participate in online legal proceedings.

Sentencing

- All Indigenous offenders should have access to a Gladue report as early as possible in the criminal justice process.
- Gladue reports should not be read out in open court.
- Greater community education is needed about Gladue reports and their role in the justice system.
- More First Nations, Inuit, and Métis Nation Gladue writers should be hired.
- Gladue report writers should receive training in cultural competency and trauma-informed approaches.
- Fewer crimes should be subject to mandatory minimum sentences.
- Greater sustained investment should be made in healing programs to ensure convicted offenders have access to healing and rehabilitation.
- More programs are needed to help women offenders maintain connections to their children while serving their sentences.
- Sentencing must take account of physical and mental disabilities.
- Post-sentence reports should be implemented to hold the system more accountable for providing appropriate rehabilitation opportunities.
- Victims and affected families should always have the choice of being notified pending release of convicted offenders.

COVID-19

- Temporary measures need to be established within the court system to ensure safe spaces can be re-instituted even in the face of physical distancing measures. The essential services provided by courtworkers and others need to be available to Indigenous victims. This includes Gladue reports and operation of sentencing circles and Aboriginal youth courts, wherever possible.
- Efforts must be made to ensure supports for people being released from prison are put in place so that a harmful cycle is not perpetuated.
- Once the pandemic has been resolved, it will be important to ensure disruption to services and supports are remedied as quickly as possible, in partnership with First Nations, Métis Nation, and Inuit peoples and organizations.

- All Indigenous communities must have access to high-speed internet connectivity, which is particularly inaccessible in northern communities. More emphasis needs to be put on ensuring access to cellphones and computers for community members, including those at risk of violence. Otherwise, social isolation and vulnerability to violence is increased.

Appendix B - List of Community Dialogue Sessions

Inuvik Justice Committee: October 28, 30 and November 6, 2020

Aboriginal Legal Services: November 25 and 28, 2020

The Mi'kmaq Confederacy of PEI: November 26 and 27, 2020

Session with Indigenous Courtworkers (across Canada), hosted by Native Courtworker and Counselling Association of British Columbia: December 4 and 11, 2020

Session with Family Information Liaison Unit for families of MMIWG (across Canada), hosted by the Ontario Indigenous Justice Division: January 11 and 12, 2021

Metis Justice Institute of the Manitoba Metis Federation: January 22, 2021

Participant Guide

Community Dialogue Sessions:
The Criminal Justice Findings of the National Inquiry into
Missing and Murdered Indigenous Women and Girls

Fall 2020

Prepared by Celeste McKay Consulting Inc.

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1. INTRODUCTION

1.1 Purpose of the Community Dialogue Sessions

Thank you for joining this Virtual Community Dialogue Session, hosted by [insert host] in collaboration with the Department of Justice Canada, on the criminal justice related findings and Calls for Justice of the National Inquiry into Missing and Murdered Indigenous Women and Girls Final Report, *Reclaiming Power and Place*.

The session you are participating in is part of a larger series of Community Dialogue Sessions being organized and hosted by Indigenous Justice Programs in other parts of Canada at the request of the Department of Justice Canada.¹ Through these sessions, Justice Canada seeks to learn more from Indigenous community justice experts on the opportunities for moving forward in response to the findings of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

In addition to supporting federal justice policy development, these Community Dialogue Sessions are intended to provide participants, as well as community organizations, with an additional tool in support of community justice planning. A key objective of these sessions is to support opportunities for dialogue amongst experts on important justice related issues. As such, the sessions are intended to be open-ended and responsive to what you, as a participant, wish to share.

The findings of all the Community Dialogue Sessions will be reflected in a final summary report, prepared by the facilitator. This report will be shared widely, including to inform the development of the National Action Plan and ensuing responses to the National Inquiry into Missing and Murdered Indigenous Women and Girls, related to the criminal justice system.²

Given your experience in community justice delivery, community justice issues, and the operation of the criminal justice system, you have been invited to participate in these sessions to share your expertise and knowledge. Discussions will focus on how changes in the criminal justice sector can contribute to addressing the pervasive and severe threats to the safety of First Nations, Inuit and Métis Nation women, girls and 2SLGBTQQIA, and their families and communities.

1.2 Outline for Dialogue Sessions

The framework, approach, and final report of the Community Dialogue Sessions are Indigenous-led in design and delivery. The Department of Justice Canada has contracted an Indigenous company to draft this Participant Guide, to facilitate the dialogue sessions, and to write the summary reports and the final report. The dialogue

¹ Up to six other Programs are hosting virtual dialogues sessions in addition to this one.

² A key recommendation of the National Inquiry is the development of a National Action Plan to address violence against Indigenous women, girls and 2SLGBTQQIA people. More information about the National Inquiry is included in this guide, for your reference.

sessions are being organized and hosted by Indigenous community justice programs, and First Nations, Métis Nation and Inuit community justice experts have been invited to participate and to share knowledge and expertise. It is expected that there will be a range of Indigenous community justice experts participating, including program coordinators of diversion programs, Indigenous court workers, Indigenous victim services and others, as considered by the host organization.

The format of the Community Dialogue Sessions is limited due to COVID-19 restrictions and health protocols. Ideally, the sessions would take place in person (as was originally envisioned) however the sessions will now be hosted virtually, either in whole or in part, determined by safety protocols.

The dialogue session will be made up of a series of facilitated meetings. (Please consult your invitation or agenda for the specific times your dialogue sessions are taking place). Recognizing it will be difficult to achieve the benefits of in person dialogues, and that there will be some limits on the format and time spent discussing issues, the organizers and the facilitators have designed methods to try to ensure everyone is comfortable and has access to the needed platforms (i.e. participation by telephone, computer microphone, or by typing responses and comments). In addition, there will be opportunities to submit written comments before and after each session. This will ensure that everyone's thoughts and reflections are received.

1.3 Outline of this Participant Guide

This Participant Guide is a key resource accompanying the Community Dialogue Sessions. Participants are encouraged to read the Participant Guide and appendices in advance of the sessions that they will be attending in order to familiarize themselves with the content and to consider what they would like to share.

The Guide is organized into two key parts. The first part sets out the purpose, format and context of the community dialogue session. The second part focuses more specifically on the criminal justice issues to be discussed and provides direction, in the form of proposed questions, for participants to consider and to guide their participation.

The Guide also includes three appendices. The Inquiry's Calls for Justice relevant to each theme are summarized in Appendix A. The appendix also highlights some of the Inquiry's specific recommendations for Inuit, Métis Nation, and 2SLGBTQQA persons regarding these themes. Appendix B provides a list of, and links to, all the volumes of the Inquiry's final report and its full Calls for Justice, as well as some of the key reports of previous inquiries and other investigations that the Commission reviewed in its analysis. Appendix C is a list of resources created in collaboration with the host of these dialogue sessions to assist with managing some of the stress, impacts and effects of the global pandemic on individuals, communities and organizations.

Four key criminal justice related topics have been identified: Policing and Accountability to the Community; Courts, Indigenous Justice and Restorative Justice; Sentencing; and

Victim and Survivor Experiences, Supports and Services. Each section ends with a set of questions that will be considered during the sessions. Participants are asked to think about the questions in relation to their work and are encouraged to share specific examples based on their experiences in this area.

In each of these areas, the Final Report of the Inquiry, *Reclaiming Power and Place*, and its supplemental volumes are referenced, along with some earlier inquiries cited by the National Inquiry, to identify the justice related findings and themes on that topic. This Guide was also informed by previous dialogues and discussions between community justice program leadership and Justice Canada officials through collaboration in delivering the Indigenous Courtwork Program and the Indigenous Justice Program.

It is important to emphasize that the objective of the Community Dialogue Sessions is not to repeat or revisit the work of the Inquiry, but rather to look at the justice sector findings through the various lenses of community justice and the experiences and expertise of participants. Through these sessions, participants will consider how criminal justice related actions, policies, partnerships, and legislation can contribute to reducing violence.

While the Participant Guide is designed to be a tool for your preparation and contribution to the dialogue sessions it is acknowledged that, given some key constraints on time, the topics included reflect a limited number of the key criminal justice issues in your work. At the same time, participants may not have expertise on all the topics included. As a result, participants are encouraged to focus on those themes and action points of greatest relevance to their work. In addition, participants will have opportunities through the facilitated dialogue sessions to raise additional criminal justice topics that they would like to address.

1.4 Current Context

The COVID-19 pandemic has created unique challenges that were not contemplated during the National Inquiry. Many existing inequalities have been further exacerbated by the current health crisis, and Indigenous women are at particularly high risk. Housing security, access to health care, education and employment as well as overall social and economic opportunities are all more difficult to attain, increasing vulnerability. The health and well-being of incarcerated individuals is greatly at risk, given the nature of COVID-19 and how it spreads when large numbers of people are forced to live in close quarters. For women facing domestic violence, the severity and extent of such violence is increasing, along with barriers to accessing services and supports. The social isolation and daily pressures associated with COVID-19 has also had a significant impact on mental health. You are encouraged to consider and share the implications of COVID-19 on the topic areas and the questions proposed.³

³ The Resource List at the end of this Participant Guide (Appendix C) provides links to community resources related to COVID-19.

At the same time, societal inequalities facing Indigenous peoples are gaining increased public recognition – the Black and Indigenous Lives Matters Movement has had an enormous effect on the consciousness of Canadians. Activists across the country have successfully forced conversations that have not previously been of such prominence. These Community Dialogue Sessions may provide an opportunity to respond to this critical moment, and contribute to the collective efforts in overcoming systemic racism and discrimination in a meaningful, impactful sustained way within the criminal justice sphere.

1.5 The National Inquiry - Background

The National Inquiry into Missing and Murdered Indigenous Women and Girls was established in August 2016, and ran until June 2019, with a mandate to examine and report on the systemic causes of all forms of violence against Indigenous women and girls, including sexual violence. The Inquiry also considered existing institutional policies and practices to address violence, including those that are effective in reducing violence and increasing safety.

Over 2,380 people participated in the National Inquiry, including 468 family members and survivors of violence. The Inquiry recognized approximately 100 individual organizations as Parties with a “substantial and direct interest” in the investigation. This included the Assembly of First Nations, Inuit Tapiriit Kanatami, the Métis National Council, the Native Women’s Association of Canada, Pauktuutit Inuit Women, and Les Femmes Michif Otipemisiwak/Women of the Métis Nation as well as many local and regional agencies and Indigenous, federal, provincial and territorial governments.

The Commission’s final report, *Reclaiming Power and Place*, describes the contemporary crisis of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people as being “centuries in the making.” (Vol. 1a, p. 313). The Commission identifies “four key pathways” through which the violence of colonialism continues to put Indigenous women, girls and 2SLGBTQQIA people at risk:

- Historical, multigenerational, and intergenerational trauma;
- Social and economic marginalization;
- Maintaining the status quo and institutional lack of will; and
- Ignoring the agency and expertise of Indigenous women, girls, and 2SLGBTQQIA people.

The Commission notes that “these four pathways continue to enforce the historic and contemporary manifestations of colonialism that lead to additional violence” (Vol. 1a, p. 117) and they are a key area of focus throughout the report.

In many ways, the final report of the Commission is framed in terms of relationships. Early on the Inquiry notes that “guiding our approach to analyzing the many truths collected by the National Inquiry is a teaching that was shared over and over again during the Truth-Gathering Process: relationships are key to both understanding the

causes of violence and to making changes to end violence in the lives of Indigenous girls, women, and 2SLGBTQQIA people.” (Vol. 1a, p. 95)

The report includes many findings and 231 Calls for Justice, which are aimed at “changing the structures and the systems that sustain violence...” (Vol. 1a, p. 718) The Inquiry articulates multiple sets of Calls for Justice. This includes distinctions-based Inuit-Specific Calls for Justice; Métis-Specific Calls for Justice; and 2SLGBTQQIA-Specific Calls for Justice. (There are no distinctions-based Calls for Justice for First Nations). There are also separate Calls for Justice in the Supplemental Report on Quebec. In addition, a specific process established within the Inquiry, the Forensic Document Review, which reviewed police handling of individual cases, made a series of recommendations including as part of an appendix to the Inquiry’s Final Report.

The Inquiry emphasizes the need for Indigenous women to lead implementation of the Calls for Justice. Further, the Inquiry calls for implementation to be distinctions-based, based on recognition of the right to self-determination and self-governance, and supported by consistent collection of disaggregated data. The Inquiry calls for a rights-based approach, as well as transparent processes that are based on adequate, sustained and accessible funding.

The first Call for Justice asks all governments to develop and implement a comprehensive and coordinated National Action Plan, in partnership with Indigenous Peoples, to address violence against Indigenous women, girls and 2SLGBTQQIA people. The Inquiry states that such an Action Plan must be “flexible and distinctions-based,” including “regionally specific plans... rooted in the local cultures and communities of diverse Indigenous identities.” The Inquiry also states that there should be “devoted funding” and “necessary resources dedicated to capacity building, sustainability, and long-term solutions.” Finally, the Inquiry states that timetables and measurable goals and that the government should report annually on progress in relation to those goals.

First Nations, the Métis Nation, Inuit, provincial, territorial and federal governments are currently developing specific plans for moving forward, as well as working on the development of a National Action Plan. Some of the key areas for consideration in moving forward include: Urban, rural and remote perspectives; First Nations, Métis Nation, and Inuit perspectives; 2SLGBTQQIA perspectives; as well as family and survivor perspectives.

2. Policing and Accountability to the Community

Contact with police is one of the most common ways that Indigenous women engage with the criminal justice system. The ability of police to respond appropriately and effectively to the needs and circumstances of Indigenous women is a critical factor in determining whether a relationship based on trust with the justice system is developed, or whether the relationship leads to criminalization and prosecution. The potential for negative interactions arises for Indigenous women seeking protections from violence and for women accused of crimes.

As part of its mandate, the National Inquiry examined how police respond to violence and threats against Indigenous women, girls, and 2SLGBTQQIA persons. The Inquiry heard serious concerns from affected families, frontline organizations, and police themselves about the effectiveness of police responses and the consequences for individual safety, community safety, and trust in the justice system more broadly.

As the Inquiry notes, “Engaging the criminal justice system to report harm or to seek assistance presents a significant challenge for Indigenous individuals as many feel that they are reaching out to institutions, police, criminal justice system professionals that have historically ignored, and continue to ignore their concerns.” (Vol. 1a, p. 631)

The Inquiry also found that Indigenous individuals, particularly women, were often afraid to call the police, noting that it could lead to child protection agencies becoming involved, or that they themselves would be arrested or charged (such as in cases of domestic or intimate partner violence where there is a high frequency of dual arrests). The Inquiry found that women were afraid to report violence because of the risk of sexual assault or harassment at the hands of the police. Indigenous women will often choose to endure experiences of violence rather than take these risks. (Vol. 1a, pp. 114-15)

Findings from the Inquiry also highlight how police stereotypes and victim blaming have “served to slow down or to impede investigations into their loved ones’ disappearances or deaths. The assumptions tied to Indigenous women, girls, and 2SLGBTQQIA people by police as “drunks,” “runaways out partying,” or “prostitutes unworthy of follow-up” characterized many interactions, and contributed to an even greater loss of trust in the police and in related agencies.” (Vol. 1a, p. 648).

Indigenous victims, survivors and family members are “dependent on the good luck of encountering a compassionate, knowledgeable, and ethical officer rather than being able to depend on a standard of practice where being respected and taken seriously are the norm.” (Vol. 1a, p. 652) The Inquiry concludes that “police apathy in cases involving violence against women and girls – or violence against certain groups of women and girls – sends the message that such behavior is accepted and will carry no consequences for perpetrators. It may, in effect, encourage the targeting of certain groups for violence.” (Vol. 1a, p. 648)

The Inquiry finds that Indigenous peoples have lost “trust and confidence in the Canadian justice system, the RCMP, and police services in general.” This is because of the historic and contemporary role of police, the “continued racism and sexism” often directed against Indigenous persons, and the high rates of unresolved cases of missing and murdered Indigenous women, girls, and 2SLGBTQQIA persons.

In its findings, the Inquiry places the contemporary concerns expressed by families, Indigenous women’s organizations and frontline workers into historic context, noting that police services have been used “to implement and enforce laws and policies designed to control, assimilate, or eliminate Indigenous Peoples.” Examples set out include forced removal of children, forced relocation of Indigenous communities and enforcement of laws prohibiting spiritual ceremonies and practices. The Inquiry notes that police services continue to be called on “to enforce present-day discriminatory and oppressive legislation and policies in areas such as child welfare and land and resource disputes.” (Volume 1a, p. 717)

At the same time, the Inquiry notes that too often police services are under-resourced, particularly in remote and northern communities, or do not have the capacity to work with First Nations, Inuit and Métis Nation communities in a culturally informed and competent manner. In these circumstances, police cannot provide community members the protection they need and deserve. Overcoming bias requires a concerted effort, not only in recruitment and training, but also in the daily practice of police engagement with the communities they serve, and in the relationships developed in the process. As the Inquiry notes in its finding, inadequately resourced and biased policing means victims of crime are less likely to come forward to seek protection, while perpetrators may be emboldened by a sense that they are unlikely to be held accountable.

These same factors also increase the likelihood of Indigenous individuals having negative interactions with the justice system. Overworked and overwhelmed police, or police who have not built positive relations with communities they serve, are more likely to lay excessive and unnecessary charges for relatively minor infractions. This is often the first step leading to a pattern of over-incarceration of Indigenous individuals. As noted in numerous previous inquiries cited by the National Inquiry, Indigenous communities face the paradoxical situation of being simultaneously both under-protected and over-policed.

Many of the Inquiry’s Calls for Justice focus on building better relationships between police and the Indigenous peoples they serve.

The most relevant Calls for Justice in relation to policing are summarized in Appendix A.

Discussion Questions

1 (a) Do the criminal justice issues raised by the Inquiry (and set out in this Guide) related to policing resonate with you and your experience?

1 (b) How do these issues play out in your community?

1 (c) In your experience, what changes could be made to the justice system that would help you work more effectively with the community? Please consider programmatic, policy, and legislative changes.

2 (a) Looking at the Calls for Justice related to policing set out in Appendix A, are there ones that are essential to meeting the justice needs of your community?

2 (b) What are some of the actions needed to give life to those important Calls for Justice?

2 (c) Are there some key considerations in relation to (where applicable):

- First Nations, Métis Nation or Inuit perspectives and experiences?
- Rural or remote considerations?
- Urban considerations?
- 2SLGBTQQIA experiences?
- Others?

3 (a) How has the global pandemic impacted your work in this area? (methods, access, etc.)

3. Courts, Indigenous Justice Systems and Restorative Justice

The National Inquiry notes that Indigenous women are “vastly more likely to become involved in the criminal justice system... than non-Indigenous women.” (Vol. 1a, p. 626) When Indigenous women are charged with violent crimes, it is often as a consequence of trying to protect themselves or their children from violence. (Vol. 1a, p. 626). The Inquiry states that the criminalization of Indigenous women “cannot be separated” from high rates of violence that they experience in their lives. (Vol. 1a, p. 626) As the Inquiry notes, however, the overwhelming majority of criminal charges against Indigenous women are for non-violent property crimes, especially theft. The Inquiry relates these crimes to the systemic impoverishment and marginalization of Indigenous women. The Commissioners write:

A clear pattern emerges. The Canadian justice system criminalizes acts that are a direct result of survival for many Indigenous women. (Vol. 1a, p. 637)

The Inquiry emphasizes the fact that the Canadian criminal justice system is foreign to First Nations, Inuit and the Métis Nation and was imposed without any effort to understand, accommodate or incorporate First Nation, Inuit and Métis Nation systems of justice.

The Canadian justice system is premised on settler-colonial society’s values, beliefs, laws, and policies. It is a justice system that fails to include Indigenous concepts of justice. The Canadian justice system has been imposed on Indigenous Peoples and has oppressed and replaced the Indigenous justice systems that served Indigenous communities effectively since time immemorial. (Vol. 1a, p. 717)

The report also speaks to the experiences of ‘retraumatization’ in the courts. Testimony from witnesses about their relationships and encounters within the criminal justice system focussed on the ways the system can retraumatize families and survivors. “For many Indigenous families, friends, and supporters, the difficulty of this experience is magnified by the fact that, once again, they may be forced to seek justice within a process and an institution that have historically been unjust, and that continue to criminalize Indigenous people at much greater rates than non-Indigenous Canadians.” (Vol. 1 a, p. 693). At the same time, witnesses spoke about “how the lack of information provided to them about the process meant that they were not able to participate in the way they would have wished to” (Vol. 1 a, p.695), as well as having to listen to “demeaning and disturbing characterizations of their missing or murdered loved one” when attending court. The Commission notes that “examples such as these offer reminders of the ways Indigenous women, girls, and 2SLGBTQIA people are positioned within colonial systems as being responsible for the violence they endure, and how this practice of blaming Indigenous women means that those who perpetrate violence remain free to do so. References to the sexual history or activity of Indigenous women, and her behaviour or demeanour at the time of her disappearance or death, are examples of the way pervasive racialized and sexist stereotypes about Indigenous

women are mobilized within the criminal justice system to justify a lack of action or accountability.” (Vol. 1 a, p. 697)

The Inquiry strongly emphasizes the fact that there have been numerous previous inquiries into the treatment of Indigenous people in the criminal justice system and that previous recommendations for transformative change have remained unimplemented. (Vol. 1a, p. 644) Key themes of the Inquiry’s own Calls for Justice include alternatives to trial and other restorative justice measures, culturally competent court processes, Indigenous representation among judges and court workers, and access to legal aid and other supports.

To achieve cultural competency, it is necessary to ensure that everyone working in the court system, including court workers, Crown attorneys and judges, have had adequate cultural competency training. It is also necessary that there be effective, functioning systems of accountability to ensure that training translates into transformed day-to-day practice. Another critical aspect is increasing the numbers of First Nations, Inuit and Métis Nation persons working as judges, lawyers, and court workers so that the court system is more representative of the diversity of Indigenous Nations and their members. (Calls for Justice 5.12, 16.34)

The Inquiry notes that there is a deeper need for reconciliation between Indigenous peoples’ own systems of law and those of the Canadian state. This requires increased recognition and integration of Indigenous legal norms and protocols in the functioning of all courts in Canada. It also means recognition and support for the exercise of the right to self-determination by Indigenous peoples in the area of justice. This should include substantive equality for the creation and ongoing operation of Indigenous courts and court alternatives. (Calls for Justice 5.10, 5.11, 5.16)

The most relevant Calls for Justice in relation to courts, Indigenous justice systems and restorative justice are summarized in Appendix A.

Discussion Questions

1 (a) Do the criminal justice issues raised by the Inquiry (and set out in this Guide) related to courts, Indigenous justice and restorative justice resonate with you and your experience?

1 (b) How do these issues play out in your community?

1 (c) In your experience, what changes could be made to the justice system that would help you work more effectively with the community? Please consider programmatic, policy, and legislative changes.

2 (a) Looking at the Calls for Justice related to Indigenous justice and restorative justice set out in Appendix A, are there ones that are essential to meeting the justice needs of your community?

2 (b) What are some of the actions needed to give life to those important Calls for Justice?

2 (c) Are there some key considerations in relation to (where applicable):

- First Nations, Métis Nation or Inuit perspectives and experiences?
- Rural or remote considerations?
- Urban considerations?
- 2SLGBTQQIA experiences?
- Others?

3 (a) How has the global pandemic impacted your work in this area? (methods, access, etc.)

4. Sentencing

Systemic discrimination faced by Indigenous women in all aspects of their lives including their encounters with the police and the criminal justice system is directly reflected in the rising numbers of Indigenous women being sentenced to serve time in federal prisons. The Inquiry found that:

While Indigenous women make up 4% of the general population in Canada, they make up nearly 40% of all federally sentenced women. Moreover, there is every indication that the number of Indigenous women being sentenced to federal correctional institutions is growing: in the last 10 years, the number of Indigenous women in federal correctional institutions has grown by 60%, making them the fastest growing population in federal prisons. (Vol. 1a. p. 626, original citations omitted)

The Inquiry also notes that testimony from Elders working in the corrections system, as well as from Correctional Service Canada staff, pointed to distinct demographics among Indigenous women serving criminal sentences: “Indigenous women tend to be younger on admission and poorly educated, and have more connections with violence inside and outside of prison, as well as mental health and addiction issues.” (Vol. 1a. p.635)

The Inquiry finds that “violence is a precursor” to incarceration for Indigenous women, with 90 percent having previously experienced physical abuse in the home and almost 70 percent having experienced sexual abuse. (Vol. 1a. p. 636). Testimony from currently and previously incarcerated women also pointed a frequent pattern of life-long institutionalization as Indigenous girls “graduate” from foster care, to youth detention, to provincial institutions, to federal institutions.” (Vol. 1a, p. 635)

The Gladue Principles, first articulated by the Supreme Court in 1999 (*R v. Gladue*) require courts to consider the background and history of Indigenous offenders as possible mitigating factors in sentencing and to consider all reasonable alternatives to incarceration. This was meant to be a culturally appropriate response of over-incarceration due to systemic racism. In practice, this has not always been the case, particularly for Indigenous women, who have too often have been unable to access Gladue reports when charged. Further, when Indigenous women are victims of crime, there are also concerns that sexist attitudes of judges combined with a lack of cultural competency do lead, at times, to the minimization of gender-based violence.

The National Inquiry notes that the introduction of the Gladue principles “is often seen as a milestone solution for the overincarceration of Indigenous women” but in practice “it has become somewhat of a ‘mixed blessing.’” (Vol. 1a, p. 640) The Inquiry notes, for example, that preparation of a Gladue report made little appreciable difference to the sentences given to the many of the Indigenous women who testified to the Inquiry. In addition, there are ongoing concerns that the information contained in Gladue reports may be used inappropriately and unfairly as evidence of the woman’s motivations, risk of reoffence or threat to others, affecting the length and conditions of sentencing. (Vol

1a, p. 641). As a consequence, the Inquiry calls for federal, provincial, and territorial governments “to thoroughly evaluate the impacts of Gladue principles and section 718.2(e) of the *Criminal Code* on sentencing equity as it relates to violence against Indigenous women, girls, and 2SLGBTQQIA people.” (Call for Justice 5.17)

Some submissions to the Commission raised concerns about the use of Gladue reports in the context of violence against Indigenous women, girls and 2SLGBTQQIA persons, particularly intimate partner violence and family violence. The concern is that reference to the background and history of Indigenous male perpetrators as a mitigating factor further diminishes the seriousness and significance of the experiences of Indigenous women as victims and survivors. This raises the importance of ensuring that the application of the Gladue principles is responsive to both gender and race. A nuanced understanding of the context of both the Indigenous perpetrator and victim(s) involved must be present to avoid misapplication.

In testimony to the National Inquiry, many incarcerated Indigenous women reported that Gladue reports were never prepared for their cases, even though they had requested a report. (Vol 1a, p. 641) The National Inquiry calls for Gladue reports to be recognized as a right and for all governments to appropriately resource access to report writing. The Inquiry also calls for the creation of national standards for Gladue reports; and that consideration be given to having strengths-based Gladue reports.

The Report also finds that Gladue reports have limited value when the infrastructure and resources for alternatives to incarceration, such as community-based rehabilitation and healing-focused services, are not available in the community to support sentencing options.

The Commission observes that the use of Gladue reports and principles are not adequately explained to survivors of violence against Indigenous women and girls, and families of missing and murdered Indigenous women and girls. The manner with which prosecutorial discretion is exercised in cases involving Indigenous women, girls and 2SLGBTQQIA people has left many families and Indigenous people to question the quality of prosecution and to believe racism and sexism played a role in that. Families are led to believe that prosecution services, lawyers and judges do not put the same value of their lives and the lives of their murdered loved ones as is placed on the lives of non-Indigenous people. Further, *Criminal Code* sentencing provisions are not always consistent with Indigenous Peoples’ principles and values, further contributing to Indigenous Peoples’ overall distrust of the system.

The Inquiry also notes that “there is a commonly held belief that Indigenous offenders receive more lenient sentences because of the application of the Gladue principles at sentencing” and that at the same time, there is a perception that “all offenders receive a more lenient sentence when the victim is an Indigenous woman, girl, or 2SLGBTQQIA person.” (Vol 1a, p. 718)

The Inquiry raises concerns about mandatory minimum sentences which it concluded are especially harsh for Indigenous women, girls, and 2SLGBTQQIA people as they limit the discretion of judges and thus limit the application of the Gladue principles. The Inquiry calls for a thorough evaluation of the impact of mandatory minimum sentences in relation “to the sentencing and over-incarceration of Indigenous women, girls, and 2SLGBTQQIA people” and for governments “to take appropriate action to address their over-incarceration.” (Calls for Justice 5.14)

Other key themes of the Calls for Justice include decarceration or community-based sentences, and measures for incarcerated women to maintain connections to family and community.

The most relevant Calls for Justice in relation to sentencing are summarized in Appendix A.

Discussion Questions

1 (a) Do the criminal justice issues raised by the Inquiry (and set out in this Guide) related to sentencing resonate with you and your experience?

1 (b) How do these issues play out in your community?

1 (c) In your experience, what changes could be made to the justice system that would help you work more effectively with the community? Please consider programmatic, policy, and legislative changes.

2 (a) Looking at the Calls for Justice related to sentencing set out in Appendix A, are there ones that are essential to meeting the justice needs of your community?

2 (b) What are some of the actions needed to give life to those important Calls for Justice?

2 (c) Are there some key considerations in relation to (where applicable):

- First Nations, Métis Nation or Inuit perspectives and experiences?
- Rural or remote considerations?
- Urban considerations?
- 2SLGBTQQIA experiences?
- Others?

3 (a) How has the global pandemic impacted your work in this area? (methods, access, etc.)

5. Victim and Survivor Experiences, Supports, and Services

Indigenous women, girls and 2SLGBTQQIA persons experience extremely high rates of violence. The types of violence are varied in form and severe in nature, a reality that has been well documented in police statistics and by previous inquiries and reports. The National Inquiry concludes that this violence is “pervasive, immediate, and urgent.” (Vol. 1a, p. 85) The Inquiry states:

As more and more studies show, Indigenous women, girls, and 2SLGBTQQIA people are being targeted from all sides, from partners and family members, acquaintances, and serial killers. Rates of domestic and family violence are extremely high, but so is stranger violence. Indigenous women are also more likely to be killed by acquaintances than non-Indigenous women, and are seven times as likely to be targeted by serial killers. In the words of James Anaya, United Nations Special Rapporteur on the Rights of Indigenous Peoples, the rates of missing and murdered Indigenous women and girls are “epidemic.” (Vol. 1a, p. 55, original citations omitted)

Many cases of the murder of Indigenous women, girls, and 2SLGBTQQIA people by their intimate partners occur in the context of a pattern of ongoing and escalating violence and abuse. A previous investigation by the UN Committee on the Elimination of Discrimination Against Women found that “piecemeal” measures are not sufficient to address the safety and security of Indigenous women, girls, and 2SLGBTQQIA people.⁴ The findings of that investigation were strongly endorsed by the National Inquiry (for example, Call for Justice 1.2).

The National Inquiry repeatedly emphasizes the importance of holistic, Indigenous-led responses. At the national level, the Inquiry calls for a comprehensive, coordinated National Action Plan to end violence (Call for Justice 1.1). At the community-level, the Inquiry strongly emphasized the need for “holistic solutions...that will restore Indigenous women, girls, and 2SLGBTQQIA people to their power and place.” (Vol. 1a., p. 85)

The Inquiry calls for responses that are informed by and in keeping with the scale and depth of these deeply entrenched root causes of violence. The Inquiry states, “The investment into solving this crisis must be equal to or better than the over five hundred years of deficit that have preceded it.” (Vol. 1a, p. 85)

In terms of the delivery and accessibility of victim services, the Commission found that many victim services programs do not take into account the cultural and social realities and needs of Métis Nation, Inuit, and First Nations women, girls, and 2SLGBTQQIA people, “and often lack cultural safety and language accessibility.” (Vol. 1b, p. 176) In

⁴ UN Committee on the Elimination of Discrimination Against Women, *Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (UN Doc: CEDAW/C/OP.8/CAN/1), 30 March 2015, p. 41.

addition, victim services were found to be limited in terms of scope, services, and eligibility, and given limited funding, they are inconsistently delivered across jurisdictions. It was noted that there are many barriers for victims in accessing services and navigating the complex criminal justice system, especially at times of trauma. Another concern raised in the report is that victim services programs are often designed to facilitate prosecution and conviction instead of meeting the justice, safety, security, and health and wellness needs of victims of violence. (Vol. 1a, p.718)

The Inquiry identifies several critical areas to improve supports and services for victims and survivors of crime, including: public education, community-based emergency responses to persons in crisis, access to emergency shelters and transition houses, and counselling for men who commit acts of violence. The Inquiry also calls for accessible, adequate and relevant support and care for women, girls and 2SLGBTQQIA people who experience violence as well as specific supports for women, girls and 2SLGBTQQIA people in the sex trade or who have been trafficked. The Commission makes recommendations regarding where victim services should be located in the criminal justice system, as well as specialized services for children and youth. Finally, the Inquiry calls for changes in how protective orders are made available and enforced as well as other significant criminal law reforms to ensure that violence against women, girls and 2SLGBTQQIA is taken seriously.

The most relevant Calls for Justice in relation to victim and survivor experiences, supports and services are summarized in Appendix A.

Discussion Questions

1 (a) Do the criminal justice issues raised by the Inquiry (and set out in this Guide) related to victim and survivor experiences, supports, and services resonate with you and your experience?

1 (b) How do these issues play out in your community?

1 (c) In your experience, what changes could be made to the justice system that would help you work more effectively with the community? Please consider programmatic, policy, and legislative changes.

2 (a) Looking at the Calls for Justice related to victim and survivor supports and services set out in Appendix A, are there ones that are essential to meeting the justice needs of your community?

2 (b) What are some of the actions needed to give life to those important Calls for Justice?

2 (c) Are there some key considerations in relation to (where applicable):

- First Nations, Métis Nation or Inuit perspectives and experiences?

- Rural or remote considerations?
- Urban considerations?
- 2SLGBTQIA experiences?
- Others?

3 (a) How has the global pandemic impacted your work in this area? (methods, access, etc.)

Appendix A

Summary of Key Calls for Justice by Theme

1. Introduction

This a summary to assist in understanding those Calls for Justice that may relate to critical aspects of the work of Indigenous Justice Workers. Overlapping Calls for Justice are grouped according to common action points.

2. Policing and Accountability to the Community

2.1 Substantive Equality in Police Services for Northern and Remote Communities

The Inquiry calls on all governments to ensure that provision of police services in remote and northern Indigenous communities meets “the safety and justice needs of the communities” and that the quality of those services “is equitable to that provided to non-Indigenous Canadians.” (Call for Justice 5.5)

The Inquiry specifically calls for the all police services to “end the practice” of short-term postings to remote and rural communities and instead implement policies focused on “building and sustaining” relationships.

Additional, concrete measures referenced in Call for Justice 5.5 include:

- Ensuring faster response from major crime units and major case management system that service remote and northern communities from other locations
- Increasing capacity for the investigation of sexualized violence, “including but not limited to tools for the collection of physical evidence, such as sexual assault kits, and specialized and trauma-informed questioning techniques.”

The Inuit-specific Calls for Justice calls for establishment of police services in all Inuit communities. (Calls for Justice 16.36)]

2.2 Culturally Competent Police Officers

Nine Calls for Justice, many of which have multiple parts, call for measures to ensure that police officers interacting with Indigenous peoples are culturally competent, conduct their duties in a non-discriminatory manner and create a space of interaction that is culturally safe.

The Inquiry calls on all police services and other actors in the justice system “to acknowledge that the historical and current relationship between Indigenous women, girls, and 2SLGBTQQIA people and the justice system has been largely defined by colonialism, racism, bias, discrimination, and fundamental cultural and societal differences.” To ensure that police are knowledgeable of, understand and respect the individuals and communities they serve, the Inquiry calls on police to:

- “Review and revise all policies, practices, and procedures” to ensure that they are “culturally appropriate” and do not reflect any bias or racism toward Indigenous peoples “including victims and survivors of violence.”
- “Undertake training and education of all staff and officers so that they understand and implement culturally appropriate and trauma-informed practices, especially when dealing with families of missing and murdered Indigenous women, girls, and 2SLGBTQQIA people.” (Calls for Justice 9.1)
- “Ensure mandatory Indigenous language capacity within police services.”
- Ensure that basic training includes “history of police in the oppression and genocide of Indigenous Peoples; anti-racism and anti-bias training; and culture and language training.”
- Ensure that all police training be “distinctions-based and relevant to the land and people being served rather than “pan-Indigenous.”
- Ensure that screening of recruits specifically addresses potential bias in respect race, gender, gender identity, and sexual orientation.
- “Include the Indigenous community in the recruitment and hiring committees/process.” (Calls for Justice 9.3)

Overall, the Inquiry strongly emphasizes the important role of community organizations and community members, including potential Indigenous justice workers, in ensuring culturally safe access to police services. The National Inquiry calls on police services to build partnerships at the community level, with community leaders and community members, including “women, Elders, youth, and 2SLGBTQQIA people from the respective territories and who are resident within a police service’s jurisdiction.” (Calls for Justice 9.3) The Inquiry also calls for the establishment of “a civilian Indigenous advisory committee for each police service or police division.” (Calls for Justice 9.8) (See also Calls for Justice 9.1, 17.12, 17.14 and Quebec Calls for Justice 14)

The Inuit-specific Calls for Justice include the call for all governments to ensure “ongoing and comprehensive Inuit-specific cultural competency training for public servants” in all areas of service delivery, including policing. The Inquiry also calls for “ongoing and comprehensive training in such areas as trauma care, cultural safety

training, anti-racism training, and education with respect to the historical and ongoing colonialism to which Inuit have been and are subjected.” (Calls for Justice 16.27)

The Métis-specific Calls for Justice call on police services “to engage in education about the unique history and needs of Métis communities.” (Calls for Justice 17.13)

The 2SLGBTQQIA-specific Calls for Justice include a call for all police services “to engage in education regarding 2SLGBTQQIA people and experiences to address discrimination, especially homophobia and transphobia, in policing.” (Calls for Justice 18.13)

The Supplementary Report on Quebec calls for all active police officers and police cadets to be trained “on the socio-cultural realities of Indigenous people and the particular challenges faced by them, the issue of missing and murdered Indigenous women and girls, including members of 2SLGBTQQIA communities, and the importance of being familiar with the particular reality of each community to which they are assigned.” (Quebec Calls for Justice 15)

2.3 Policing and the Safety of Sex Workers

Call for Justice 9.11 calls on all police services to work in consultation with women engaged in the sex industry to “develop and implement guidelines for the policing of the sex industry.”

Call for Justice 9.11 further calls on police services “to create a specific complaints mechanism” for sex workers to report abuse or misconduct by police.

The 2SLGBTQQIA-specific Calls for Justice calls on all police services to take specific measures “to ensure the safety of 2SLGBTQQIA people in the sex industry.” (Calls for Justice 18.14)

3. Courts, Indigenous Justice and Restorative Justice

3.1 Alternatives to Trial and Other Restorative Justice Initiatives

The National Inquiry calls on governments to expand restorative justice programs, including “community-based and Indigenous specific” diversion programs (Calls for Justice 5.16); Indigenous Peoples’ courts (Calls for Justice 5.11) and Indigenous justices of the peace (Calls for Justice 5.10).

The Inquiry also calls on governments to expand the jurisdiction of all Indigenous justices of the peace to be comparable to justices of the peace in Nunavut. (Calls for Justice 5.10) The Nunavut justices of the peace preside over Justice of the Peace Courts and are empowered to issue a variety of emergency protection orders where there is risk of family violence, including restraining orders, temporary child custody, and

orders granting exclusive occupation rights to the family home, as well as community intervention orders that can include mandatory counselling with a traditional counsellor.⁵

Restorative justice measures had also been extensively considered in a number of previous inquiries cited by the National Inquiry. In its 1991 Final Report, the Manitoba Justice Inquiry set out the following principles that should guide diversions and other alternative alternatives:

- Perceived legitimacy within the affected communities;
 - Formal recognition within the justice system;
 - Integration of Indigenous cultures including involvements of elders, peacemakers and others from the affected communities;
 - Community input into sentencing (without diminishing the “ultimate responsibility” of the presiding judge);
 - Effort to engage “all those who have a direct interest in the case including the victim and the community”;
 - Ability to accept referrals at any stage, including from the community before charges have been laid “and, if possible, before the authorities become involved”;
 - Openness to innovative alternatives such as “participation in an Aboriginally operated wilderness program, an education program, an employment training program, or a treatment program”; and
 - Community-based oversight of the disposition and enforcement of any sentence.
- (Aboriginal Justice Inquiry of Manitoba)

The Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform called for sentencing alternatives to developed in cooperation with Indigenous peoples that would “allow for intensive therapy involving Elders, healers, and supports for family.” The Saskatchewan Commission specifically recommended the creation of a “Therapeutic Court, preferably mobile, with the capacity to address issues such as alcohol and other addictions, fetal alcohol spectrum disorders, families in crisis and family violence (Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform 2003).

The Truth and Reconciliation Commission called for federal, provincial, and territorial governments “to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal

⁵ Many of the powers of the Nunavut Justices of the Peace are set out in the Family Abuse Intervention Act, SNU 2006, c 18. <https://www.nunavutcourts.ca/index.php/faia-civil>

peoples, the Constitution Act, 1982, and the United Nations Declaration on the Rights of Indigenous Peoples.” (TRC Call to Action 42)

The TRC additionally called on the federal government “to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws.” (TRC Call to Action 50)

The Viens Commission in Quebec, which issued its Final Report after the conclusion of the National Inquiry, calls on the province to “fund projects developed and managed by Indigenous authorities that are aimed at documenting and revitalizing Indigenous law in all sectors deemed to be of interest.” (Viens Commission Call for Action 40). The Commission also calls for provincial laws to be amended to enable the creation of Indigenous justice systems, both within specific Indigenous nations and in urban areas. (Viens Commission Call for Action 41)

3.2 Culturally Competent Court Processes

The Inquiry calls for measures to ensure that all trial processes are culturally competent, including “mandatory intensive and periodic training” in Indigenous cultures and histories for judiciary, courtroom officers, Crown attorneys, defence lawyers, court staff “and all who participate in the criminal justice system.” This cultural competency training, the Inquiry underscores, must include “distinctions-based training” and be designed and led in partnership with local Indigenous communities. The Inquiry also calls on Law societies to work with Indigenous women, girls, and 2SLGBTQQIA people to establish and enforce cultural competency standards. (Calls for Justice 10.1)

In addition, the Inquiry calls for governments to establish a staff position of Indigenous courtroom liaison worker in all courts “to ensure Indigenous people in the court system know their rights and are connected to appropriate services.” The Inquiry states such positions must be adequately funded and resourced. (Calls for Justice 10.1)

The Inuit-specific Calls for Justice calls for “ongoing and comprehensive Inuit-specific cultural competency training” in areas including “trauma care, cultural safety training, anti-racism training, and education with respect to the historical and ongoing colonialism to which Inuit have been and are subjected.” (Calls for Justice 16.27)

The Métis-specific Calls for Justice include a call for “actors within the justice system to engage in education and training regarding the history and contemporary realities of Métis experiences.” (Calls for Justice 17.29)

The Truth and Reconciliation Commission had previously called on law societies and law schools to ensure lawyers and future lawyers receive cultural competency training that includes:

- the history and legacy of residential schools;

- the *United Nations Declaration on the Rights of Indigenous Peoples*;
- Treaties and Indigenous rights;
- Indigenous law;
- Indigenous–Crown relations; and
- “skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.” (TRC Calls to Action 27 and 28)

3.3 Indigenous Representation Among Judges and Other Court Officials and Workers

The National Inquiry calls on all governments to “increase Indigenous representation in all Canadian courts, including within the Supreme Court of Canada.” (Calls for Justice 5.12)

The Inuit-specific Calls for Justice include the call for the federal and provincial governments “to fully implement the principles and objectives” of Article 23 of the Nunavut Land Claims Agreement throughout Inuit Nunangat. Article 23 requires proportional representation in the public service, including the criminal justice system and the courts. (Calls for Justice 16.34)

3.4 Access to Legal Aid and Other Supports

The National Inquiry finds that legal aid systems and services are “inadequate, inaccessible, and inconsistent” and “[a]s a result, access to courts, dispute resolution mechanisms, and legal remedies is inadequate and inconsistent.” (Final Report Vol. 1a, p. 718).

The Inquiry’s Calls for Justice state that Indigenous women, girls, and 2SLGBTQQIA people “must have guaranteed access to legal services” in order to defend and assert their rights. The Inquiry called on all provincial and territorial governments “to expand and adequately resource legal aid programs.” (Calls for Justice 5.13)

4. Sentencing

4.1 Gladue Principles

The Inquiry noted that even when Gladue reports are prepared, women may be reluctant to share details they consider humiliating or may justifiably fear that details may be used against them in sentencing and security classification. As a consequence,

the Inquiry calls for adoption of “strength-based” reporting methods. (Calls for Justice 5.15)

Subsequent to the National Inquiry, the Viens Commission in Quebec also considered the issue of access to Gladue reports. The Calls for Action from that Inquiry included:

- Requiring that Gladue reports are automatically prepared whenever someone enters the court system;
- Creating a specific “budget envelope” exclusively for preparation of Gladue reports;
- Increase the number of report writers and the remuneration they receive;
- Fund for development of training for report writers; and
- In cooperation with Indigenous peoples, periodically review the quality of reports being prepared. (Viens Calls for Action 52-55)

4.2 Mandatory Minimum Sentences

The National Inquiry also raises concerns about mandatory minimum sentences which it concluded “are especially harsh for Indigenous women, girls, and 2SLGBTQQIA people” as they limit the discretion of judges and thus limit the application of the Gladue principles. (Final Report Vol 1a, p. 644) The Inquiry calls for a thorough evaluation of the impact of mandatory minimum sentences in relation “to the sentencing and over-incarceration of Indigenous women, girls, and 2SLGBTQQIA people” and for governments “to take appropriate action to address their over-incarceration.” (Calls for Justice 5.14)

The Truth and Reconciliation Commission had also raised concerns about the impact of mandatory minimum sentences and called on the federal government to amend the Criminal Code “to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.” (TRC Call to Action 32)

4.3 Decarceration or Increased Opportunity to Serve Sentences in the Community

The National Inquiry strongly emphasizes the importance of Indigenous women, girls and 2SLGBTQQIA persons being able to serve custodial sentences in the community, whether in some form of lodge or other community-based facility or through some form of supervised release. The Inquiry states that “community-based resources for Indigenous women can better address the underlying issues of incarceration – trauma,

poverty, and other effects of colonization – by using the strengths of cultural practices for healing.” (Final Report, Vol. 1a, p. 643).

The Inquiry calls on Correctional Service Canada (CSC) “to take urgent action” to implement sections 81 and 84 of the *Corrections and Conditional Release Act*, which allow for resourcing and authority to be transferred to Indigenous peoples to establish and maintain facilities and programs to take custody of Indigenous people serving sentences for criminal offenses, including enabling their return to the community. The Calls for Justice state that Indigenous women, girls, and 2SLGBTQQIA persons must have access to “options for decarceration” (Calls for Justice 14.1) and that these facilities and programs must receive funding parity with facilities and programs operated by Correctional Service Canada. (Calls for Justice 14.2)

The Inquiry notes that the 2017-2018 Annual Report of the Correctional Service Investigator “recommended that CSC reallocate significant resources to negotiate new funding arrangements and agreements with partners to transfer the care and supervision of Indigenous people from prison to the community.” The Inquiry calls for the federal government to fully implement all the outstanding recommendations of the Correctional Service Investigator.

The Inuit-specific Calls for Justice include a call “to support and equitably fund the establishment of facilities and spaces as described in section 81 and section 84 of the *Corrections and Conditional Release Act*, within all Inuit regions.” (Calls for Justice 16.30)

The Truth and Reconciliation Commission had previously called for “sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.” (TRC Calls to Action 31)

The TRC also called on the federal government “to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system” (TRC Calls to Action 35) and “to provide more supports for Aboriginal programming in halfway houses and parole services.” (TRC Calls to Action 37)

4.4 Proximity to Home and Families

Closely related to the call for increased access to community-based custody arrangements (see Section 5.1 above), the Inquiry underlines the importance of ensuring that Indigenous women, girls, and 2SLGBTQQIA persons are able to maintain ties with their families, communities and cultures.

Call for Justice 14.1 calls on Correctional Service Canada to ensure that new facilities created under sections 81 and 84 of the *Corrections and Conditional Release Act* are “strategically located to allow for localized placements and mother-and-child

programming.” The Inquiry also called on CSC to “expand mother-and-child programming” within federal institutions.

The Inuit-specific Calls for Justice include a call for measures to “ensure that Inuit women can remain within their Inuit homelands and are able to maintain ties with their children and families.” (Calls for Justice 16.30)

5. Victim and Survivor Experiences, Supports and Services

5.1 Accessible, Adequate and Relevant Support and Care for Victims of Violent Crime

The National Inquiry calls for “an enhanced, holistic, comprehensive approach for the provision of support” both to Indigenous victims of crime and to the families and friends of murdered or missing persons. (Calls for Justice 5.6) The Inquiry calls for such services to include:

- Guaranteed access to financial support and “meaningful and appropriate trauma care” regardless of whether victims of violent crime report directly to the police, if the perpetrator is charged, or if there is a conviction.
- Appropriate funding for Indigenous and community-led organizations to deliver “adequate and reliable culturally relevant and accessible” services and supports.
- Independence of victim services from police and prosecutors (Calls for Justice 5.6)

The Métis-specific Calls for Justice call for “increased victim support services specific to Métis needs to help Métis victims and families navigate the legal system and to support their healing and well-being throughout the process of seeking justice.” (Calls for Justice 17.28)

The Quebec Supplementary report calls for the province to “guarantee the permanent provision and availability of victim services in all Indigenous communities and in urban areas.” (Quebec Calls for Justice 10).

The Truth and Reconciliation Commission had previously called on federal, provincial and territorial governments to work collaboratively with Indigenous peoples “to create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms.” (TRC Calls to Action 40)

The National Inquiry, and previous inquiries, had noted that the need for a number of specific supports that are generally not part of victim services as currently structured.

The National Inquiry calls for paid leave and disability benefits for victims of crime or traumatic events to be made mandatory through legislation. (Calls for Justice 5.6)

The Inquiry also calls for guaranteed access, at no cost, to independent legal services, beginning “as soon as an Indigenous woman, girl, or 2SLGBTQQIA person decides to report an offence,” including “before speaking to the police.” (Calls for Justice 5.6)

Prior to the National Inquiry, the BC Inquiry called for a healing fund for the families missing and murdered women and specific compensation fund for their children. (BC Inquiry 2012)

5.2 Public Education to Prevent Violence

Many participants in the Inquiry sessions emphasized the importance of public education as a tool to improve the lives of First Nations, Inuit and Métis Nation women, girls and 2SLGBTQQIA persons and, more specifically, to reduce violence. Testimony cited in the Inquiry’s Final Report referred specifically to education and training on issues such as Indigenous cultures and histories, anti-oppression, non-violent conflict intervention, consent, internet safety, sexual exploitation prevention, and human rights (for example, Vol 1b, pages 119 and 158).

The Inquiry sets out 12 Calls for Justice specifically focused on public education, calling for:

- sustainable, core funding for Indigenous communities and organizations “to create, deliver, and disseminate” education and awareness campaigns specifically for Indigenous communities and families on “violence prevention and combatting lateral violence.” (Calls for Justice 1.8); and
- development of public education campaigns “to challenge the acceptance and normalization of violence.” (Calls for Justice 1.9)

Similarly, the Quebec Supplementary Report calls for funding and dissemination support for Indigenous-led awareness campaigns “to prevent, denounce, de-normalize and address violence against Indigenous women and girls, including members of 2SLGBTQQIA communities.” (Quebec Calls for Justice 7)

There are several Inuit-specific Calls for Justice tailored to addressing violence in Inuit communities through education. (Calls for Justice 16.22, 16.23 and 16. 24)

In relation to the 2SLGBTQQIA community, specific Calls for Justice relate to “the re-education of communities and individuals who have learned to reject 2SLGBTQQIA people, or who deny their important history and contemporary place within communities and in ceremony” (Calls for Justice 18.17) and to mandatory cultural competency training for service providers. (Calls for Justice 18.18, 18.19, 18.20 and 18.32)

5.3 Holistic Wrap-Around Programs and Supports

Community safety is inseparable from community well-being. The Final Report of the National Inquiry emphasizes the foundational importance of a “holistic approach to safety and well-being” (Vol 1b, p. 110) that is able to address root causes of violence and promote “physical, mental, emotional, spiritual, and social safety.” (Vol 1a, p. 416)

The Inquiry urges that trauma and addictions treatment programs “be paired with other essential services such as mental health services and sexual exploitation and trafficking services” depending on the specific needs of First Nations, Inuit, and Métis women, girls, and 2SLGBTQQIA people they serve. (Calls for Justice 3.4)

The Inquiry also calls on all governments to ensure substantive equality in access to and provision of quality services for Indigenous women, girls, and 2SLGBTQQIA people, including Indigenous-run health services. In this Call, the Inquiry calls for “mandated permanent funding of health services for Indigenous women, girls, and 2SLGBTQQIA people on a continual basis, regardless of jurisdictional lines, geographical location, and Status affiliation or lack thereof.” As part of this call for substantive equality in access to and quality of services, the Inquiry also calls on all governments to “ensure that jurisdictional disputes do not result in the denial of rights and services. (Calls for Justice 3.6)

There are many Calls for Justice responding to the unique needs of the Métis Nation, Inuit and 2SLGBTQQIA community (Calls for Justice 16.29, 16.38, 16.40, 17.20, 17.23, 18.1, 18.2, 18.11, 18.26, 18.27, 18.28, 18.29 and 18.32).

5.4 Community-based Emergency Responses for Persons in Crisis

Tragic events since the release of the Final Report have focused increased public attention on the inappropriateness and the risks associated with police performing wellness checks or other kinds of emergency responses. Public attention has underscored the need for health professionals, social workers and other frontline workers to better be resourced and supported to play this role. Five Calls for Justice focus on the role of community organizations in responding to persons in crisis, the need for improved funding and other supports to enable organizations to perform this role, and the importance of improved collaboration between police services and frontline service providers.

The National Inquiry calls on all governments “to establish culturally competent and responsive crisis response teams in all communities and regions” to meet the immediate needs of individuals, families and communities “after a traumatic event (murder, accident, violent event, etc.)” (Calls for Justice 3.5) It is clear throughout the Inquiry’s findings that a greater role for Indigenous frontline services is envisioned as an integral part of structural solutions to service delivery.

5.5 Addressing Male Violence

The Inquiry calls for federal, provincial and territorial correctional services “to provide programming for men and boys that confronts and ends violence against Indigenous women, girls, and 2SLGBTQQIA people.” (14.12) There is an emphasis on the need for well-resourced and accessible, gender- and Inuit-specific services for Inuit men and boys, including in custody to address root causes of violent behaviour. (Calls for Justice 16.12 and 16.30)

Further, research on men who commit violence against Indigenous women, girls, and 2SLGBTQQIA people is encouraged. (Calls for Justice 5.25)

5.6 Support for Women, Girls and 2SLGBTQQIA People in the Sex Industry

The National Inquiry calls on all governments “to support programs and services for Indigenous women, girls, and 2SLGBTQQIA people in the sex industry to promote their safety and security.” The Inquiry states such programs and services must be:

- Designed and delivered in partnership with people who have lived experience in the sex industry; and
- Supported by “stable and long-term funding. (Calls for Justice 4.3)

The 2SLGBTQQIA-specific Calls for Justice call on police services “to take appropriate steps to ensure the safety of 2SLGBTQQIA people in the sex industry.” (Calls for Justice 18.14)

Among the numerous previous Inquiries and reports cited by the National Inquiry, the BC Inquiry into the murder and disappearance of women in Vancouver’s Downtown Eastside had called for “an integrated strategy for enhancing the safety of women engaged in the survival sex trade.” (BC Inquiry 2012).

5.7 Responding to Trafficking and Sexual Exploitation

The National Inquiry calls on all governments and on health service providers to support Indigenous-led programs and services “related to sexual trafficking awareness and no-barrier exiting.” (Calls for Justice 7.1)

The Inquiry calls on all child and family services agencies “to promote the intensive and ongoing training of social workers and child welfare staff “to recognize signs and develop specialized responses” to sexual exploitation and trafficking. (Calls for Justice 12.12)

The Inquiry calls on private corporations, industry associations and individuals in the transportation and hospitality industries “to undertake training to identify and respond to sexual exploitation and human trafficking” and to develop and implement reporting

policies and practices, as well as the development and implementation of reporting policies and practices. (Calls for Justice 8.1)

The Inuit-specific Calls for Justice includes a call for all governments “to fund and to support programs for Inuit children and youth to teach them how to respond to threats and identify exploitation,” including “the threats of drugs and drug trafficking as well as sexual exploitation and human trafficking.” The Inquiry states that such awareness and education work:

- must be culturally and age-appropriate; and
- involve all members of the community, including 2SLGBTQQIA Inuit. (Calls for Justice 16.1)

In its investigation of violence against Indigenous women and girls in Canada, the UN Committee on the Elimination of Discrimination Against Women called on the federal government to reviews its National Action Plan to Combat Human Trafficking “in order to ensure that it provides for specific measures for protection and assistance to aboriginal victims, for the detection, investigation and prosecution of offenders, and for the identification of victims of human trafficking among aboriginal women and girls.” The National Inquiry calls for the full implementation of CEDAW’s recommendations. (Calls for Justice 1.2)

5.8 Availability, Accessibility and Effectiveness of Protection Orders

The Inquiry finds that legal instruments designed to provide protection against violence, such as protection orders, “are underutilized and ineffective because of inadequate community resources and enforcement mechanisms” and therefore “do not adequately protect Indigenous women, girls, and 2SLGBTQQIA people.” (Final Report, Vol. 1a, p. 718).

The Inquiry calls on all governments to ensure that protection orders are available, accessible, and promptly issued and that enforcement is effectively resourced. (Calls for Justice 5.9)

5.9 Law Reform

The Inquiry calls for law reforms in four areas, including measures to ensure that criminal laws are responsive to the seriousness and nature of violence against women, girls and 2SLGBTQQIA persons.

First, the Inquiry calls for review and reform of all laws pertaining to sexualized violence and intimate partner violence, “utilizing the perspectives of feminist and Indigenous women, girls, and 2SLGBTQQIA people.” (Calls for Justice 5.3)

Second, the Inquiry calls for a specific amendment to Criminal Code, requiring courts to consider the Indigenous identity and gender of victims of violent crimes as an aggravating circumstance in sentencing. (Calls for Justice 5.18) The Inquiry specifically endorsed Bill S-215 which was passed by the Senate in 2016 but defeated in the House of Commons in April 2019.⁶

Third, the Inquiry calls on the federal government to redefine “murder in the first degree” to include murders where there is prior pattern of “intimate partner violence and abuse.” (Calls for Justice 5.19)

Finally, the Inuit-specific Calls for Justice calls on all governments within Inuit Nunangat “to amend laws, policies, and practices to reflect and recognize Inuit definitions of “family,” “kinship,” and “customs.” (Calls for Justice 16.37)

⁶ Bill S-215, An Act to amend the Criminal Code (sentencing for violent offences against Aboriginal women). <https://parl.ca/DocumentViewer/en/42-1/bill/S-215/third-reading>

Appendix B – Resource List

The National Inquiry on Missing and Murdered Indigenous Women and Girls

Interim Report, Our Women and Girls Are Sacred

<http://www.mmiwg-ffada.ca/wp-content/uploads/2018/04/ni-mmiwg-interim-report-en.pdf>

Final Report, *Reclaiming Power and Place*, in Two Volumes

Volume 1 a

https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf

Volume 1 b

https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1b.pdf

Supplementary Report on Quebec

https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_2_Quebec_Report-1.pdf

Calls for Justice

<https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Calls-Web-Version-EN.docx>

Recommendations of Previous Inquiries and Reports Organized by Theme

<https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/National-Inquiry-Master-List-of-Report-Recommendations-Organized-By-Theme-and-Jurisdiction-2018-EN-FINAL.pdf>

Reports of Previous Inquiries and Investigations cited by the National Inquiry

Aboriginal Justice Inquiry of Manitoba

Final Report, *The Deaths of Helen Betty Osborne and John Joseph Harper*, 1991

<http://www.ajic.mb.ca/volume.html>

Committee on the Elimination of Discrimination Against Women

Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

(CEDAW/C/OP.8/CAN/1), 30 March 2015.

<https://undocs.org/CEDAW/C/OP.8/CAN/1>

Inter-American Commission on Human Rights

Missing and Murdered Indigenous Women in British Columbia, Canada (OEA/Ser.LV/II. Doc.30/14), 21 December 2014.

<https://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>

Office of the Correctional Investigator

Spirit Matters: Aboriginal People and the Corrections and Conditional Release, 2012.

<https://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022-eng.aspx>

British Columbia Missing Women Inquiry

Forsaken: The Report of the Missing Women Commission of Inquiry, 2012.

<http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-Vol-1-web-RGB.pdf>

Royal Commission on Aboriginal Peoples

Report of the Royal Commission on Aboriginal Peoples, 1996.

www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sq/sqmm_e.html

Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform

Final Report, *Legacy of Hope - An Agenda for Change*. 21 June 2004.

<https://www.securitepublique.gc.ca/cnt/rsrscs/lbrr/ctlg/dtIs-en.aspx?d=PS&i=23876180>

Truth and Reconciliation Commission of Canada

Final report in Six Volumes plus *Principles of Reconciliation* and *Calls for Action*, June 2015

<http://nctr.ca/reports.php>

Appendix C
Resources for Dealing with Stress and Anxiety associated with the
COVID-19 Pandemic (and other resources)

Hope for Wellness Helpline

Provides mental health counselling and crisis intervention for Indigenous peoples. Services are available in some Indigenous languages. Live web chat is also available.

1-855-242-3310, www.hopeforwellness.ca

Talk4healing

Culturally-grounded, fully confidential counselling and supports for Indigenous Women available 24/7, with services in 14 languages by calling or texting. Live chat is also available.

1-855-554-4325, www.talk4healing.com

First Nations Specific Resources on COVID-19

Assembly of First Nations

The Assembly of First Nations has a webpage dedicated to COVID 19 that includes a variety of information including tips and considerations around mental wellness.

www.afn.ca

First Peoples Wellness Circle

Provides factsheets and tips for addressing on mental wellness during COVID-19, including specific materials for Elders and a factsheet on domestic violence.

www.fpwc.ca

Métis Specific Resources

Métis Nation

The Métis Nation have links to a wide range of resources on prevention and treatment, including programmes on supporting mental health promoted through the Métis Nation Governing Members.

<https://metisnation.ca/covid19/>

Inuit Specific Resources

Inuit Tapiriit Kanatami

The Inuit Tapiriit Kanatami has various resources posted to their website, including a list of COVID-19 supports for urban Inuit and a tool for children. Their work related to

mental wellness and COVID-19 is guided by the National Inuit Suicide Prevention Strategy and their National Inuit Youth Council.

<https://www.itk.ca/category/covid19/>

General Information on COVID-19 for Indigenous Peoples

COVID-19: Indigenous awareness resources

Links to videos, factsheets and other awareness resources in Indigenous languages, created by the Public Health Agency of Canada, Indigenous Services Canada, and Indigenous peoples.

<https://www.sac-isc.gc.ca/eng/1586548069915/1586548087539>

COVID-19 and Indigenous Women

[Canadian Feminist Alliance for International Action \(FAFIA\) and Dr. Pamela Palmater, Chair in Indigenous Governance at Ryerson University, *Impact of the COVID-19 Pandemic on Indigenous Women and Girls in Canada Response to the call for input by Jose Francisco Cali Tzay, Special Rapporteur on the rights of Indigenous Peoples for his report to the General Assembly on the Impact of COVID-19 on Indigenous Peoples, 19 June 2020.*](#)

<https://pampalmater.com/wp-content/uploads/2020/06/P.-Palmater-FAFIA-Submission-COVID19-Impacts-on-Indigenous-Women-and-Girls-in-Canada-June-19-2020-final.pdf>

[Pam Palmater, “Canada is ignoring the gendered impacts of COVID-19 on Indigenous women,” *Canadian Dimension*, 25 March 2020.](#)

<https://canadiandimension.com/articles/view/canada-ignoring-gendered-impacts-of-covid-19-on-indigenous-women>

We Matter - Videos

We Matter is an Indigenous youth-led and nationally registered organization dedicated to Indigenous youth support, hope and life promotion

<https://wemattercampaign.org/>

A video created by We Matter, Indigenous youth ambassadors addressing mental health, see <https://www.youtube.com/watch?v=GGvgsb71V4Y>