

# Confronting Racism and Over-Incarceration of Indigenous Peoples in Canada

by Pamela Palmater\*

*Editor's note: Dr. Pamela Palmater was the 2016 Margaret Mead Award recipient at the International Community Corrections Associations Annual Research Conference held in Toronto, Ontario, on October 2–5. The Mead award is the association's most prestigious award and recognizes an individual's role in working toward making our society and communities safer and healthier places through contributions such as those embraced by Margaret Mead, who was a noted intellectual, activist, and innovator whose work was important in reform efforts. Dr. Palmater is a worthy recipient of the Mead award and, as her lecture testifies, is both a scholar and an activist for Aboriginal issues. She is currently an associate professor in the Department of Politics and Public Administration at Ryerson University, in Toronto. Her current research relates to Aboriginal governance, and a critical part of this research deals with the ever-changing political structures and connections within and among Aboriginal communities and their relations with the state. What follows is an expanded version of the lecture she presented at the award ceremony.*

## Introduction

Canada is in denial about the growing crisis of racism in our country, and it is killing and incarcerating Indigenous people. Despite Canada's efforts to portray itself as a modern, liberal, democratic country that celebrates multiculturalism and is a champion of human rights, Canada has a dark side. Deep-rooted racism against Indigenous peoples is not only present in certain segments of Canadian society, but federal, provincial, and municipal governments and institutions are literally infected with racism. Canada's brand of racism is not limited to name-calling or matters of political correctness—Canada's racism is targeted, violent, and often lethal to Indigenous peoples. The fact that the crisis of Indigenous

over-incarceration in prisons has been allowed to continue for decades is an example of how Canada has turned a blind eye to the devastating impact of its own racist laws and institutions. How else could incarceration rates for Indigenous peoples be soaring when crime rates have plummeted and the incarceration rates for “white” Canadians have declined? Unless Canadians force their governments to act, the crisis for Indigenous peoples will continue to escalate.

One of the challenges to addressing over-incarceration is racism itself. Not only must police officers, lawyers, prosecutors, judges, and corrections officials admit that

of what happened to Indigenous peoples in the far-off past, which had no direct link to current circumstances. Indigenous issues were primarily relegated to courses on history or culture (art and literature), effectively limiting the lens through which Indigenous issues could be seen. This has served Canadian governments well, allowing them to concentrate on their own political agendas and issues affecting “everyday” Canadians like education, healthcare, and the economy. The few times that Indigenous issues did come up in the media were typically met with calls to “get over” the past. Indigenous and social justice movements have helped

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they hold and act on racist ideas and stereotypes about Indigenous peoples, but they must also be motivated to stop their racist behaviors. What is the motivation to end racist practices if society at large and governments, specifically, are willfully blind to a justice system that denies justice based on indigeneity? Most Canadians can grow up, get an education, work, and live their entire lives without having to think about Indigenous peoples languishing in prisons. The mainstream media helps maintain the stereotype of the dangerous Indian that offers an easy excuse for many to look away from the injustice. Given that all Canadians benefit either directly or indirectly from the colonization of Canada, the historical and current theft of Indigenous lands and resources, and the denial of equality and basic human rights to Indigenous peoples, it is no surprise that the crisis continues.

The “historicization” of Indigenous peoples (and their mistreatment) represents another significant hurdle to addressing the crisis of over-incarceration. For decades, many schools, colleges, and universities—if they taught courses about colonization and its impacts on Indigenous peoples at all—taught from a historical context. In other words, they taught students about only some

educate the public and have effectively challenged the ability of many to be willfully blind to the Indigenous incarceration crisis.

## A Growing Crisis

One of the social movements that gained a great deal of media attention in Canada was the Idle No More movement—a historical movement led by Indigenous women that grew to include thousands of grassroots Indigenous peoples and allied Canadians (The Kino-nda-niimi Collective, 2014). This movement sprang up organically in response to former Prime Minister Stephen Harper's oppressive legislative agenda with regard to Indigenous peoples and the threat both this new legislation and other government laws and policies posed to Indigenous safety and well-being. Ironically, Harper's direct attack on the rights of Indigenous peoples inspired Idle No More to engage in widespread marches, rallies, protests, blockades, and public education events that attracted sustained media coverage (Palmater, 2015). It was, in part, this sustained media attention that changed the public conversation about Indigenous peoples and drew the public's attention to the many overlapping crises,

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including the shocking incarceration rates of Indigenous peoples. What has been a growing crisis for decades has finally reached the public's attention (Campion-Smith, 2013; Therien, 2012). The statistics are dire.

Although Indigenous peoples make up only 4% of the population in Canada, they represent more than 23% of the prisoner population in federal penitentiaries (Office of the Correctional Investigator, 2013). This amounts to an incarceration rate that is 10 times higher than for non-Indigenous peoples in Canada. Far from getting better, the incarceration rate of Indigenous peoples has increased by 56.2% since 2000–2001. This is especially shocking given that the crime rate has decreased in both volume and severity since 2004, representing the lowest rates since 1998 (Boyce, 2015, p. 5; see also

Edmonton Institution for Women in Alberta and the Saskatchewan Penitentiary, 60% of the prisoners are Indigenous women (Office of the Correctional Investigator, 2015, p. 37). Although the Prairie provinces tend to have higher rates, in the Kenora Prison in Ontario more than 90% of the prisoners are Indigenous women (Porter, 2012; Wesley, 2012, p. 1). Indigenous women also represent the fastest growing prison population, and their incarceration rates have increased by nearly 90% in the last decade (Wesley, 2012). The vast majority of these women, more than 91%, have suffered from physical and sexual abuse (Feminist for Alliance for International Action et al., 2017); at least 64% of them are single mothers (Barrett et al., 2010, p. 39); and the majority of their children end up in foster care (Feminist for Alliance for International Action et al., 2017, p. 53). The strong link between foster care and sub-

sequent prison time has been documented and may well explain why incarceration rates for Indigenous youth are also on the rise (Correctional Service Canada, 2001; Kenny, 2011; McCaskill et al., 2011; Winsa & Rankin, 2013).

that two-thirds had been adopted, placed in group homes, or been in foster care at some point in their childhood (Trevethan et al., 2001, p. 1). If they manage to get out of custody, their experiences in and out of foster care are also a pipeline to being exploited, trafficked, and murdered (Palmer, April 12, 2017). A recent report noted that 73% of youth who were homeless before 16 years of age were involved with child protection (Nichols et al., 2017, p. 3). It should be no surprise, then, that Indigenous peoples are over-represented in homelessness (Belanger et al., 2012) and, therefore, have more frequent contact with law enforcement. The sad reality today is that Indigenous youth in Canada have a greater chance of ending up in jail than graduating from high school (Assembly of First Nations, 2012).

### **A History of Denial and Inaction**

Given the increasing rates of Indigenous incarceration, it is shocking that more has not been done by federal, provincial, and territorial governments to stem the growing crisis and take concrete steps to reverse incarceration rates. The problem is that most governments have acted as though there is no crisis. This has not been a partisan issue; federal, provincial, and territorial governments of all backgrounds—Liberal, Conservative and New Democratic Party (NDP)—have all been in power and have all neglected this crisis. Unfortunately, some political parties, such as the Conservatives, have made the crisis much worse (*The Star*, 2013). Former Prime Minister Stephen Harper's Conservative government passed numerous bills during his decade-long tenure, which they would have known would not only increase incarceration rates generally, but Indigenous rates specifically (Doob & Webster, 2015).

The disproportionate impact of Harper's "tough on crime" (Comack et al., 2015) agenda meant that rates of incarceration for Indigenous men, women, and youth all soared under his regime, despite the fact that crime rates were at historic lows (Office of the Correctional Investigator, 2000–2016). The most disproportionate impact was felt by Indigenous women, whose incarceration rates increased by 109%, making them "the fastest growing offender category under federal jurisdiction (Office of the Correctional Investigator, *Federally Sentenced Women*, 2016). What is worse is that the Harper government not only increased incarceration rates of Indigenous peoples when crime was low, it also refused to act or hold an

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Allen, 2016), pp. 3–5); it should be noted that in 2015, there was a slight increase in crime rates for the first time since 2003, primarily due to growth in crime in Alberta. The overall crime rate is still 31% lower than in 2005. However, the federal rates don't paint the whole picture. The incarceration rates of Indigenous peoples in many provincial prisons are far worse. The percentage of Indigenous prisoners in Manitoba's Stony Mountain and Saskatchewan's Penitentiary are more than 65.3% and 63.9%, respectively (Office of the Correctional Investigator, 2013). Given that incarceration rates are increasing for Indigenous peoples, the impact of incarceration on prisoners is particularly concerning. For example, the regions with the highest incarceration rates also have higher rates of prisoner self-harm, assaults, and homicides (Office of the Correctional Investigator, 2013).

Of particular concern are the even higher incarceration rates for Indigenous women, who represent 35.5% of federal prisoners (Office of the Correctional Investigator, 2015) and 41% of prisoners in federal and provincial institutions combined (Office of the Correctional Investigator, 2013). Moreover, in the last year alone, the rate of Indigenous women in federal prisons increased to 39% (Mahoney et al., 2017, p. 39). Manitoba's Stony Mountain Prison has 57% Indigenous prisoners, and in the

sequent prison time has been documented and may well explain why incarceration rates for Indigenous youth are also on the rise (Correctional Service Canada, 2001; Kenny, 2011; McCaskill et al., 2011; Winsa & Rankin, 2013).

Indigenous youth make up a staggering 41% of those entering the justice system (Kirkup, April 26, 2016): 29% Indigenous males and 44% Indigenous females (Statistics Canada, 2016). Moreover, Indigenous youth are more likely than non-Indigenous youth to be admitted to custody and less likely to receive community supervision (Statistics Canada, 2016). A special investigation into the province of Ontario showed that Indigenous male youth are five times more likely to be incarcerated than white males and that Indigenous female youth are incarcerated at 10 times the rate of white female youth (Rankin et al., 2013). In places like Saskatchewan, however, Indigenous youth are 30 times more likely to be incarcerated than non-Indigenous youth (Department of Justice Canada, 2004). This is despite the fact that youth incarceration rates have declined by 33% since 2010 (Malakieh, 2017).

One report documented that nearly 40% of Indigenous youth were involved with child protection agencies at the time of their admission (Malakieh, 2017, p. 11). A study on adult Indigenous prisoners found

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inquiry when violent criminal acts against Indigenous women and girls were increasing, saying about the calls for a national inquiry into the crisis: “It isn’t really high on our radar to be honest” (CBC News, 2014). This pattern of willful blindness and denial from the federal government does not inspire either politicians or Canadians to take action. The most recent example of this pattern is found in the terms of reference for the national inquiry into murdered and missing Indigenous women and girls, which specifically excludes any review of police conduct or individual files (Kirkup, May 3, 2016; see also Palmater, May 15, 2017).

The federal government is not the only level of government to engage in blatant denials about this obvious crisis of racist and abusive policing that leads to both over- and under-policing and over-incarceration of Indigenous peoples. Provincial governments and their police forces alike take turns denying culpability. The chief of Saskatchewan Police refuted the allegations contained in the Human Rights Watch report about abuses to Indigenous women in police custody, stating that these reports only “add to the angst people have” (650 CKOM, 2017). The deputy police chief of the Regina Police Service outright denied the allegations, saying: “It doesn’t happen” (Adam, 2017). The Toronto Police Association president categorically denies systemic racism in the police force, saying: “It’s not true . . . and it’s not acceptable to suggest it” (Ostoff, 2016). Quebec’s police union president suggested that Indigenous women raising concerns of sexual abuse while in police custody were using the police officers as “scapegoats” for their own social problems (CBC News, 2015). The Province of Alberta’s Lethbridge Police Service refused to respond to allegations of racism at all (Labby, 2017). The responses by most police forces are the same despite the statistical and other evidence to the contrary.

Despite the strenuous denials of police chiefs and politicians, many research reports, inquiries, and commissions that have studied the issue of Indigenous peoples and the justice system have found that Indigenous peoples are disproportionately represented in police stops, charges, and arrests and in court convictions and prison sentences—not because they are more criminal, but because they are Indigenous (MacAlister et al., 2010). One of the very first commissions to find systemic racism in the justice system against Indigenous peoples was the 1989 *Royal Commission on the Donald Marshall, Jr., Prosecution* (Hickman, 1989). Donald Marshall, Jr. was a Mi’kmaq man who was

wrongfully convicted and imprisoned, in part because he was Indigenous:

The criminal justice system failed Donald Marshall, Jr. at virtually every turn from his arrest and wrongful conviction for murder in 1971 up to, and even beyond, his acquittal by the Court of Appeal in 1983. The tragedy of the failure is compounded by evidence that this miscarriage of justice could—and should—have been prevented, or at least corrected quickly, if those involved in the system had carried out their duties in a professional and/or competent manner. That they did not is due, in part at least, to the fact that Donald Marshall, Jr. is a Native (Hickman, 1989, p. 1).

that the justice has failed and continues to fail Indigenous peoples (RCAP, 1993, p. 3). Like the Manitoba Inquiry, RCAP also emphasized the testimony of Indigenous women who spoke about their experiences of racism at every level of the justice system from the police to the courts (Royal Commission on Aboriginal Peoples, 1996, p. 434). It is clear from these and many other reports that the over-incarceration of Indigenous peoples stems from deep-seated racism within the justice system that has yet to be addressed.

The ongoing failure of governments to act on this crisis was addressed by the Supreme Court of Canada (SCC) in both the *Gladue* and *Ipeelee* cases. In *R. v. Gladue* (1999) 1 SCR 688, the SCC had to deal with the proper interpretation of section 718.2(e)

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**“The drastic overrepresentation of aboriginal peoples within both the Canadian prison population and the criminal justice system reveals a sad and pressing social problem.”**

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Marshall spent 11 years wrongfully imprisoned for a crime he did not commit, and sadly, he is not the only one (Fontaine, 2016). Despite being only 4% of the population in Canada, Indigenous peoples represent 25% of the caseload for the Association in Defence of the Wrongly Convicted in Toronto, Ontario (Fontaine, 2016).

Shortly after the *Marshall Inquiry*, the 1991 *Task Force on the Criminal Justice System and Its Impact on the Indian and Metis people of Alberta* concluded that the overrepresentation of Indigenous peoples in prison was proof that the Canadian criminal justice system was failing them (Province of Alberta, 1991, p. 1.5). In the same year, the report of the *Aboriginal Justice Inquiry of Manitoba* came to a similar conclusion that “the justice system has failed Manitoba’s Aboriginal people on a massive scale” (Province of Manitoba, 2001, p. 1) It further highlighted the fact that the justice system has specifically failed to protect Indigenous women and children (Province of Manitoba, 2001, chap. 9). The 1992 *Report of the Saskatchewan Indian Justice Review Committee* was “cognizant of the pervasive aspects of racism throughout our social, economic and political systems” and that Indigenous peoples are the ones most often at the receiving end of racism (Province of Saskatchewan, 1992, p. 64) The comprehensive research and testimony gathered during the Royal Commission on Aboriginal Peoples (RCAP) echoed the same concerns

of the Criminal Code (1985), which directs sentencing courts to take into consideration:

(e) [A]ll available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders (718.2(e).

The Court noted that although Canada is a “world leader in putting people in prison” (*R. v. Gladue*, 1999, para. 54) (second only to the United States), experts have found that imprisonment is not effective in rehabilitating prisoners (*R. v. Gladue*, 1999, para. 56). The SCC then drew attention to the fact that: “If overreliance upon incarceration is a problem within the general population, it is of much greater concern in the sentencing of aboriginal Canadians” (*R. v. Gladue*, 1999, para. 58). The Court highlighted that the over-incarceration of Indigenous peoples has been well documented in numerous commissions and inquiries (*R. v. Gladue*, 1999, para. 59). Calling it the “tip of the iceberg insofar as the estrangement of aboriginal people from the Canadian justice system is concerned,” the Court went on to find that widespread racism has turned into systemic discrimination (*R. v. Gladue*, 1999, para. 61):

These findings cry out for recognition of the magnitude and gravity

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of the problem, and for responses to alleviate it. The figures are stark and reflect what may fairly be termed a crisis in the Canadian criminal justice system. The drastic overrepresentation of aboriginal peoples within both the Canadian prison population and the criminal justice system reveals a sad and pressing social problem (*R. v. Gladue*, 1999, para. 64).

Unfortunately, the incarceration rates of Indigenous peoples only worsened after this case. The issue arose again in the context of multiple prisoners in the *R. v. Ipeelee* ((2012) 1 SCR 433) case, where the SCC reconfirmed the principles set out in *Gladue*. The SCC specifically held that while courts may be “hesitant to take judicial notice of the systemic and background factors affecting Aboriginal people,” they absolutely must do so (*R. v. Gladue*, 1999, para. 60).

Yet despite these landmark cases in Canada’s highest courts, the crisis continues to get worse. Canada’s Office of the Correctional Investigator (OCI) has been trying to raise the alarm for nearly two decades, with little substantive remedial action from the federal government. Report after report calls on the federal government to address this “continuing crisis and embarrassment” (Office of the Correctional Investigator, 2003, p. 17) which is about not only over-incarceration, but also the unequal treatment of Indigenous peoples once in custody—a reality that “remains unchanged, unacceptable and discriminatory” (Office of the Correctional Investigator, 2000, p. 31). Like the SCC, the Correctional Investigator has described the systemic discrimination against Indigenous peoples as an “alarming” (Office of the Correctional Investigator, 2000, p. 9) and “grave” situation that results in the denial of their statutory and constitutional rights (Office of the Correctional Investigator, 2005, p. 17). Dispelling any myths about this being the fault of Indigenous peoples, the Correctional Investigator also called attention to the “inequitable and differential outcomes for Aboriginal offenders resulting from federal correctional policies and practices” (Office of the Correctional Investigator, Annual Report 2009–2010, p. 43). Unfortunately, many of his recommendations have not been implemented (Office of the Correctional Investigator, Annual Report 2008–2009, p. 29) nor have his calls for an independent review of this crisis been answered (Office of the Correctional Investigator, 2004, p. 15). It should be no surprise that this lack of action by the government

has resulted in increased incarceration and “deteriorating” conditions for Indigenous prisoners (Office of the Correctional Investigator, Annual Report 2008–2009, p. 29).

### An Issue of Life and Death

This growing crisis of over-incarceration is a serious breach of the basic human rights, liberties, and freedoms of Indigenous peoples, as well as a complete abdication of the federal and provincial government’s constitutional duties and obligations to Indigenous peoples. The Canadian Charter of Rights and Freedoms (1982) grants everyone in Canada the right “to life, liberty and security of the person” (s.7); the right “not to be arbitrarily detained or imprisoned” (s.9); the right “not to be subjected to cruel and unusual treatment or punishment” (s.12); and to be treated “equal before and under the law” free from “discrimination based on race” (s.15). These are constitutionally protected rights and freedoms that, at least in theory, trump all other Canadian laws and should act as guide posts for all government actions (I specifically note “Canadian laws” as being subjected to the *Charter*, because Indigenous laws pre-date Canadian laws and could arguably supersede Canadian laws in some instances). Federal and provincial governments also have a legal fiduciary obligation to act in the best interests of Indigenous peoples, which stems in part from constitutionally protected inherent, Aboriginal, and treaty rights (Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 at s.35(1), which provides: “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”). It is clear from the grim statistics that Canadian governments have breached and continue to breach their legal obligations to Indigenous peoples with impunity, despite the SCC’s calls for urgent change.

Although much of the research has focused on incarceration rates, it is important to note that once in prison, some Indigenous prisoners are also being subjected to extended periods of solitary confinement (also referred to by some countries as “administrative segregation”)—something the United Nations (UN) Special Rapporteur on Torture considers to be cruel, inhuman, or degrading treatment (United Nations General Assembly, 2011, p. 9; personal communication with Canadian Association of Elizabeth Fry Societies (August 12, 2017). It should be noted however, that women are often isolated in small units of 1 to 5 (or 6 to 10 if they are double-bunked). The term “segregation” does not cover this unique reality for women prisoners. Every maximum security unit

for federally sentenced women is, as per the Corrections and Conditional Release Act, 1992 S.C. c.20, a segregated unit. Yet these states of isolation are not covered by current litigation. Periods of extended solitary confinement have severe impacts on both physical and mental health and can lead to self-harm and suicide (United Nations General Assembly, 2011, p. 18). It is for this reason that the UN Special Rapporteur considers solitary confinement beyond 15 days to be a form of torture (United Nations General Assembly, 2011, p. 21). This context is important when reviewing the case of Guy Langlois, an Indigenous man who committed suicide after spending 118 days in solitary confinement (Crawford, 2017). Adam Capay, a young Indigenous man from Lac Seul First Nation, was kept in solitary confinement for four years awaiting trial (Porter, 2016). These cases are not the exception. Despite extended solitary confinement being recognized as a form of torture, the Correctional Investigator found that Indigenous prisoners have the longest average stay in segregation of any group (Office of the Correctional Investigator, 2015, p. 27). Indigenous men make up one-third of solitary confinement placements (Office of the Correctional Investigator, 2015, p. 27) and Indigenous women make up a shocking 50% (Office of the Correctional Investigator, Annual Report 2015–2016, p. 62).

Those prisoners not being tortured in solitary confinement run the risk of dying in prison even if they are “legally innocent.” A recent review of deaths in Canada’s provincial jails over the last five years shows that two-thirds of the 270 who died were legally innocent, that is, they were awaiting trial and had not been convicted (Paperny, 2017). A previous study related to deaths in federal prison over a five-year period (2001–2005) found that 22% of the deaths were of Indigenous people (Gabor, 2007, p. 3). Despite previous recommendations to remedy the numbers of death in prison, this study found no evidence that Correctional Services Canada “had improved its overall capacity to prevent or respond to deaths in custody” (Gabor, 2007, p. 6). This is of great concern to Indigenous peoples who are grossly over-represented in both federal and provincial prisons and who stand the greatest statistical risk of being tortured (solitary confinement) or dying in prison. Systemic racism has proven to be lethal for Indigenous peoples on these multiple, overlapping levels.

Indigenous peoples end up in prison at such high rates in part because of racist

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policing practices that mean Indigenous peoples are arrested at higher rates, which traps them inside a racist justice system that is more likely to convict them and keep them in prison longer. Key to this vicious circle are racist policing practices by which Indigenous peoples are both under-policed and over-policed—a combination that has proven to be lethal (Ireland, 2016; Jones et al. 2014; Lithopoulos & Ruddell, 2013; Province of Manitoba, 2001, see chap. 16). Police forces in Canada are failing to protect Indigenous peoples from harm and to properly investigate crimes against Indigenous peoples, and are disproportionately targeting them for arrests. The crisis of murdered and missing Indigenous women and girls is a prime example of under-policing and over-policing. One of the primary concerns of the families of murdered and missing Indigenous women and girls is the lack of police follow-up on missing persons reports, violence against Indigenous women and girls, and proper murder investigations (Indigenous and Northern Affairs Canada, 2016). At the same time, police forces are targeting Indigenous women and girls for sexual exploitation and abuse and threatening arrests if they complain about police-involved rapes or assaults (Palmater, 2016). Systemic discrimination against Indigenous peoples is one of the causes of under-policing (Commissioner Wally Oppal, 2012, pp. 43–107).

The reverse is also true, in that over-policing of Indigenous peoples has resulted in Indigenous deaths in police custody or in prison (Gabor, 2007; MacAlister et al., 2010, p. 3; Razack, 2015). Although police forces make it difficult if not impossible to access race data on deaths in police custody or police shootings and assaults (Ling, 2015), the information that is available shows that at least in some areas of Canada, Indigenous peoples are six times more likely to be killed or injured by police than “white” Canadians (Wortley, n.d., p. 37). The *Ipperwash Inquiry*, which investigated the police shooting and killing of an unarmed Indigenous man, Dudley George, directly confronted the myth of racist policing being simply an issue of a few bad apples and found racism to be “widespread” throughout the police force (Linden, 2007, p. 272). The research has shown that the “biggest predictor of police force size in Canadian cities is the number of visible minorities and marginalized populations, not crime” (Noel, 2015; Noel cites studies by Neil and Carmichael [2015] and Carmichael and Kent [2015]). Racism then forms part of the very foundation of how Canadians are policed.

## Moving Forward

The over-incarceration of Indigenous peoples in Canada should be considered a national crisis and should be treated as such by all levels of government. Indigenous families are being ripped apart by the increasing incarceration rates for Indigenous men, women and youth. With rates at nearly 100% for some institutions, it is hard to conceive how much worse Indigenous women’s incarceration could possible get and the corresponding devastating impact this will have on their children. How can we inspire hope for the future and reduce youth suicide rates if Indigenous youth incarceration rates continue to outpace education attainment levels? The institutionalization of Indigenous peoples throughout history has taken different forms over time, but it

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nevertheless remains one of the primary ways to remove Indigenous peoples from their families, communities, and lands—a way to “get rid of the Indian problem” (First Nations Child and Family Caring Society of Canada, 2016, p. 3). The recent comparison of Canada’s prison system to the residential schools of the past is an apt analogy (MacDonald, 2016).

The question is, where do we go from here? Canada is a state that was created out of the brutal and prolonged genocide of Indigenous peoples, the theft of Indigenous lands and resources, and the ongoing denial of their core human rights (Palmater, 2014). Canada’s constitutional, legal, and governing system was created on a foundation of racism that not only targeted Indigenous peoples for certain punitive and control measures, but also created legal, economic, and social barriers to Indigenous self-sufficiency, nation building and well-being (Palmater, *Death by poverty*, 2017). Despite more recent changes in the constitution to protect Indigenous rights, court cases that have upheld Indigenous rights, and a new federal government that claims it respects the rights of Indigenous peoples, fundamental change has not occurred. Many Indigenous peoples continue to have higher suicide rates and suffer from poor health and live shorter lives; lack access to clean water, housing, healthcare, and education; and are over-represented in foster care, among the murdered and missing, and in prisons.

Numerous studies, commissions, inquiries, and reports have long established that there is a crisis and have provided hundreds of recommendations for change. The recommendations range from general calls for action to very specific changes to the laws and systems reinforcing racism against Indigenous peoples. The Report of the Truth and Reconciliation Commission (TRC), which looked at the intergenerational legacy of abuses suffered by Indigenous peoples in residential schools had recommendations specific to the issue of over-representation in prison:

30. We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed

annual reports that monitor and evaluate progress in doing so.

31. We call upon the federal, provincial, and territorial governments to provide 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.

32. We call upon 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. (Truth and Reconciliation Commission of Canada, 2015)

The *Marshall Inquiry* recommended that the Province of Nova Scotia establish a race relations policy and Cabinet committee with a view to eliminating equalities based on race and reducing racial tensions, as well as specific police training and correctional programs aimed at reducing racist behaviors by officials toward Indigenous peoples (Hickman, 1982, p. 26). The *Aboriginal Justice Inquiry of Manitoba* made additional recommendations calling for the establishment of Indigenous justice systems, alternatives to prison sentences, training and discipline for those in corrections who abuse Indigenous

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prisoners, and training and discipline for police with racist attitudes (Province of Manitoba, 2001, Appendix I). The SCC in *Gladue* and *Ipeelee* made urgent calls for alternatives to sentencing for Indigenous peoples, taking into account the intergenerational trauma caused by Canadian laws and policies. The Correctional Investigator has made numerous and specific recommendations to change how those in corrections treat Indigenous peoples, with a view to ending racism and providing cultural supports within prisons (Office of the Correctional Investigator, 2011, p. 47).

Similarly, non-government organizations such as the Canadian Association of Elizabeth Fry Societies (CAEFS), which advocates on behalf of women and girls in the justice system, and the Native Women's

Action, then he needs to declare the issue an emergency (Trudeau, 2015). He needs to assemble a special Cabinet committee including the ministers for justice, Indigenous affairs, health, status of women, families and children, and public safety and emergency preparedness, to work with provincial and territorial representatives, Indigenous representatives and experts, human rights and justice experts, and specific organizations that work with and advocate for those in prison to develop an emergency plan to address the crisis. At the same time, there must be a commitment for significant funding from federal, provincial, and territorial governments to address both the root causes of over-incarceration (such as poverty, education, and mental health) as well as the lack of programs, services, and supports necessary inside prisons and post-release.

an end to the over-incarceration of Indigenous peoples for good. In protecting the human rights of Indigenous peoples, Canadians and other countries guarantee that their own rights will also be protected. Protecting Indigenous peoples from over-incarceration protects our future from unfettered destruction, because Indigenous peoples have always given their lives to protect the health and safety of the people, plants, animals, and waters within our shared lands. Canada will never be a just society until racism against Indigenous peoples is finally addressed.

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## If the current prime minister of Canada truly means what he says about no relationship being more important to him than the one with Indigenous peoples, and if he truly intends to implement the TRC's Calls to Action, then he needs to declare the issue an emergency.

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Association of Canada (NWAC) have also made specific recommendations meant to end discriminatory treatment against Indigenous women and girls in the justice system. They call on governments to decarcerate Indigenous women, reintegrate them back into their communities, and compensate Indigenous women who were denied their rights in prisons (McIvor & Johnson, 2003). The CAEFS continues to advocate for Correctional Service Canada to bring its policies in line with existing legislation, specifically sections 81 and 84 of the Corrections and Conditional Release Act, 1992. These sections provide mechanisms for Indigenous men and women to be jailed (s.81) and paroled (s.84) into Indigenous communities (urban, rural, or reserve), but CSC policy significantly limits the application of these provisions (Akhtar, 2017). There is no shortage of research or recommendations to support addressing this crisis. The problem has always been a lack of political will to address both overt and systemic racism against Indigenous peoples.

If the current prime minister of Canada truly means what he says about no relationship being more important to him than the one with Indigenous peoples, and if he truly intends to implement the TRC's Calls to

It is well beyond the scope of this article to lay out the entire framework of such a plan or to highlight all the recommendations that need urgent action. The majority of the research-supported solutions already exist. There needs to be a national commitment from all parties involved to address this crisis urgently before more precious lives are wasted or lost in prison before they even have a chance to get started. Every Canadian benefits from the historical dispossession of Indigenous peoples and the current legal, economic, and political system that serves to further isolate and oppress Indigenous peoples. Yet, most Canadians are far removed from the consequences of systemic racism against Indigenous peoples in that the Indigenous men, women, and children trapped in prisons are out of sight and out of mind. Where governments have failed to take action, it is incumbent upon Canadians, individuals within the corrections system, and the international community to advocate strenuously for social justice and to protect the core human rights so many get to take for granted.

The international corrections community can help raise awareness, bring about institutional changes, and help put pressure on Canada to confront its own racism and put

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