



# IMAGINATIONS

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A COLLECTION OF ESSAYS

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# ImagiNATIONS

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Canadian Studies Program  
University College  
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Has there ever been a year where Canadian Studies has been more important? We all know 2020-2021 has been a year unlike any other. This sixth issue of ImagiNATIONS is a testament to the extraordinary dedication, energy, and critical acumen of all who have contributed to this collection: writers and editors who would not be here without our editor, Dellannia Segreti. Thank you, Dellannia, for guiding this collection with skill, insight, and unflagging professionalism. Thank you to our student editors who reviewed essay submissions, Jessica Attalla and Hannah Koschanow, and thank you to the many students who submitted their outstanding essays during an exceptionally busy and demanding year.

Reviewing the full collection of essays published here, I see students who have risen to the challenges of lockdown, continuing their research inquiries with focus and a deep commitment to social change in a year in which long-standing inequities have been amplified. Here you will read essays examining social justice issues in health care, sex work, policing, the Arctic, our carceral systems, and resource sectors. Essays also re-examine critical moments in our past and with our politicians. Others foreground significant contributions and complications of our understanding of Canadian experience and identity focusing on (separately) Japanese Canadian writer Joy Kogawa, Indigenous hockey player Fred Saskamoose, Black Canadian filmmakers Kourtney Jackson and Carrie Mae Weems, and the complexity of Asian Canadian identities as represented in the television series *Kim's Convenience*.

Let us all celebrate the work that has been done, which you can now read here, and let us celebrate the future work of our many students who I know I will be hearing of as change makers in the years ahead.

Siobhan O'Flynn  
Director, Canadian Studies Program

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## EDITOR'S FORWARD

Dear Reader,

It was such an honour to be this year's editor-in-chief for ImagiNATIONS, Canadian Studies Undergraduate Journal. I want to take this opportunity to thank everyone who helped to make this journal possible: Siobhan O'Flynn, Program Director, for guiding me and providing me with this opportunity, and Jessica Attalla and Hannah Koschanow for your hard work and diligence in editing the papers and ensuring that they are print ready.

The 2020-2021 academic term was unprecedented and looked very different for everyone at the University of Toronto. Moving to virtual learning was not an easy switch, however, with great resilience we are all able to conclude this academic term with nothing but strength and confidence that we can take on anything that the future brings us. In putting this journal together during the COVID-19 global pandemic, there were some hiccups along the way, but I want to thank every one of the undergraduate students who submitted their wonderful academic papers, which bring new perspectives to Canadian issues. Without them, this journal would not have become a reality.

A grand thank you goes out to all who contributed to this year's volume.

Happy reading!

Dellannia  
Editor-in-Chief

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# *Comparing Maternal Health Inequities Amongst Black and Indigenous Women in Canada*

## **Nasma Ashraf**

*\*CW: discussion of colonization, medical anti-Black and Indigenous racism and medical violence\**

*This paper would also like to acknowledge that there is a severe lack of race-based data collected within Canada's healthcare system, which has resulted in incomplete and inconsistent information pertaining to health inequities within the childbirth sector. This lack of adequate information is instrumental to the denial of and silence concerning anti-Black and Indigenous violence and racism within Canada's healthcare system. This neglect acts as a form of refusal to recognize the impacts of anti-Black and Indigenous racism in healthcare delivery. Thus, this essay includes information within the context of the United States, where more race-based data have been collected and similar results for Canadian counterparts can be mirrored.*

Presently and historically, Black and Indigenous women have been primary victims of systemic discrimination within the neonatal and postnatal sector of Canada, which continually places Black and Indigenous women's lives in danger, along with those of their infants.<sup>1</sup> Even though slavery was abolished in Canada in 1834, and the act of Truth and Reconciliation has begun for Indigenous peoples, the cemented dehumanizing ideas about Black and Indigenous individuals are still alive and thriving, consequently taking different forms in Canadian systems and institutions. Within the pre- and post-natal sectors of hospitals, Black women have significantly higher rates of miscarriage and mortality than their white counterparts, even after controlling for variables such as socioeconomic status, employment, and age.<sup>2</sup> Additionally, Indigenous infants born in Quebec are four times more likely to die before they turn one year old compared to non-Indigenous infants.<sup>3</sup> Maternal morbidity amongst Black and Indigenous women in North America is still increasing at a steady rate.<sup>4</sup> Thus, this essay will be a comparative analysis between the experiences of Black and Indigenous women, investigating three areas: the response to pain experienced by Black and Indigenous women, the availability, or lack thereof, of culturally specific support and services for Black and Indigenous women during childbirth, and the inadequate assistance provided to Black and Indigenous women postpartum.

### **Response to Pain Experienced by Indigenous and Black Women**

One area that illustrates the experience of inequitable childbirth assistance for Black women and Indigenous women is how their pain is responded to during childbirth, which stems from racist and discriminatory prejudices and stereotypes. A study conducted by the Ontario Health Coalition illustrated that the amount of pain medication that patients receive at hospitals in Ontario is directly correlated with their skin tone.<sup>5</sup> Dr. Naveen Arya, a gastroenterologist in Canada, also conducted a meta-analysis that showed that Black patients were 22 percent less

likely than their white counterparts to receive medication or treatment for their pain.<sup>6</sup> This lack of regard for Black women's pain during childbirth is rooted in the historical dehumanization of Black women and their bodies. During the 1800s in North America, the use of enslaved individuals for human experiments without informed consent or safety precautions was normalized.<sup>7</sup> Many Black individuals were subjected to the brutal pain and torture of medical experimentation that involved inflicting wounds on these individuals or exposing them to harmful bacteria and diseases.<sup>8</sup> The justification behind using Black individuals for experiments was that they were seen as incapable of feeling pain in the same way that white individuals do.<sup>9</sup> Black women were perceived as being insensitive to pain, a dehumanizing assumption given that pain is a biological response that is common to all humans.<sup>10</sup> This led to Black women being used as human subjects in medical experiments without their consent or provision of analgesic medications, such as painkillers or anesthesia.<sup>11</sup>

On a similar note, Indigenous women also have a history of being forced to be human subjects for medical experiments. This forced experimentation took place in "Indian hospitals," which were racially segregated hospitals, sanatoriums, and residential schools that were implemented by the Canadian federal government in the 20<sup>th</sup> century to treat Indigenous individuals.<sup>12</sup> Inside these hospitals, vaccine trials and surgeries were administered on Indigenous patients and mothers without their consent, to develop treatments for diseases such as tuberculosis. Reasons for this unethical experimentation was the widespread idea that Indigenous individuals were racially inferior to European settlers.<sup>13</sup> This non-consensual testing, which arose from assumptions of racial inferiority, mirrors what Black individuals faced in healthcare settings. However, it is important to recognize that Black individuals were experimented on, not just due to the idea of racial inferiority, but also because of the misconception that Black individuals have thicker skin and fewer nerve endings than white individuals.<sup>14</sup>

This history of Indigenous and Black individuals having their pain dismissed has translated to low levels of pain medication being used to treat pain experienced during childbirth. While giving birth and being in labour, women across all races and ethnicities experience pain, to some degree, due to contractions.<sup>15</sup> Though the pain experienced by women falls along a spectrum, there is no research that proves any statistically significant relationship between specific races and the pain they experience. However, recent studies have discovered that Black individuals were 40 percent less likely to be prescribed drugs for pain, and 34 percent less likely to be prescribed opioids.<sup>16</sup> The lack of pain treatment of Black individuals can be attributed to harmful racist ideologies, such as Black individuals being perceived as drug seekers, which has repercussions for the health of Black mothers and their babies.<sup>17</sup> In consequence, within the provinces of Quebec and Ontario, African-born women had a statistically significantly higher rate of preterm birth compared to Canadian-born women.<sup>18</sup>

Studies regarding whether pain medication was received by Indigenous mothers indicate similar findings. Indigenous women often receive inadequate drug treatment for pain due to widely held stereotypes of Indigenous individuals being drug addicts.<sup>19</sup> This long-standing stereotype was elicited as a response to the substance abuse issue amongst Indigenous communities as a way for settlers to justify their colonialist agenda and further marginalize and stigmatize Indigenous communities. An example of this stereotype playing out was presented in an interview conducted by Leason on experiences of Indigenous women in Canada's childbirth

service sector.<sup>20</sup> During the interview, an Indigenous woman, Lisa, recalled her experience of seeking medical help for immense pain experienced after her baby was born. Lisa stated: “I asked her for a prescription for Tylenol, calcium, vitamin E, Polysporin, and Band-Aids... She asked why and when I explained I was First Nations and that it was covered, she said, “I’m tired of you people abusing Tylenol, you ... Abinational...” I was so humiliated and embarrassed that I’ll probably never go back again.”<sup>21</sup>

According to research conducted by Nelson and their colleagues, a prominent reason why there is an undertreatment of pain for Indigenous individuals is because nurses assume that, by giving Indigenous individuals high dosages of drugs such as opioids, they will become addicted to the drugs.<sup>22</sup> However, this assumption has been proven to be incorrect by various research studies because addiction as a result of pain medication is highly uncommon and not an influential contributor to this issue within Indigenous communities.<sup>23</sup> The issue of overdose rather stems from the racism, discrimination, exclusion, lack of support, colonization, and intergenerational trauma that Indigenous individuals have lived through.<sup>24</sup> Racial bias in pain assessment is dangerous. Research by McKinnon and her colleagues has illustrated an association between racial bias, and underdiagnosis and undertreatment of pregnancy-related illnesses, which has caused preventable pregnancy complications and avoidable fatalities.<sup>25</sup>

### **The Availability of Culturally Specific Support and Services for Black and Indigenous Women During Childbirth**

This dismissal of cultural and social awareness is ongoing and detrimental to the lives of Black and Indigenous mothers and children. The lack of knowledge and implementation of culturally specific support for these Black women during pregnancy is reflected in evidence from a data survey of national pregnancy-related mortality, which stated that Black women are three to four times more likely to die from childbirth and have pregnancy complications than white women.<sup>26</sup> Similarly, according to a study conducted by Luo and their colleagues on childbirth inequities amongst Indigenous families, results found that Inuit infants born in Quebec are four times more likely to die before they turn one year old.<sup>27</sup> Studies also show that preterm births are more prevalent amongst Indigenous mothers in comparison to non-Indigenous mothers.<sup>28</sup> Despite the health inequalities identified amongst the scarce Canadian race-based data, there continues to be a lack of effort by Canadian hospitals to train staff in anti-oppression, anti-racism, and culturally sensitive practices.<sup>29</sup> This training is needed to close the large inequity gaps in prenatal and postnatal health outcomes and ensure that Black and Indigenous mothers feel supported during childbirth.<sup>30</sup>

In a study conducted on the main contributors to health disparities between Black and white individuals regarding maternal health, a large contributor to infant and maternal morbidity amongst Black women was social circumstances.<sup>31</sup> More specifically, Black mothers are exposed to social stressors, which are related to their exposure to discrimination.<sup>32</sup> According to Taylor (2019), Black mothers are often disrespected by healthcare workers, which results in patients mistrusting their doctors and nurses. These feelings of distrust can cause Black mothers to fear for their lives, in addition to the usual stresses related to pregnancy and childbirth.<sup>33</sup> This experience aligns well with Indigenous mothers who have experienced the implications of intergenerational trauma and colonization. Indigenous mothers who give birth in publicly funded hospitals in Canada do not have trust for their healthcare providers.<sup>34</sup> When assisting Indigenous



mothers and their children, it is vital to account for the systemic disadvantages and issues faced by Indigenous communities and mothers, which is a result of colonization and consequently impacts their offspring.<sup>35</sup> Examples of common issues faced by Indigenous women, which need to be acknowledged and addressed in the pre- and post-natal ward, would be pre-existing health conditions, the young age of mothers, food choices, access to adequate nutrition, maternal smoking rates, and overcrowded environments.<sup>36</sup> Understanding the social and environmental issues that Indigenous mothers face as a result of discrimination and structural barriers, instead of individual failure, would allow for hospitals to have a more equitable approach to assisting Indigenous women with childbirth and meeting their specific needs given their unique circumstances.

It is also vital to understand that this lack of culturally sensitive care for Indigenous mothers can stem from the history of “Indian hospitals,” which were implemented by the Canadian federal government in the 20<sup>th</sup> century to treat Indigenous individuals.<sup>37</sup> These Indian hospitals treated Indigenous patients without the use of their traditional and cultural healing methods, such as Indigenous medicines, midwives, or holistic healing methods, which were seen as backwards and ineffective by the European settlers.<sup>38</sup> The main purpose of these hospitals was to replace Indigenous healthcare methods with the biomedical notions of healthcare that were introduced by the settlers. In these hospitals, many Indigenous patients were subjected to invasive and uninformed treatments for minor issues due to the stereotype that Indigenous individuals were unable to responsibly treat themselves.<sup>39</sup> Thus, when Canadian hospitals treat Indigenous mothers and infants, Indigenous rituals and beliefs should be incorporated into the birthing process, which would allow for these mothers to be comfortable when giving birth, as well as experience a reduction in spiritual pain when giving birth in accordance with foreign Western beliefs, policies, and agendas.<sup>40</sup>

Providing equitable healthcare for Black and Indigenous mothers could also be more effective if there was appropriate representation of Black and Indigenous physicians in the childbirth sector, who would likely have a better understanding of the social, cultural, and biological circumstances of Black and Indigenous individuals.<sup>41</sup> The severe underrepresentation of Black and Indigenous physicians across Ontario, paired with a general lack of understanding, expertise, and training in Black and Indigenous population health, has resulted in a lack of safe and culturally sensitive healthcare delivery for Black and Indigenous individuals.<sup>42</sup> This lack of culturally sensitive care is costing the lives of many Black and Indigenous mothers and infants as racial bias and prejudice begin to fill in gaps in experience and knowledge, causing vital decisions about care for Black and Indigenous individuals to be made with clinical uncertainty.<sup>43</sup> These harmful decisions not only result in unfavorable health outcomes for Black and Indigenous women, but also serve as a source of preventable stress and anxiety.<sup>44</sup>

### **Inadequate assistance provided to Black and Indigenous women postpartum**

In addition to Black and Indigenous women being at a higher risk of exposure to pregnancy-related illnesses, infant mortality, maternal mortality, and childbirth complications, Black and Indigenous women also face insufficient care after they give birth.<sup>45</sup> This inadequate care contributes to an increased risk of developing postpartum depression (PPD) in this population.<sup>46</sup> According to a study conducted at the Icahn School of Medicine in New York,

African American women were more than twice as likely to develop PPD than their white counterparts.<sup>47</sup> Researchers from this study also predicted that the numbers of Black women who face PPD are likely substantially higher than reported by about 50 percent. Sandoiu attributes this gap to a reluctance on the part of Black women to report symptoms due to the fear of the legal repercussions they might face.

Black women are also more likely to have their children taken away from them by public enforcement officers, a pervasive fear that may prevent Black women who are going through PPD from getting help and seeking support.<sup>48</sup> Black individuals make up about four percent of Toronto's population, yet comprise 41 percent of children involved with the Toronto Children's Aid Society.<sup>49</sup> In a study conducted on the causes of the disproportionate representation of Black individuals within child welfare systems, research revealed that when child welfare agencies receive a report to investigate a situation, Black families are investigated twice as thoroughly and frequently as white families are.<sup>50</sup> This results in a larger number of Black children being taken away from their families and placed into the child welfare system.<sup>51</sup> The cause for this targeting of Black families is due to systemic racism, which is based on the prejudice that Black families are less capable of raising children and that Black mothers are unfit and unable to fulfill the needs of their children.<sup>52</sup>

Indigenous women, in a qualitative analysis conducted by Leason, also indicated a fear of seeking postpartum healthcare support and primary care due to fearing that their motherhood skills would be undermined, which would result in their children being taken away from them. Many participants felt as though they were being surveilled and policed by healthcare providers.<sup>53</sup> In Leason's interviews, an Indigenous mother stated: "That's a huge fear for me! When I think about it now, it still scares me inside, because it happens all the time. It happens all the time still ... kids are taken away. I guess it [dealing with things on her own] is just easier that way. I do feel so alone sometimes."<sup>54</sup> This fear of policing on behalf of healthcare providers is detrimental to mothers who struggle with postpartum depression, as it acts as an additional barrier to seeking help.<sup>55</sup> Similar to the high rates of PPD amongst Black women, Leason stated that about 30 percent of participants in her study identified having symptoms of PPD. However, exact numbers were likely higher, as Leason acknowledged that many Indigenous women were not familiar with what PPD was and what it entailed. One of Leason's interviewees stated: "I don't think I really know [if I had PPD] because I just dealt with it on my own and never really reached out to anyone to talk about it. Who knows ... maybe I was?"<sup>56</sup> This lack of understanding of PPD can contribute to inadequate support received by Indigenous women after giving birth, which can have emotional impacts on their children in the long term, further perpetuating intergenerational trauma.<sup>57</sup>

Additionally, Canada sustains a problematic practice named "birth alert", which entails that nurses may notify social workers if they suspect that the infants being born might need extra care, support, and protection.<sup>58</sup> Given that birth alerts are issued on the nurse's assumption of a mother's ability to raise her child, these alerts are steeped in structural racism. Consequently, Black and Indigenous individuals are disproportionately affected and can have their babies instantly taken away from them after giving birth, with scarce evidence as to why this occurred. Birth alerts seek to further marginalize families that face issues of low income, discrimination, substance abuse, and mental health.<sup>59</sup> These birth alerts are based on common stereotypes of

Black and Indigenous mothers as being less responsible, drug seekers, and incapable of loving their children.<sup>60</sup>

In conclusion, this paper has expanded on the various ways in which Canadian childbirth services and providers reinforce anti-Black and anti-Indigenous racism through the lack of culturally specific support and services for Black and Indigenous women during childbirth, the lack of acknowledgement of Black and Indigenous mothers' pain, and the inadequate assistance provided to Black and Indigenous women after giving birth. This paper has illustrated the implications of these inadequacies, which have resulted in a heightened risk of Black and Indigenous mothers developing avoidable pregnancy-related illnesses and have caused avoidable infant and maternal mortality. For many years, Canada has refused to acknowledge the damaging anti-Black and colonial prejudices and discrimination that persist within the healthcare field, which results in Black and Indigenous women fighting for their lives. Consequently, Black and Indigenous women and infants are forced to live with a lower quality of life and have fewer opportunities than their counterparts socially, culturally, and physically.

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- <sup>55</sup> Ibid.
- <sup>56</sup> Ibid., 13.
- <sup>57</sup> Ibid.

<sup>58</sup> Howells, Laura. “Ontario to END practice of birth alerts that's led to babies being seized from new mothers.” *CBC News*, 2020. Retrieved April 12, 2021, from <https://www.cbc.ca/news/canada/toronto/ontario-ends-birth-alerts-1.5648940>

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<sup>60</sup> Ibid.

# *Prison Industrial Complex and Revisioning Justice*

## **Tiara Beaton**

The Prison Industrial complex is an institutionally racialized issue that has historically dehumanized Black and Indigenous peoples and continues to oppress Black and Indigenous peoples. To begin, in order to understand the scope of the essay, I will briefly define the Prison Industrial Complex (PIC) and provide a historical background that stems from years of slavery, commodification, imperialism, and racism. Second, I will discuss why the PIC is a racial issue that continues to persist today, which demonstrates the institutionally entrenched discrimination. Last, I will explore some future steps that can be taken to combat the racialized prison system, including the shift towards Restorative Justice and what abolition really means. In conclusion, the PIC is a racialized system that works to oppress and commodify Black and Indigenous peoples. However, there are several future steps that can be taken to rebuild this corrupt system and dismantle this institution.

To begin, I will define the term “Prison Industrial Complex” and I will provide a detailed historical background of the PIC’s roots dating back to slavery. The PIC is the exertion of social, political and economic control in order to produce mass cheap labour over those who are considered “undesirable” in society. Governments use incarceration to commodify “undesirable” citizens to benefit private corporations through mass production.<sup>1</sup> In Canada, marginalised groups such as Black and Indigenous peoples make up the majority of the prison population. The PIC operates to maintain the authority of people who obtain power through racial, economic, and other privileges.<sup>2</sup> By perpetuating negative and criminal stereotypes of marginalised groups, the PIC “produces and reproduces its control.”<sup>3</sup> The PIC has regulated and oppressed minorities for decades dating back hundreds of years during the time of slavery in North America. After the passing of the Fugitive Slave Act in 1793, over 30,000 slaves came to Canada through the Underground Railroad until the end of the American Civil war in 1865 and settled in Southern Ontario, Quebec, and Nova Scotia.<sup>4</sup> Many African American slaves who were brought to Nova Scotia in the mid 1700s were slaves of English and American settlers and many were sold at auctions in Halifax.<sup>5</sup> There were also a few free former slaves in Nova Scotia who were skilled labourers, however, there was still a strong belief held by the Euro-settlers and Nova Scotians that these free Black individuals deserved to remain slaves of the white slave owners.<sup>6</sup> Black people were commodified, objectified, violated, watched, and controlled by the white settlers. The early police forces established by the Canadian government were designed as a watch system to protect and oversee the population, however, they acted as a patrol to enslaved people.<sup>7</sup> This system of surveillance and patrol was used by the North American government to violently enforce prohibitions on enslaved people who held meetings or secretly learned to read and write. From these “informal patrol” systems emerged the urban police who managed the mobile urban enslaved population even after slavery was abolished.<sup>8</sup>

In 1834, slavery was officially abolished in Canada, however, an era of segregation and discrimination towards Black people followed.<sup>9</sup> Even after slavery ended, police officers maintained and perpetuated racial inequality through over-policing in urban areas, incarceration, and prosecution on weak evidence.<sup>10</sup> The Confederation of Canada in 1867 established police



patrols and penitentiaries to extend Canadian law and assert colonial rule over minorities.<sup>11</sup> Canada's Euro-settlers forced imperialism onto Indigenous and Black peoples and extended their own social, economic, and racial power through violence, genocide, and slavery in order to patrol, control, and exterminate Indigenous and Black peoples. This resulted in the criminalization, over-policing, and discrimination against Black and Indigenous peoples by the state and society. Following the abolishment of slavery came the rapid construction of prisons, which represented the over-policing and criminalization of Black and Indigenous peoples. In addition, former prime minister Stephen Harper proposed a "tough on crime" political attitude that introduced legislation that increased prison sentences, enforced less parole, and increased funding for more prisons.<sup>12</sup> The Conservative government pushed for an expansion of the Canadian prison complex, which included a two-billion-dollar investment of public funds into prison expansion, which allowed private contractors and the government to benefit from prison labour.<sup>13</sup> The PIC seeks to commodify and profit from the inmates who are primarily Black and Indigenous and subjects inmates to strenuous working conditions, which demonstrates the Marxist mass consumer culture that dominates North America. According to Wright, prisons are used as social control, which targets racialized groups and lower socioeconomic classes and produces nothing more than shattered lives, recidivism, and a "torn social fabric", comparable to chattel slavery.<sup>14</sup> The PIC in Canada and the U.S. is economically dependent on the exploitation of prison labour, which benefits private corporations.<sup>15</sup> Scholars have argued that the exploitation of cheap labour from mostly Black and Indigenous peoples can be seen as modern-day slavery.<sup>16</sup> The PIC capitalizes on cheap prison labour and takes advantage of inmates, who receive no health benefits, employment insurance, workers' rights, proper working conditions, fair wages, or the ability to unionize. Asaf Rashid, a Toronto-based lawyer who focuses on an array of legal issues surrounding inmates, notes that prison systems in Canada earned over \$57 million in revenue in 2018 from one of various inmate worker programs, however, inmates were subjected to harsh punishments by jailor-employers and poor living and working conditions.<sup>17</sup> Canadian prisons, which are dominated by Black and Indigenous peoples, are pressured to participate in such inmate programs and endure massive pay cuts and inflation throughout the prison system. In 2017, several lawyers argued that the federal pay cuts to inmates' salaries and inmates' working conditions equated to cruel and unusual punishment that violated the Canada Labour Code.<sup>18</sup> Several inmates such as Claude Joy told the courts that he felt pressured to work for the prison work programs and when he refused, he was forced into solitary confinement, demonstrating the barbaric treatments that inmates are subjected to in the Canadian PIC, which can be seen as modern-day slavery.<sup>19</sup> In conclusion, the PIC is rooted in centuries of racism and slavery and continues to exploit inmates through cheap prison labour.

I will now discuss why the Canadian PIC is a current racialized issue that works to oppress marginalised groups. As mentioned previously, the PIC commodifies inmates and exploits Canadian prisoners that comprise mostly Black and Indigenous peoples, and the PIC targets racialized and poor communities through social control.<sup>20</sup> The PIC is deeply rooted in systemic racism that can be seen by not just its historical roots, but also by the over-policing and criminalization of marginalised urban communities in Canada. Presently, Canadian statistics show that the majority of incarcerated Black individuals are put in prison for petty crimes, which could have been avoided through rehabilitation programmes. However, the over-policing of

urban communities in Canada and the stigmatization of these Black people and areas has clouded courts and police officers' judgements. This has led to the criminalization of Black people, which make up 8.6 percent of the federal prison population but only make up three percent of the Canadian population. Canadian statistics show that there are 70 percent more Black Canadians in federal prison than there were 10 years ago according to Howard Sapers (2017), who presented his annual report in Parliament detailing the demographics and conditions within our federal prisons. Sapers notes that since he started in 2005, there wasn't a year in which the Black population did not grow and he noticed that there was racism at every level of the legal system, from police officers to courts to jails.<sup>21</sup>

Upon taking an intersectional analysis on this issue, it is evident that race, class, sexuality, etc. intersect to the disadvantage of Black and Indigenous peoples through the surprisingly high percentage of Black and Indigenous peoples that comprise the prison population. Historically, this is no different than the dehumanization and oppression that Black people faced when being enslaved or subjected to necropolitics, where their bodies are discounted in a system that doesn't recognize their value.<sup>22</sup>

Finally, I will define and discuss abolition movements and introduce Restorative Justice as I strive to explore some future steps that must be taken in order to rebuild this corrupt system. There are several common misconceptions regarding the term "abolition" in regards to the PIC. Tim Graham, a reporter from Fox News, describes abolishment of prisons in North America as democratic "radicalism" that will allow criminals to roam the streets.<sup>23</sup> This quote demonstrates several misconceptions regarding abolishing prisons. According to Critical Resistance, PIC abolition is a political vision that aims to dismantle the current surveillance by the state in urban communities and harsh imprisonment, and replace these discriminatory systems with alternatives,<sup>24</sup> such as repairing fractured social institutions and offering rehabilitation to offenders. Abolitionists are a loose coalition of libertarians, scholars, and activists such as Angela Davis, who argue that incarceration is an "obsolete institution because they exacerbate societal harms instead of fixing them,"<sup>25</sup> and perpetuate racial discrimination through systemic racism. Davis argues that imprisonment is inhumane and the isolation, surveillance, and violence reproduces the same conditions that lead inmates to prison.<sup>26</sup> Abolitionists aim to reform not just the judicial system, but also aim at reshaping society and addressing root causes such as poverty, lack of community resources, addiction, lack of affordable housing, and mental health crises.<sup>27</sup> These societal issues have led to the criminalization of urban areas and the criminalization of poverty, mental illness, homelessness, and marginalised racial groups that are often subjected to these conditions in cities within Canada.<sup>28</sup> The abolitionists' vision is to dismantle the prison system by stopping the expansion of prisons across North America, removing non-violent offenders who could be redirected to rehab facilities, and lastly, putting in place diversion strategies to prevent such prisoners from ending up in prison in the first place.<sup>29</sup> In 2006, Caitlin Hewitt-White spoke with several other activists such as Peter Collins, who spoke on prisoner justice in the Canadian context, and stated that prison sentences are given as a social substitute for people with mental illness or addiction problems.<sup>30</sup> To summarize, the abolitionist movement aims at transforming the way people think of crimes and instead, considers that the real problem is the lack of resources rather than mental illness or homelessness. The "culturally ingrained prejudice" of such social issues should not immediately look to imprisonment as a solution.<sup>31</sup> It

is imperative to engage others in the prison abolition movement in order to challenge the Americanization of Canada's penal system and the right-wing "tough-on-crime" notion that benefits the privatization of prisons, longer sentences, harsh conditions, etc.<sup>32</sup>

Furthermore, there must be changes within Canadian cities and urban communities to address the social issues and work on preventative measures for imprisonment. Abolitionists in Canada have identified the lack of resources and the criminalization of poverty within urban communities, which is echoed by Toronto-based lawyer for African Canadian rights, Anthony Morgan. Morgan notes that the Toronto police budget for 2016 was a shocking one billion dollars, however, some of those funds could be redirected to foster stronger communities, affordable housing, accessible health care, child care, education, transit, job opportunities, and more.<sup>33</sup> This funding could benefit low-income communities that are disproportionately racialized and subjected to over-policing as well as social neglect by those in power.<sup>34</sup> Anthony Morgan also suggested that there should be a Black Canadian justice strategy, similar to the Aboriginal justice strategy built in 1991, which would help tackle rising prison populations by creating community initiatives and dismantling systemic social neglect.

In addition, there is not much literature that addresses solutions to the current penal system, however, aside from important abolitionist movements, another important legal framework that should be explored is Restorative Justice. Upon presenting in CDN335H1 on this topic, there was much discussion from other classmates and myself around Restorative Justice. Restorative Justice can also be described as transformative justice, which seeks to heal those who are most affected by crime while also using rehabilitative practices as an alternative to prisons.<sup>35</sup> This practice includes the offenders, the victims, their families, and their communities, and invites them to work towards a better future that focuses on healing and learning from past mistakes.<sup>36</sup> This practice acknowledges the criminal behaviour and, instead of punishing the offender with long prison sentences and mandatory prison labour, Restorative Justice focuses on restoring community balance and "structural injustices that lead to crime and inequality".<sup>37</sup> For example, the Canadian Friends Service Community is an organization that utilizes Restorative Justice and partners with Toronto organizations and the Canadian Criminal Justice Association to address criminal justice issues and engage the community in alternatives to imprisonment.<sup>38</sup> Keith Maddock, a member of this organization, volunteered for 20 years in the Don Prison in Toronto and facilitated discussions with several prisoners regarding Restorative Justice initiatives, circles of support and accountability, and Alternative to Violence projects.<sup>39</sup>

An example of Restorative Justice is in 2019, a young teenage girl named Carolyn Stewart had broken into a café called the Tall and Small Café in Nova Scotia, owned by Meghan Peters and her husband. This robbery shocked the entire community and left the community feeling angered and uneasy. After Mrs. Peters had spoken to the constable, the Crown had suggested that Mrs. Peters consider the Restorative Justice Program, which enabled her to meet Carolyn. The two hosted a community dinner with 130 guests and gave Carolyn the chance to not only engage with the community, but to make peace with Meghan and apologize for her actions. This program allowed the café owner and Carolyn to make amends and allowed Carolyn to take responsibility. "Many victims have experienced decreased fear, anger and anxiety after resolving their case through Restorative Justice... Research also shows that offenders are less likely to reoffend after Restorative Justice."<sup>40</sup>

According to the Department of Justice Canada, Restorative Justice is currently being practised across Canada and, when effectively used, leads to better outcomes for victims, prevents many cases from going to trial, and reduces reoffending.<sup>41</sup> Restorative Justice places an emphasis on accountability, rather than exploiting marginalised groups through commodification. However, the Canadian justice system still operates on inherent systemic racism and continues to over-represent Black and Indigenous peoples as the incarceration rate rapidly increases. There need to be more community initiatives, an investment in community needs, and awareness regarding alternative forms of justice such as abolition movements that aim at understanding the offender's needs and helping offenders thrive within society. There needs to be a better understanding of what "abolition of PICs" truly means and from there, Restorative and Transformative Justice and other forms of rehabilitation should be considered. Restorative Justice not only strives to rehabilitate the offenders and give justice to the victims, but also integrate the offenders back into society to become functional members of society, rather than being discarded in society. Once offenders have a record, they face economic and social challenges for the rest of their lives, however, Restorative Justice offers beneficial alternatives to serving a prison sentence that aims at restoring justice to the communities and victims while utilizing self-reflection and accountability projects.

In conclusion, the PIC is an institutionally racialized issue that has discriminated against Black and Indigenous peoples. Nevertheless, there are systems such as abolitionist movements and Restorative Justice strategies that must be implemented into the penal system in order to dismantle and rebuild the PIC. First, I defined the Prison Industrial Complex (PIC), and provided a historical background that expressed the years of slavery intertwined with commodification of Black and Indigenous peoples. Second, I discussed why the PIC is a racial issue that continues to persist today and that demonstrates institutionally entrenched racism. Last, I explored future steps that must be taken to combat the racialized prison system, such as the shift towards Restorative Justice and what abolition really means. In conclusion, the PIC is a racialized system that works to oppress Black and Indigenous peoples. However, there are several future steps, such as familiarizing communities with abolitionist movements and prioritizing Restorative Justice for all offenders across Canada, focusing on rehabilitation, that can be taken to improve the Canadian justice system.

## Notes

<sup>1</sup> "Critical Resistance."

<sup>2</sup> Wright, Paul. "The Cultural Commodification of Prisons," 15-21.

<sup>3</sup> Piracha, Yasir. "Are Prisons Obsolete?"

<sup>4</sup> Reese, R. "Canada: The Promised Land for US Slaves."

<sup>5</sup> Reese, R. "Canada: The Promised Land for US Slaves."

<sup>6</sup> "African Nova Scotians in the Age of Slavery and Abolition."

<sup>7</sup> Piracha, Yasir. "Are Prisons Obsolete?"

<sup>8</sup> Wright, Paul. "The Cultural Commodification of Prisons," 15-21.

- <sup>9</sup> Bakan, Abigail. "Reconsidering the Underground Railroad: Slavery and Racilization in the Making of the Canadian State."
- <sup>10</sup> Roach, Kent. "Changing Punishment at the Turn of the Century: Restorative Justice on the Rise."
- <sup>11</sup> "End of the Prison Industrial Complex."
- <sup>12</sup> "End of the Prison Industrial Complex."
- <sup>13</sup> Piche, Justin. "Playing the 'Treasury Card' to Contest Prison Expansion: Lessons From a Public Criminology Campaign," 145-167.
- <sup>14</sup> Wright, Paul. "The Cultural Commodification of Prisons."
- <sup>15</sup> Guilbaud, Fabrice. "Working in Prison: Time as Experienced by Inmate Workers," 41-68.
- <sup>16</sup> Hattery, Angela and Smith, Earl. "If We Built It They Will Come: Human Rights Violations and the Prison Industrial Complex."
- <sup>17</sup> Ling, Justin. "Prison Labour."
- <sup>18</sup> Ling, Justin. "Prison Labour."
- <sup>19</sup> Ling, Justin. "Prison Labour."
- <sup>20</sup> Wright, Paul. "The Cultural Commodification of Prisons," 15-21.
- <sup>21</sup> Sapers, Howard. "Corrections in Ontario."
- <sup>22</sup> McIntyre, Catherine. "Canada Has a Black Incarceration Problem."
- <sup>23</sup> Graham, Tim. "Abolish the Police? Prisons? More? Here's Where This Radical Experiment is Headed."
- <sup>24</sup> "Critical Resistance."
- <sup>25</sup> Washington, John. "What is Prison Abolition."
- <sup>26</sup> Washington, John. "What is Prison Abolition."
- <sup>27</sup> Washington, John. "What is Prison Abolition."
- <sup>28</sup> Sadavoy, Joel, Meier, Rosemary, and Amoy, Yuk Mui Ong, "Barriers to Access to Mental Health Services for Ethnic Seniors: The Toronto Study."
- <sup>29</sup> Washington, John. "What is Prison Abolition."
- <sup>30</sup> "Prison Abolition in Canada."
- <sup>31</sup> Washington, John. "What is Prison Abolition."
- <sup>32</sup> "Prison Abolition."
- <sup>33</sup> Morgan, Anthony. "Black Canadians and the Justice System."
- <sup>34</sup> Siemiatycki, Myer, Lim, April, Lo, Lucia, Lo, et al. "Newcomer Service in the Greater Toronto Area: an Exploration of the Range and Funding Sources of Settlement Services."
- <sup>35</sup> Roach, "Changing Punishment at the Turn of the Century: Restorative Justice on the Rise."
- <sup>36</sup> "Penal Abolition and Restorative Justice."
- <sup>37</sup> "Penal Abolition and Restorative Justice."
- <sup>38</sup> "Penal Abolition and Restorative Justice."
- <sup>39</sup> "Penal Abolition and Restorative Justice."
- <sup>40</sup> "Restorative Justice."
- <sup>41</sup> "Restorative Justice."

# *Colliding Views on Climate Change Impacts in the Canadian Arctic*

**Britney Best**

## **I. Introduction**

As climate warming takes place and new geopolitical opportunities, interests, and strategies emerge in the global arena, Canada's Arctic response has evolved alongside growing international interest in the region. Canada's Arctic Strategy has been grounded in affirming sovereignty over Canadian land, water, and resources in the Arctic region through strategic defense and development plans for the North.<sup>1</sup> Although Canada's Arctic and Northern Policy Framework (2019) involves Indigenous partnership and a climate focus, the framework primarily acknowledges the physical and environmental consequences of climate change and the corresponding implications for defense, resources, and the economy.<sup>2</sup> In contrast to the federal policy framework, the Inuit response to climate warming is grounded in Indigenous knowledge systems based on long-term observation of environmental changes taking place in the Arctic and by contextualizing the effects of climate change on Indigenous peoples whose lives are integrated with their ecosystems.<sup>3</sup> In light of this view, advocates such as Sheila Watt-Cloutier express the consequences of climate change for Inuit culture, health, and traditional subsistence using a human-centred approach and highlighting human impacts, human development, and human rights concerns.<sup>4</sup> In order to assess these colliding views on climate change in the Arctic and inform policy decisions moving forward, this paper will consider the theoretical work of Isaiah Berlin on value pluralism and investigate the role of human rights tribunals in guiding processes by which these concerns can be governed and remedied.

## **II. Canada's Arctic Policy: Climate Change Through the Lens of Sovereignty, Security Resources, and Economics**

Prime Minister Stephen Harper's response to climate change and its impacts in the Arctic represents the evolution of Canada's Arctic Policy alongside increased international interest in the region.<sup>5</sup> With the melting of sea ice leading to a global race for resources and access to future shipping opportunities, Canada's response to climate warming has been grounded in enhancing defense and military capabilities in the North, strengthening the "international rules-based order" in the Arctic, putting forward an assertive economic development strategy in the region, and portraying Canada as an Arctic power through the discourse of Canadian "Northern energy and natural resource potential."<sup>6</sup> This reflects the recent "use it or lose it" posture of Canadian Arctic security and the economic development led by the Harper government.<sup>7</sup> This rhetoric about the changing Arctic, viewed in terms of economic investment, development, and security threats, permeates the paradigm of Canadians who hold very little knowledge about the Arctic. Canadians understand the Arctic as a place in need of investment, development, and military involvement instead of as a region inhabited by Inuit peoples and as a place vital for the preservation of Inuit culture, knowledge, and tradition that is under severe threat from climate change impacts.

In 2019, Canada's Arctic and Northern Policy Framework was released, expanding on Harper's priorities with a shift towards inclusive integration of Indigenous and local priorities, and an emphasis on climate action and closing the gap between the Arctic and the rest of Canada.<sup>8</sup> The federal position on climate change in the Arctic primarily considers the changes to Arctic ecosystems and waters, with a recognition of the effects this has for Indigenous communities in the North, and puts forward an objective to "accelerate and intensify national and international reductions of greenhouse gas emissions."<sup>9</sup> This is a step towards integrating environmental security into Canada's Arctic policy, representing a marked difference from the Harper government. Despite greater inclusion of Indigenous and local perspectives and a greater climate focus, the 2019 framework continues to reflect a response to climate impacts that involves an assertion of sovereignty, maximization of natural resource potential, and economic development as part of Canada's Arctic strategy.<sup>10</sup> In contrast to the Inuit concern for human security and the human rights implications of climate change, Canada's 2019 framework primarily acknowledges the physical and environmental consequences of climate change. Its focus on the corresponding military, economic, and natural resource implications remains strong.<sup>11</sup>

In considering Canada's Arctic strategy, it is evident that industrialized nations, such as Canada, prioritize economic development over climate action, failing to make any significant reduction to greenhouse gas emissions or to commit to effective climate action due to fear of job losses and short-term economic decline.<sup>12</sup> At the same time, economic interests and investment opportunities are driving the current development trajectory in the Arctic region; private and public actors from all over the world hold the view that melting ice in the North offers a new opportunity for resources and commercial shipping.<sup>13</sup> Sheila Watt Cloutier, an Inuit advocate and activist, describes the arrival of commercial flights carrying mining, oil, and gas executives keen to exploit the energy resources lying below the ice.<sup>14</sup> Nonetheless, it is thought that the estimated economic ruin that will result from climate change should be alarming enough for governments to halt this kind of development. But, as Cloutier argues, the process of ongoing debate and circling back to numbers during economic and technical discussions permits industry and government stakeholders to delay any real plan or progress to reduce emissions.<sup>15</sup> From this point, Cloutier advocates the strength of a human-rights-based framework for responding to climate change impacts by humanizing the consequences and showcasing what is really at stake for the rest of the world, and humanity more broadly.

## **II. The Right to be Cold — Inuit Response to Climate Change in the Arctic**

The Inuit response to climate change impacts in the Arctic is unlike Canada's Arctic strategy. It is based on Indigenous knowledge systems and long-term observation of environmental changes taking place in the Arctic.<sup>16</sup> From this perspective, the effects of climate change are reconsidered from the perspective of Indigenous peoples whose lives are integrated with their ecosystems.<sup>17</sup> In line with this perspective, advocates such as Sheila Watt-Cloutier discuss the consequences of climate change for Inuit culture, health, and traditional subsistence.<sup>18</sup> Advancing a human-centred approach to climate change with a spotlight on human impacts, human development, and human rights concerns carries a powerful message to world leaders.<sup>19</sup> Cloutier has been active in expressing the concerns that Inuit have about rapid climate change in

the Arctic and the impacts and effects of climate warming as it threatens their ability to exist as they have for millennia.<sup>20</sup> The environmental<sup>21</sup> and ecological changes<sup>22</sup> associated with climate change are profoundly connected to the non-physical impacts of climate change, “infringing on Inuit rights to subsistence, health, use of traditional lands and to culture/environment.”<sup>23</sup>

As sea-ice melting occurs and native species decline due to warming, Inuit experience a disruption in subsistence hunting and food-sharing culture.<sup>24</sup> The threat to Inuit ancient hunting culture affects the process of cultural transmission to younger generations, whereby the process of hunting teaches and prepares them for the challenges of life; it is a process that not only transmits hunting culture to future generations, but also develops character skills and teaches wisdom to younger generations.<sup>25</sup> The ancient connection to Inuit hunting culture is declining rapidly and likely to disappear with the trajectory of climate change that we are witnessing, creating confusion and despair and impacting mental health, seen in rising rates of addiction and suicide in young Inuit people.<sup>26</sup> Additionally, the decline in hunting culture and traditional food supply increases Inuit reliance on imported and expensive foods, which are processed and less nutritious than a traditional diet, shaping trends in diabetes and other food-related illnesses.<sup>27</sup> Finally, the use of traditional lands and the environment is threatened by unpredictable weather, erosion, and melting, which makes travelling and hunting on the land increasingly dangerous.<sup>28</sup> From this view, the Inuit express strong concerns for the human impacts experienced from climate change in the Arctic, and showcase that climate change does not just produce physical, environmental, and ecological changes. The impact is marked by significant human impacts and violations of human rights in Inuit communities whose connection to the environment remains strong, and who are dependent on the land and sea for their subsistence, health, and realization of their cultural rights.<sup>29</sup>

The Inuit position, emphasizing the human impact of climate change, is echoed by a recent Human Rights Watch report from 2020, describing Canada’s climate change inaction as a violation of Indigenous human rights.<sup>30</sup> This report highlights the significance of the climate crisis in the North, which is causing a food security crisis for Canada’s Indigenous populations. With fewer fish and animals to provide a traditional diet, and unstable, unpredictable freeze/melt cycles complicating harvest practices, Indigenous peoples are left paying high prices for less nutritious imported foods.<sup>31</sup> The authors of the report, Rall and LeFortune, argue that Canada is violating the human rights of Indigenous people, who are enduring climate-related food insecurity, as the country fails to meet emissions targets and fails to provide resources for Northern communities to access traditional food.<sup>32</sup> Rall and LeFortune describe their focus on Canada for this Human Rights Watch report, citing Canada’s role in creating this climate crisis as one of the top 10 global greenhouse gas emitters, which is compounded by the climate change impacts documented in Canada’s Indigenous populations pertaining to their right to food, health, and culture.<sup>33</sup> In view of this report, it is clear that the human impacts of climate change and the human rights discourse is not merely an Inuit perspective or paradigm, but further shows that the Inuit are referring to real changes and real climate change impacts that violate their human rights. Furthermore, I think that this report also showcases Canada’s responsibility in creating and addressing the impacts of the climate crisis, and perhaps signals the need to restructure our national strategy in the Arctic to move away from a traditional security and resource focus



towards environmental security and human rights protection.

### **III. Assessment: Theoretical Work of Isaiah Berlin on Value Pluralism and Recommendations**

In order to assess these colliding views on climate change in the Arctic and inform policy decisions moving forward, we will consider the theoretical work of Berlin and Ureta on value pluralism and investigate the role of human rights tribunals in guiding processes by which Canada should govern and remedy these concerns. Berlin's theory on value pluralism describes value incommensurability, which argues that there is no general procedure for resolving value conflicts. For example, this theory argues that there is no rule to state what value has priority over another.<sup>34</sup> However, Ureta notes that human values must be instantiated in practice and can be held to a maximum or lower level in certain instances. In this context, when values collide, there is a possibility for compromise when values are not held to their maximum.<sup>35</sup> Applying this theoretical foundation to the colliding values between the Canadian government and the Inuit pertaining to climate change in the Arctic, I believe that it would be easier for the Inuit to compromise, which is seen in Inuit leaders permitting investment and economic development in the Arctic as a means to address the infrastructure deficit in the region. On the other hand, it is more difficult to conceptualize a situation where the government would sacrifice economic growth in exchange for emissions reduction to better support the rights of the Inuit.

It is my view that the best way to resolve the issue of climate change in the Arctic would be for Canadian foreign policy in the Arctic to shift its focus from traditional security alliances towards environmental security agreements. The Canadian government has the overarching responsibility to enact climate action and support Inuit rights in the Arctic. However, climate change is ultimately a shared responsibility between the international community and relevant stakeholders, including Arctic states, NATO allies, and private partners in the region. Thus, Canada should take the lead on fostering emission reduction agreements and climate diplomacy by involving Inuit leaders in multilateral negotiations and international rulemaking to fully express the human impacts of climate change, which are soon to become common to the rest of the world. Finally, the most immediate remedy for colliding values and human rights impacts experienced by the Inuit might be through a human rights tribunal, and a decision to oblige the government to meet its emissions targets and support community needs pertaining to the realization of their rights.

### **Notes**

<sup>1</sup> Plouffe, Joël. "Stephen Harper's Arctic Paradox." Canadian Global Affairs Institute, December 2014. Accessed March 2, 2021. [https://www.cgai.ca/stephen\\_harpers\\_arctic\\_paradox](https://www.cgai.ca/stephen_harpers_arctic_paradox).

<sup>2</sup> Government of Canada; Crown-Indigenous Relations and Northern Affairs Canada, "Canada's

Arctic and Northern Policy Framework," Government of Canada; Crown-Indigenous Relations and Northern Affairs Canada, November 18, 2019. Accessed March 03, 2021. <https://www.rcaanc-cirnac.gc.ca/eng/1560523306861/1560523330587>) <sup>3</sup>Sheila Watt-Cloutier, "Testimony before IACHR on Global Warming & Human Rights," Earth Justice, [1], accessed March 2, 2021, [https://earthjustice.org/sites/default/files/library/legal\\_docs/testimony-before-iachr-on-global-warming-human-rights-by-sheila-watt-cloutier.pdf](https://earthjustice.org/sites/default/files/library/legal_docs/testimony-before-iachr-on-global-warming-human-rights-by-sheila-watt-cloutier.pdf))

<sup>4</sup> Watt-Cloutier, Sheila. "Testimony before IACHR on Global Warming & Human Rights," 1.

<sup>5</sup> Plouffe, Joël. "Stephen Harper's Arctic Paradox."

<sup>6</sup> Plouffe, Joël. "Stephen Harper's Arctic Paradox."

<sup>7</sup> Watt-Cloutier, Sheila. "Inuit Circumpolar Conference: Senate Committee on Commerce, Science and Transportation: Testimony of Sheila Watt-Cloutier," p. 35.

<sup>8</sup> Government of Canada; Crown-Indigenous Relations and Northern Affairs Canada, "Canada's Arctic and Northern Policy Framework."

<sup>9</sup> Government of Canada; Crown-Indigenous Relations and Northern Affairs Canada, "Canada's Arctic and Northern Policy Framework."

<sup>10</sup> Government of Canada; Crown-Indigenous Relations and Northern Affairs Canada, "Canada's Arctic and Northern Policy Framework."

<sup>11</sup> Government of Canada; Crown-Indigenous Relations and Northern Affairs Canada, "Canada's Arctic and Northern Policy Framework."

<sup>12</sup> Watt-Cloutier, Sheila. *The Right to Be Cold One Woman's Story of Protecting Her Culture, the Arctic and the Whole Planet*. Penguin, xxi.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid, xxii.

<sup>16</sup> Ibid.

<sup>17</sup> Watt-Cloutier, Sheila. "Testimony before IACHR on Global Warming & Human Rights," 1.

<sup>18</sup> Watt-Cloutier, Sheila. "Returning Canada to a Path of Principle: An Arctic and Inuit Perspective," Inclusion.ca, 3, May 29, 2009. [https://www.inclusion.ca/site/uploads/2016/11/LaFontaineBalwdinLecture2009\\_SiilaWattCloutier.pdf](https://www.inclusion.ca/site/uploads/2016/11/LaFontaineBalwdinLecture2009_SiilaWattCloutier.pdf)

<sup>19</sup> Watt-Cloutier, Sheila. "Returning Canada to a Path of Principle: An Arctic and Inuit Perspective," 3.

<sup>20</sup> Watt-Cloutier, Sheila. "Testimony before IACHR on Global Warming & Human Rights," 11.

<sup>21</sup> Extreme weather, erosion and melting.

<sup>22</sup> Invasion of new species, decline of native species – polar bears, walrus, seals, marine birds etc.

<sup>23</sup> Watt-Cloutier, Sheila. "Returning Canada to a Path of Principle: An Arctic and Inuit Perspective," 24.

<sup>24</sup> Watt-Cloutier, Sheila. "Inuit Circumpolar Conference: Senate Committee on Commerce, Science and Transportation: Testimony of Shiela Watt-Cloutier," 4.

<sup>25</sup> Watt-Cloutier, Sheila. "Testimony before IACHR on Global Warming & Human Rights," 3.

<sup>26</sup> Watt-Cloutier, Sheila. "Inuit Circumpolar Conference: Senate Committee on Commerce, Science and Transportation: Testimony of Shiela Watt-Cloutier," 5.

<sup>27</sup> Watt-Cloutier, Sheila. "Inuit Circumpolar Conference: Senate Committee on Commerce, Science and Transportation: Testimony of Shiela Watt-Cloutier," 12.

<sup>28</sup> Ibid.

<sup>29</sup> Sheila Watt-Cloutier, "Inuit Circumpolar Conference: Senate Committee on Commerce, Science and Transportation: Testimony of Shiela Watt-Cloutier," 3.

<sup>30</sup> Brownwell, Claire. "Canada's Climate-change Inaction Violates Indigenous Human Rights: Report." October 21, 2020. Accessed February 17, 2021.

<https://www.macleans.ca/news/canada/canadas-climate-change-inaction-violates-Indigenous-human-rights-report/>

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> O'Flynn, Siobhan. CDN 367 Canadian Pluralism Class 4. Lecture, Canadian Studies, University College, February 2021.

<sup>35</sup> Ibid.

## *“Sleeping with an Elephant”: A Contextualization of Prime Minister Pierre Trudeau’s Speech to Washington and the U.S.-Canada Trade Relationship*

**Willow Chadwick**

During a speech to the Washington Press Club on Prime Minister Pierre Elliot Trudeau’s first official visit to Washington following President Richard Nixon’s inauguration, Trudeau described the complex and unique relationship between these two states: "Living next to you is in some ways like sleeping with an elephant. No matter how friendly and even-tempered is the beast [...] one is affected by every twitch and grunt."<sup>1</sup> The purpose of this paper is to contextualize the relationship between the United States and Canada leading up to Trudeau’s speech in 1969, and how this relationship has developed since before Confederation to the Trudeau government’s official policy of the “Third Option” formulated by Secretary of State for External Affairs, Mitchell Sharp.<sup>2</sup> Trudeau’s speech highlights the growing anti-American sentiment amongst Canadians and Canadian policy as a result of Canada’s vulnerability in relation to America’s changing policies. At the turn of the decade and a new presidential administration, not only did this speech illustrate the complex relationship between the two states, but the speech affected U.S.–Canada relations in its aftermath, most notably in terms of trade between the two nations, but also in contributing to the disdain of the pro-protectionist American sentiment that climaxed with the “Nixon Shock” in the 1970s.

Historian Ivan Head asserts that "Canadians and successive Canadian governments have long assumed that the extensive economic relations of the United States and Canada were different from those between other countries."<sup>3</sup> However, Head is incorrect to claim that Prime Minister Louis St. Laurent was the first Prime Minister to shape Canada’s foreign policy.<sup>4</sup> As John Hancock points out, throughout history Canada has been in a conflict between “integration and independence” as a result of policies from the U.S.<sup>5</sup> Beginning with the Reciprocity Treaty of 1854, Canada’s foreign relations have been the “product of the influence of two states with which it has been intimately related throughout its history: Great Britain and the United States.”<sup>6</sup> Yet in the periods following the world wars, Canadian foreign policy became increasingly dependent on American protectionism and independent of Great Britain. The 1854 Reciprocity Treaty represented British North America’s desire for more continental integration. Yet the deal came to an end when Americans refused the deal as a result of Great Britain’s support for the Confederacy during the Civil War, which led Canada to pursue economic nationalism.<sup>7</sup> Despite this treaty, British North America aimed to develop its internal market and passed the “Cayley-Galt tariffs, which increased import tariffs by 20 to 40 percent.”<sup>8</sup> In retaliation and leading up to the Civil War, America increasingly closed its market, and the economic challenges faced by the British North American colonies were a chief reason for Confederation in 1867 as future prime minister John A. Macdonald promised increased protection.<sup>9</sup> In his re-election campaign, Macdonald crafted a protectionist National Policy, which called for increased tariffs, the

construction of the Canadian Pacific Railway, and increased immigration to Western Canada. In addition, the Civil War resulted in the domination of the Republican Party, which endorsed national and protectionist policies for decades to come;<sup>10</sup> the average tariff on American imports jumped from 19 percent in 1857 to 47 percent in 1870.<sup>11</sup>

Prior to the First World War, the biggest investment capital source in Canada was Great Britain,<sup>12</sup> so continentalism was not popular amongst Canadians. During the 1911 federal election and while pro-free-trade Democrats had control of the U.S. Congress, Prime Minister Sir Wilfred Laurier's Liberal government called for a referendum election on committing to continentalism, a cause for which his government fought.<sup>13</sup> In the end, Robert Borden won the election, but continentalism did not die, as demonstrated during the First World War when imports of American war materials prospered and America surpassed Britain as "Canada's main source of international funding."<sup>14</sup> During the interwar period, U.S.-Canada economic relations declined once again as the Great Depression caused the Republican president and Congress to end trade liberalization and return to high tariffs. Canada was exceedingly impacted by the Smoot-Hawley tariff, resulting in Liberal prime minister William Lyon Mackenzie King retaliating with tariff increases that matched American levels in most cases.<sup>15</sup> At the 1932 Ottawa Conference, King embraced Britain's new system of imperial preference to encourage "switch[ing] trade from [the] US to Britain."<sup>16</sup> As a result, between 1929 and 1933, trade between Canada and the U.S. collapsed by two-thirds.<sup>17</sup>

Following the Great Depression and the Second World War, Canada turned to continentalism once again as the Roosevelt liberal administration was convinced that restoring free trade was "critical to economic recovery and international stability."<sup>18</sup> At the same time, the U.S. and Canada emerged as industrial powers as the war had "destroyed the economic base of much of Europe."<sup>19</sup> This period marked the decline of U.S. tariffs and Canada's National Policy because of accelerated industrialization and integration. In April 1947, the twenty-three Allied states signed the General Agreement on Tariffs and Trade (G.A.T.T.), which would continue until 1995 to regulate tariffs and quotas in order to promote international trade, a key institution in limiting American and Canadian protectionist policies. The Canadian Liberal governments of King, St. Laurent, and Pearson were all proactive in subsequent G.A.T.T. negotiations by encouraging depoliticized access to the American market and diversification of trade.<sup>20</sup> Important anti-protectionist measures were added to this agreement, namely Articles 12, 19, and 21, which allowed "recourse to protectionist measures in the event of a country's structural balance of payments deficit, of an unexpected and serious injury to its industrial interests, or of a national security risk."<sup>21</sup> During the war, the two states collaborated on the Alaska Highway project and so following the war, they worked together to build additional shared infrastructures, including the St. Lawrence Seaway, transborder pipelines, and U.S. investment in Canada's mining and energy sectors.<sup>22</sup> The material benefit from the U.S. "flood[ed] across the border by television, radio, film and magazines" at the same time as Canada "moved from an agricultural and primitive industrial base to one of technology and mass production."<sup>23</sup> As a result, American ownership of Canadian industries greatly increased, and the foreign ownership concentrated in Canada's energy, resource, and manufacturing sectors set unprecedented records.<sup>24</sup> By 1972, U.S.

investment in Canada totaled around \$35 billion and was 30 percent of all U.S. foreign investment,<sup>25</sup> yet America turned in the early 1970s down a path of increased protectionism under the Nixon administration.

Understanding the complex trade relationship between Canada and the U.S. is essential to understanding the underlying message of Trudeau's 1969 Washington Press Club speech. Before rising to power as prime minister, Trudeau was well educated on the topic of nationalistic policies and ideologies that shape U.S.-Canada relations. Growing up in Quebec, Trudeau was exposed to nationalism and participated in protests against threats to the Catholic Church and French-Canadian identity, which continued in his education while attending Collège Jean-de-Brébeuf.<sup>26</sup> Yet future studies at Harvard University, Institut d'Études Politiques de Paris, and the London School of Economics allowed him to explore Keynesian economics for "democratic renewal", skepticism of his previous education, and a "middle way" between the anti-Communism of North American governments and the stern communism of Joseph Stalin.<sup>27</sup> Trudeau announced during his 1968 election campaign that his administration had contemplated a review of foreign policy, and published a white paper on foreign relations in 1969.<sup>28</sup> At that time, "the British government was reducing its forces east of the Suez" and "strong voices were being raised in the United States against that country's worldwide presence."<sup>29</sup> By the turn of the decade and the "cold war showing no thaw"<sup>30</sup>, Canadians wanted to look elsewhere for trade rather than relying heavily on the U.S. The argument arose that this change was "motivated by anti-Americanism, as the much earlier move to independence had been interpreted by some as being anti-British,"<sup>31</sup> and Trudeau addressed these concerns in his speech in Washington.

Trudeau begins by discussing the joint U.S.-Canada negotiations during the Second World War to build the Alaska Highway project. As previously discussed, this was the first major infrastructure project to be coordinated by two countries. It was also the beginning of joint infrastructure projects continuing into the 1950s and 1960s, including "construction of the St. Lawrence Seaway, the building of transborder pipelines, and the development of Canada's energy and mining sectors."<sup>32</sup> Reminding his American audience of this successful project was intentional; given the rise of American protectionism, Trudeau reminded the audience of how previous administrations' collaboration on joint projects has created the contemporary environment in which Canada is directly affected by America and vice versa. As previously noted, Macdonald was the first prime minister to adopt an official national policy aimed towards Canadian protectionism, and Trudeau reminds the audience of this as well: "but how many of your historians have ever noted what Canada's first prime minister, John A. Macdonald, was at one time contemplating as your fate."<sup>33</sup> In doing so, Trudeau is addressing how Canada has been forced throughout history to implement protectionist policies against the U.S. Yet this was not always the case, as Macdonald's national policy saw the end to the 1854 Reciprocity Treaty. Trudeau goes on to claim that Canada was not abandoning the United States as Macdonald had once done: "I want to emphasize that this review is not an excuse to prove our independence; that independence needs no proving. Nor is it an exercise intended to illustrate to the United States our potential for irritation. We have no desire, and no surplus energy, for that kind of activity. We are building a new society in Canada."<sup>34</sup> Trudeau's new society in Canada

had objectives that were “neither exclusively foreign nor exclusively domestic,”<sup>35</sup> and instead focused on improving the wellbeing of Canadians in order to improve wellbeing internationally: “an independent Canada serves American as well as Canadian interests, partly because it contributes to the reputation of the United States as a good international citizen.”<sup>36</sup> Trudeau concludes with the since famous line to describe this complex relationship between the two neighboring nations, which has caused the administration’s new foreign policy: “Living next to you is in some ways like sleeping with an elephant. No matter how friendly and even-tempered is the beast [...] one is affected by every twitch and grunt.”<sup>37</sup> Following his speech, Trudeau took questions from the audience and *The New York Times* reported that it was clear Trudeau’s speech “produced concern, if not irritation among some Americans unfamiliar with his views.”<sup>38</sup>

With little regard to Canada’s changing position and motivated by American economic factors, Nixon spoke in a joint address to the House of Commons in August 1971 to discuss his new economic policy, which implemented a ten percent surcharge tax on all U.S. imports.<sup>39</sup> *The New York Times* reported that upon arrival to Ottawa, Nixon remarked this was based on a “frank recognition of the ‘separate identities’ of the two allies’ and the ‘significant differences’ between them,”<sup>40</sup> and further that “no self- respecting nation can or should accept the proposition that it should always be economically dependent upon another nation.”<sup>41</sup> The Americans were motivated by the Vietnam War; it had become increasingly more apparent that America would not benefit from the war as it faced payment deficits and an insurgence of Japanese and European intervention.<sup>42</sup> Yet, Trudeau’s visit to Washington did appear to affect Nixon as he commented that the prime minister’s remarks not only mean “very much between our two countries”, but also “means something to the world” since America was “seeking new relationships.”<sup>43</sup> Canadian diplomats in Washington responded to the president’s new policies by asserting that the relationship between the two states was special. By moving forward with this policy, Canadian diplomats argued that America would cause negative effects for both states; this would result from American investment in Canada offering unhealthy returns and unemployed Canadians being unlikely to buy imported products.<sup>44</sup> The Canadian government requested an exemption from the import surcharge, but it was rejected. Although the surcharge was lifted after U.S. Secretary of State Kissinger argued against it for four months, Canada’s vulnerabilities to American policies became clear and it was impossible to deny that Canada was sleeping next to the American elephant.

An anti-American and nationalist interest grew amongst Canadians in the 1970s, and thus, the Trudeau government needed to adopt a new foreign policy. As a result of Canada’s “historic and linguistic separation” from the U.S., Trudeau had the opportunity to cultivate new links with Commonwealth nations.<sup>45</sup> Yet, even Trudeau was skeptical of the Commonwealth countries, and only attended the Singapore conference in January of 1971 because of strong pressures from his staff.<sup>46</sup> After a review of Canada’s foreign relations, Trudeau’s Minister of External Affairs Mitchell Sharp published his conclusions in 1972, “Canada-US relations: Options for the future”, and argued Canada should “focus on fast-growing markets overseas and break free of its economic dependence on the U.S.”<sup>47</sup> Sharp argued that Canada had three options moving forward: continue with the status quo; further integration with the U.S. and accept

further “erosion of autonomy”; or diversify their foreign and domestic economic development to assert Canadian independence.<sup>48</sup> On one hand, Sharp feared full economic integration would be “incompatible with Canadian independence and sovereignty” while on the other hand, he feared U.S. protectionism shutting out Canadian exports from the American market.<sup>49</sup> Yet, Sharp’s strategy is a concise formulation of the Canadian nationalism utilized in the past in response to U.S. protectionism. The Third Option was not a result of purely Canadian anxieties, but rather of American economic problems that directly affected the lives of Canadians since America would, as stated by the report, “increasingly put its own interests first, even at the expense of trade relations with Canada.”<sup>50</sup>

Despite nationalist calls for disengagement from America and dreams of a Third Option so Canada could develop closer relationships with other states, the American presence in Canadian foreign affairs remained a dominant force.<sup>51</sup> The Third Option largely failed because of the 1973 recession and the 1985 Macdonald Royal Commission, which favoured integration. Canada-U.S. integration only deepened in the decade after Sharp launched his initiative, leading to a future of trade relations to be dominated by free trade. Thus, the Trudeau government and his speech to the Washington Press Club in 1969 largely represented a moment of Canadians’ growing belief in the 1960s and 1970s that Canada needed to diversify herself in order to protect the nation from the evolving policy changes in the United States. However, historian Ivan Head is incorrect to assert that Canadian protectionism in response to American tariffs is a new phenomenon since, as this paper highlights, this has been a reoccurring conflict between the two states since Canada’s Confederation.

### Notes

<sup>1</sup> Trudeau, Pierre. “Living next to an elephant.” March 1969, Washington. <http://www.cbc.ca/player/play/1797537698>.

<sup>2</sup> Hancock, John. "The Third Option: An Idea Whose Time Has Finally Come?" *International Journal*, vol. 70, no. 2 (2015): 323.

<sup>3</sup> Head, Ivan. "The Foreign Policy of the New Canada." *Foreign Affairs*, vol. 50, no. 2 (1972): 246.

<sup>4</sup> Ibid, 238.

<sup>5</sup> Hancock, 325.

<sup>6</sup> Head, 237.

<sup>7</sup> Hancock, 326.

<sup>8</sup> Rioux, Hubert. "Canada First vs. America First: Economic Nationalism and the Evolution of Canada-U.S. Trade Relations." *European Review of International Studies*, vol. 6, no. 3 (2019): 35.

<sup>9</sup> Hancock, 326.



- <sup>10</sup> Rioux, 36.
- <sup>11</sup> Ibid.
- <sup>12</sup> Head, 245.
- <sup>13</sup> Head, 244.
- <sup>14</sup> Hancock, 327.
- <sup>15</sup> Ibid.
- <sup>16</sup> Ibid.
- <sup>17</sup> Ibid.
- <sup>18</sup> Ibid.
- <sup>19</sup> Head, 238.
- <sup>20</sup> Rioux, 44.
- <sup>21</sup> Ibid, 45.
- <sup>22</sup> Hancock, 328.
- <sup>23</sup> Head, 245.
- <sup>24</sup> Hancock, 329.
- <sup>25</sup> Head, 245.
- <sup>26</sup> English, John. "TRUDEAU, PIERRE ELLIOTT." *Dictionary of Canadian Biography*, vol. 22, (University of Toronto/Université Laval, 2003). Accessed October 16, 2020. [http://www.biographi.ca/en/bio/trudeau\\_pierre\\_elliott\\_22E.html](http://www.biographi.ca/en/bio/trudeau_pierre_elliott_22E.html).
- <sup>27</sup> Ibid.
- <sup>28</sup> Head, 239
- <sup>29</sup> Ibid, 237.
- <sup>30</sup> Ibid, 238.
- <sup>31</sup> Ibid.
- <sup>32</sup> Hancock, 328.
- <sup>33</sup> Trudeau.
- <sup>34</sup> Head, 239.
- <sup>35</sup> Ibid, 240.
- <sup>36</sup> Ibid, 242.
- <sup>37</sup> Trudeau.
- <sup>38</sup> Clarity, James F. "TRUDEAU PLEDGES INDEPENDENT LINE: TELLS WASHINGTON AUDIENCE FRIENDSHIP DOESN'T MEAN UNANIMITY OF POLICY TRUDEAU SAYS CANADA WILL PURSUE FRIENDLY BUT INDEPENDENT POLICIES IN HER RELATIONS WITH THE U.S." *The New York Times* (Mar 26, 1969). <http://myaccess.library.utoronto.ca/login?url=https%3A%2F%2Fwww.proquest.com%2Fdocview%2F118706237%3Faccountid%3D14771>.
- <sup>39</sup> Rioux, 46.
- <sup>40</sup> Semple, Robert B. "Nixon, in Ottawa, asks recognition of differences." *The New York Times* (April 15, 1972). Accessed on October 16, 2020. <https://www.nytimes.com/1972/04/15/archives/nixon-in-ottawa-asks-recognition-of-differences-assures-canadians.html>.
- <sup>41</sup> Semple.
- <sup>42</sup> Hancock, 330.

<sup>43</sup> Nixon, Richard. "Remarks on Arrival at Ottawa, Canada." April 13, 1972. Ottawa. <https://www.presidency.ucsb.edu/documents/remarks-arrival-ottawa-canada>.

<sup>44</sup> Head, 247.

<sup>45</sup> Ibid, 251.

<sup>46</sup> English.

<sup>47</sup> Hancock, 322.

<sup>48</sup> Ibid, 323.

<sup>49</sup> Ibid, 325.

<sup>50</sup> Ibid, 332.

<sup>51</sup> English.

<sup>52</sup> Hancock, 322.

# *“Cis and Trans Black Women in Sex Work: The Intersection of Blackness, Transness, and the State”*

**Noah G. R. Foster**

## **1. Introduction**

Sex work takes place in highly contentious workplaces wherein violence poses a constant threat to willing or unwilling participants<sup>1,2,3,4</sup>. The frequency and intensity of this violence are dependent upon the sex worker’s gender, race, sexuality, and socio-economic status<sup>5,6,7,8,9</sup>. These identities also determine the workspaces and locations that are accessible to a sex worker and, therefore, their safety within the workplace is contingent upon their identity<sup>10</sup>. This essay will analyze the experiences of Black women in sex work across Canada. Examining academic and personal accounts of sex work, this essay will delve into the intersections of Blackness, transness, and sex work to frame the experiences of sex workers within a Canadian context. In Canada, Black transgender (trans) and cisgender (cis) women sex workers face unique discrimination as a result of over-policing, environmental changes, third-party representation, and violence within the workplace.

## **2. Black Sex Workers: Over-policing, Criminalization, and Violence**

### *2.1. Prostitution Laws in Canada*

For decades, criminal law has framed sex workers as both victims and criminals within society. In 2014, Canada passed Bill C-36, the Protection of Communities and Exploited Persons Act, which framed sex work as inherently exploitative and perpetually victimized, lacking free will and agency<sup>12,13,14,15</sup>. Although Bill C-36 legalizes the sale of sex, it criminalizes the purchase and third-party advertisement of sex work. Consequently, sex workers are put at greater risk of harm from clients<sup>16</sup>.

### *2.2. Over-policing Black Sex Workers*

Hon Chu and colleagues<sup>17</sup> interviewed sex workers in Ontario to learn about their experiences with law enforcement, particularly since the passing of Bill C-36. They found that Black sex workers were more likely than non-Black sex workers to be arbitrarily and disproportionately policed by law enforcement, even after the passage of Bill C-36. Black trans women are the most likely subjects of profiling because of the sole fact of their identity, which police associate with sex work<sup>18,19</sup>. As a result, Black trans and racialized women sex workers are overpoliced and underprotected.

These findings are consistent with those of previous papers, which have found that racialized sex workers face the most violence from both clients and police officers<sup>20,21</sup>. Lyons and colleagues<sup>22</sup> found that sex workers’ experiences with police are often dependent upon the time of day. During daylight hours, officers enforced the law more frequently in an effort to keep sex workers away from local businesses. During the evening, the same officers became flirtatious. It is vital for sex workers, particularly those who are Black trans women, to be aware of these changing behaviors of law enforcement officers so they can best protect themselves.

Sex workers have found new and unique ways to handle law enforcement<sup>23</sup>. One such tactic is to treat every client as if they are a police officer. Sex workers avoid incriminating

themselves until they can be sure that the client is not an undercover officer. Other sex workers familiarize themselves with law enforcement tricks and listen for specific language that indicates a possible setup. Such tactics are most important to Black African-Caribbean sex workers because they are most visible in their work and, thus, easily targeted by law enforcement<sup>24,25,26,27,28</sup>.

### *2.3. Victimization and Criminalization of Black Sex Workers*

The disproportionate criminalization of Black sex workers extends beyond street paroling. During Hon Chu and colleagues'<sup>29</sup> research, some sex workers reported that they faced criminal charges after defending themselves against violent clients. Monica Forrester, a Black trans sex worker in Toronto, told researchers that she was convicted of manslaughter after protecting herself from a violent client. This criminalization of victimized cis and trans Black sex workers is the result of police bias<sup>30</sup>. Police are inclined to believe that cis, straight white sex workers are passive victims within sex work, while cis, trans, and/or queer Black sex workers are aggressive criminals. Consequently, Black women sex workers, particularly those who are trans, are overcriminalized, oversurveilled, and underprotected by law enforcement<sup>31,32</sup>.

## **3. Effects of Environmental Changes on Sex Workers' Employment**

### *3.1. Indoor vs. Outdoor*

Structural violence, introduced by Galtung<sup>33</sup>, refers to the ways in which social, political, and economic circumstances put certain populations at risk of harm<sup>34,35,36</sup>. Sex workers who are confined to isolated outdoor workspaces are subject to higher rates of violence<sup>37,38,39</sup>. The distribution of sex workers across workspaces is determined by a social hierarchy influenced by one's race, gender, and class<sup>40</sup>. Racialized and trans sex workers are forced into risky outdoor environments where they are vulnerable to violence.

### *3.2. Construction and Gates*

Lyons and colleagues<sup>41</sup> studied the impacts of environmental changes on racialized trans sex workers in Vancouver, focusing primarily on the impacts of construction on employment opportunities. They found that trans sex workers have been pushed out of newly gentrified areas in Vancouver by both police and community members, putting great strains on the sex workers' employment.

Additionally, road construction caused detours within the city that resulted in increased traffic congestion<sup>42</sup>. With more traffic and attention to particular areas, clients were hesitant to stop to be serviced by sex workers. Competition between sex workers increased, affecting trans sex workers who rely on each other for protection (e.g., having clients wear condoms). Furthermore, sex workers were forced to lower their prices and change their practices in order to maintain their client base and a stable income.

Road construction also forced sex workers to work further down the railways in order to avoid law enforcement while performing services<sup>43</sup>. To protect themselves from clients, they cut holes in the fencing that lines the railway so they could easily escape if necessary. However, this was not a perfect solution. Security guards would leave their car headlights on in order to deter potential clients and issued tickets to the sex workers for loitering or for unrelated offenses. Road construction caused this heightened attention from law enforcement and security guards.

Lyons and colleagues<sup>44</sup> also found that buildings were being physically altered to disrupt sex worker activity. Several business owners installed new gates to prevent sex workers from standing outside or inside their buildings. This forced the sex workers into unpredictable weather conditions like rain, snow, and frigid nights.

Construction, gentrification, and building changes greatly affected sex workers' clientele<sup>45</sup>. Black trans women sex workers were most affected by these environmental changes because they were often forced to work outdoors as a result of sex work social hierarchies<sup>46</sup>.

### 3.3. COVID-19

COVID-19 has had significant and prolonged environmental impacts on sex workers<sup>47</sup>. Due to quarantine regulations, Canada has seen the closure of many safe workspaces<sup>48</sup>, including salons, parlors, and spas<sup>49</sup>. Consequently, sex workers' incomes have disappeared rapidly<sup>50</sup>, yet government emergency funds are inaccessible to many sex workers because of their line of work. As a result, many are food insecure and face eviction<sup>51</sup>. Despite the risk to their and their clients' health, sex workers were often forced to work outdoors during the pandemic, in an effort to maintain a living wage<sup>52,53</sup>.

COVID-19 disproportionately affects Black Canadians, who make up 18 percent of Canada's population, yet 33 percent of COVID-related hospitalizations<sup>54,55</sup>. Abramovich and colleagues<sup>56</sup> found that trans and nonbinary people in Ontario experience higher rates of chronic conditions, such as HIV, diabetes, and asthma, all of which put them at greater risk of contracting and dying from COVID-19<sup>57</sup>.

Therefore, Black trans sex workers are at great risk during the COVID-19 pandemic. They have suffered a loss of clientele and therefore experience lower incomes. They are unable to access government relief benefits and are at greater risk of contracting and dying from the virus. The pandemic has had environmental and social impacts that greatly affect the lives of Black trans sex workers.

## 4. Advertisements for Black Sex Workers

### 4.1. Prostitution and Escort Services

Race, class, and gender determine whether or not a sex worker is viewed as respectable or unrespectable<sup>58</sup>. For example, a street-based sex worker who is HIV-positive is viewed as unrespectable, whereas an upscale escort with no STIs is viewed as respectable. These categorizations are often racialized, which is the reason for the implementation of a quota system that limits the number of women of colour who can work in one area.

Third-party managers limit the number of women of colour who can work for them, all the while hypersexualizing these racialized employees in their advertisements<sup>59</sup>. Their ads usually play into racial stereotypes, emphasizing Black women's breasts and butts. These women are usually photographed wearing animal print with descriptions promoting wild and rough sex, comparing sex with them to sex with a wild animal. The language used to describe Black women often involves references to food, such as fudge or brown sugar<sup>60</sup>. In contrast, advertisements characterize white sex workers as intelligent, witty, and fun-loving, with descriptions like "blonde Canadian sweetheart" and "gorgeous French-Canadian angel"<sup>61</sup>. Black sex workers are

subjected to degrading stereotypes that characterize them as wild animals, while white sex workers are advertised as beautiful and respectable women.

#### 4.2. Pornography Industry

The degradation of Black women in sex work extends beyond prostitution and escort services. Black women in the porn industry are relentlessly hypersexualized, creating a narrative of Black sexual deviance<sup>62</sup>. Within porn, their bodies are treated like disposable objects that serve to reinforce notions of hyper-heterosexuality<sup>63,64</sup>.

The demand for Black women in porn is found in interracial sectors of the industry<sup>65</sup>. People desire porn that portrays white men violently dominating Black women so they can play out their “post-colonial fantasy rooted in reinforcing derogatory sexual fetishizations of Black women”<sup>66</sup>. These areas of porn further segregate and devalue Black women while fetishizing their bodies for sexual gratification<sup>67</sup>.

If these Black women are also trans, they are further subjected to fetishization and invalidation because of their trans identity. Porn videos of trans women often include labels like “she-male” and “tranny,” which work to humiliate trans people for the sexual pleasure of the viewer<sup>68</sup>. Black trans women are degraded and demeaned within porn in ways that white cis women are not.

### 5. Conclusion

In Canada, sex work can be a site of danger and violence. Cis and trans Black women sex workers are subjected to higher rates of violence and are policed more often than other sex workers<sup>69</sup>. They are forced to work in risky, isolated outdoor workspaces<sup>70</sup>. Since the start of the COVID-19 pandemic, sex workers have suffered a loss of clientele, forcing them to put their health at risk in order to maintain a living wage<sup>71</sup>. Within porn, cis and trans Black women are degraded and fetishized for sexual gratification. This paper has demonstrated how the intersection of Blackness, transness, and violence within the State create unique experiences of oppression for cis and trans Black women in the sex industry.

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# *The Environment vs. The Trans Mountain Pipeline Expansion Project*

## **Isabella Rose Fusco**

### ***Introduction***

The environment has become an increasingly pressing issue within Canadian politics. The federal government has responded by making commitments to eliminate single use plastics, placing taxes on carbon, and even entering international climate accords such as *The Paris 2016 Agreement* (2016). Yet, the government continues to invest and promote one of Canada's oldest and most harmful natural resources to boost its economy: oil. Due to this increase of environmental protectionism, Amy Janzwood notes that pipelines "have attracted significant attention in relation to the issue of climate change."<sup>1</sup> The Trans Mountain Expansion Project was first announced in 2013 and is a pipeline that has gained the focus of the media and public in regards to its negative effects on the environment. This attention has caused significant delays in the pipeline's creation, even forcing a re-evaluation by the Canadian government on how the pipeline affects Earth. As its presence is boasted by the government as necessary for creating wealth for the country, scholars such as David J. Hughes and the Conversations for Responsible Economic Development group have begun criticizing not only the pipeline's effect on climate change, but its economic viability. This demonstrates that pipeline delays are predicted to continue as they have occurred for the past seven years.

### ***Thesis***

This paper will demonstrate that the Trans Mountain Pipeline Expansion Project has been significantly affected by environmental protectionism regarding oil production. This will be showcased through a discussion of how the pipeline's increasing media attention and social mobilization, re-evaluation by the government and scrutiny from scholars, ultimately led to its predicted status of continuous stagnancy.

### ***Resources and the Trans Mountain Expansion Project***

To begin, the use of natural resources has been Canada's economic strategy since before Confederation. Natural resources are credited as the backbone of the Canadian economy, as shown when Olewiler notes that leading scholars, such as Innis and Mackintosh, debated whether this dependence will allow us to diversify our economy or cause our demise.<sup>2</sup> Olewiler determines that this dependence has a positive effect on our economy, but that we will continue to need new natural resources, as "depleting natural capital can increase economic growth rates in the short term, but over time, the economy will need new natural resources."<sup>3</sup> As we are dependent on staple goods, the federal government has maintained an economy dependent on the use of lucrative natural resources, such as the Trans Mountain Expansion Project (TMEP). Yet, while these natural resources fuel our economy, they also fuel harmful impacts on climate change and on our planet. As natural resources come from our environment, negative environmental outcomes pose a large threat to our economic stability, not just the planet. Olewiler notes that these impacts are "expected to last for many decades if not centuries if not

enough is done to stabilize then reduce global greenhouse gas (GHG) emission levels.”<sup>4</sup> With both the economy and environment at stake, the TMEP has faced significant criticism regarding long-term effects on climate change and its economic viability.

The Trans Mountain Expansion Project plans to expand the current Trans Mountain pipeline from Edmonton, Alberta to the coast of British Columbia in Burnaby.<sup>5</sup> It was approved by the Government of Canada in 2019 and is “planned to be 1,150 kilometres” long.”<sup>6</sup> This intensive expansion is boasted by the federal government as being necessary for Canada’s economic prosperity. The Government of Canada’s website notes that the project aims to create “thousands of good, middle-class jobs; [it will] unlock new global markets in order to get a fair price for Canadian oil [and] generate billions in revenue.”<sup>7</sup> Yet, due to rising environmental activism and increased awareness of climate change since 2015, Janzwood emphasizes that “no federally regulated oil sands pipelines have been completed.”<sup>8</sup> The TMEP is among those pipelines. Janzwood elaborates that, since the pipeline’s announcement in 2013, the TMEP has experienced significant delays.<sup>9</sup> The project’s estimated impact on the environment is a result of various predictions, such as projected oil spills, GHG emissions, endangerment of killer whales, and dissolution of the Indigenous cultural practices associated with killer whales.<sup>10</sup> This projected impact on the environment has been a well discussed topic in the media from Indigenous peoples and climate activists.

### ***Social Mobilization and Media Attention***

The TMEP is a project that has been particularly targeted by the media and various social groups. In Janzwood’s study of various pipelines and their delays, she found that, “projects with a certain scale of social mobilization are particularly difficult to build.”<sup>11</sup> This is true in the case of the TMEP, as there have been various articles, news stories, protests, and even lawsuits filed against the pipeline, which have had severe effects on the pipeline’s development. Protests against the pipeline have been occurring for years; for example, over the course of many months in 2018, “more than 200 people from various backgrounds have been arrested for civil disobedience.”<sup>12</sup> These arrests were associated directly with activists’ responses against the development of the pipeline. Additionally, in November 2020, *The Similkameen Spotlight* notes that protestors were blocking a railway route to the site of the TMEP, headed by groups such as the Extinction Rebellion.”<sup>13</sup> These protests have caused significant delays to the construction of the pipeline (e.g., by creating blockades), which have resulted in arrests that have cost the government and TMEP valuable time and money. They have also resulted in negative media attention nationwide, aimed to promote “media coverage, public support and political pressure” of protests against TMEP.<sup>14</sup> These protests have not only led to delays in daily production of the pipelines, but have led to lawsuits aimed at stopping production altogether.

Indigenous peoples are a major social group that have been against the Trans Mountain Expansion Project due to the risk the project poses to the prosperity of their land and the sustainability of cultural practices. Groups like the Wet’suwet’en, Secwepemc First Nations and the Tsleil-Waututh Nation, in particular, have been major opponents of the pipeline project.<sup>15</sup> Andrea Woo, a reporter at *The Globe and Mail*, notes that, in 2017, “there have been 19 separate lawsuits from First Nations, municipalities and environmental groups” against the TMEP.<sup>16</sup> The government ultimately won these lawsuits, though they caused delays in the project’s

development. The Tsleil-Waututh Nation have been active protestors, filing lawsuits and even writing a report titled *Assessment of the Trans Mountain Pipeline and Tanker Expansion Proposal* in 2015, in an attempt to stop the pipeline from being built to protect the environment.<sup>17</sup> The document notes that Tsleil-Waututh Nation's "obligation is not to oil. Our obligation is to our land, our water, our people, our life."<sup>18</sup> Chief Maureen Thomas was also quoted in an article by *The Globe and Mail*, wherein he states that the "disappointingly flawed" federal consultation understated oil-spill risks and health impacts."<sup>19</sup> This showcases that Indigenous mobilization, in particular, has affected the development of the TMEP. In the debate on what should take priority, the economy or the environment, when it comes to using natural resources, the media and social groups overwhelmingly support the environment. This support has undermined the pipeline's ability to be built and has caused the government to re-evaluate its approach in completing the TMEP.

### ***Re-evaluating the Project and its Effects***

The government attempted a two-fold approach to completing the Trans Mountain Expansion Project, which has resulted in a re-evaluation and delays in the development of the pipeline. David Hughes describes the government's approach as 'conflicting priorities,' as they are "increasing oil and gas production while at the same time trying to reduce carbon emissions."<sup>20</sup> These conflicting priorities have made the government's argument for promoting the pipeline confusing. In 2018, Environment Minister Catherine McKenna was criticized by *The Globe and Mail* for asking businesses to consider the environment in their actions while not having her government do the same.<sup>21</sup> Due to the negative attention drawn towards the government's dual stance in both the media and by social groups, the government's National Energy Board was called to re-evaluate the pipeline, and they released an updated report in 2019. The report detailed the inclusion of extensive protections for the environment, as well as various descriptions as to how the pipeline would assist the Canadian economy. The National Energy Board's report is very lengthy, covering topics ranging from the effects of the project on Indigenous culture, predicted impacts on climate change and the environment, and the pipeline's economic profitability.

The government's re-evaluation of the TMEP finds that "the marketplace demonstrated the need for the project."<sup>22</sup> The government states that "Canadians are the ultimate owners," as they boast that the pipeline will improve the price of oil.<sup>23</sup> However, despite how the document boasts this view, the report still presents a dual perspective by addressing key environmental issues, such as greenhouse gas emissions, oil spills, impacts on Indigenous groups and their land, and disruptions to the environment overall. Yet, this concern for the environment goes far beyond the Board's report. Jacob Cardinal from the *Toronto Star* has noted that the Trans Mountain Expansion Project has "submitted an application to the Canada Energy Regulator to see if the company will be able to re-route their pipeline from the Coldwater First Nation to the Coldwater Valley."<sup>24</sup> This action demonstrates that the government is attempting to move away from harming Indigenous land but is still willing to harm the environment and a different community nearby. Thus, the Government of Canada, the owners of the TMEP, presents a conflicting perspective in regards to their own pipeline. Whilst they celebrate what the TMEP can do for the Canadian economy, they also address significant concerns for the environment, ultimately

choosing profit from natural resources over our planet, a decision that is highly criticized by scholars.

### ***Scholarly Scrutiny***

Last, academics from across the nation have criticized the government's approach to mitigating the pipeline's effects on the environment, while also questioning its alleged economic viability. The report conducted by the Conversations for Responsible Economic Development group notes that 50 permanent jobs and an unconfirmed number of two-year temporary jobs will be created from the expansion project.<sup>25</sup> While the report confirms these jobs, it also highlights that, in the event of an oil spill on the environment, hundreds of thousands of jobs in tourism, real estate, property development, film, clean tech, digital media, agriculture, and information communication technology industries would be put at risk.<sup>26</sup> Whilst the TMEP may present itself as creating 'good middle-class jobs,' it could also take away thousands of them through a very likely oil spill, a spill that would not only affect the environment, but also the economy and natural resources, the very things that the government is aiming to protect.

Another scholar who has openly criticized the TMEP for its questionable economic value and harm to the environment is David Hughes, a well-known Canadian earth scientist who has been studying energy resources for over 40 years.<sup>27</sup> Hughes notes that "emissions from the oil and gas sector alone are on track to exceed Canada's emissions reduction target in 2050 by 81 per cent,"<sup>28</sup> The oil and gas sector includes various pipelines, like the Trans Mountain Expansion Project. Hughes does not limit his criticism to the pipeline's environmental impact but also attacks the government's economic approach, noting that "increased setbacks for Canadian producers is not supported by the evidence."<sup>29</sup> Both Hughes and the Conversations for Responsible Economic Development group agree that the pipeline, on account of both the economy and the environment, is not a viable project. These criticisms have increased support for the environment, deconstructing the government's argument for the pipeline's necessity and justifying delays in the pipeline's development.

### ***Conclusion***

As demonstrated above, the responses to the infrastructure initiative of the Trans Mountain Expansion Project have led to lawsuits, re-evaluation of the pipeline, and scholarly critique, all causing delay in the pipeline's construction. The debate on whether to export resources and prioritize the environment is the main cause of this delay and will continue to be a source of interruption to the pipeline's development. Janzwood notes that "the presence of long distance and legal risk and social mobilization and a major regulatory barrier is sufficient to produce the absence of the outcome: pipelines that are not built."<sup>30</sup> Janzwood's description of a halt in the building of pipelines perfectly encapsulates the causes of the delay in the Trans Mountain Expansion Project. Thus, it is likely that the project will continue to face significant delays and media scrutiny until its eventual completion, or until the project is discarded.

To conclude, this paper demonstrates that the debate in regard to utilizing natural resources to aid the Canadian economy, or to stop their use to save the environment, has affected the development of the Trans Mountain Expansion Project. The project has faced significant scrutiny in the media, such as coverage on social mobilization and its harm to the planet. These

mobilizations have led to legal action against the TMEP, resulting in a complete re-evaluation of the pipeline by the Canadian government. Although the government made changes to the project, scholars still find the pipeline to be both environmentally and economically harmful, showcasing that the Trans Mountain Expansion Project is a negative project in all aspects. In the argument to choose the environment or the economy, Canadians have lost to the government, as they continue to choose building the pipeline.

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<sup>19</sup> Woo, “How intervener status...”.

<sup>20</sup> David J. Hughes. “Will the Trans Mountain Pipeline and Tidewater Access Boost Prices and Save Canada’s Oil Industry?” *Canadian Centre for Policy Alternatives*, 2017: 7.

<sup>21</sup> Shawn McCarthy. “Ottawa won’t commit to disclosing carbon risk for expansion of Trans Mountain Pipeline; Environment Minister calls on Canadian corporations to detail how climate change will affect businesses, but decision has yet to be made on proposed investment in pipeline.” *The Globe and Mail*, April 20, 2018.

<sup>22</sup> National Energy Board, 331.

<sup>23</sup> Ibid.

<sup>24</sup> Cardinal, “Trans Mountain Re-Route...”.

<sup>25</sup> “Assessing the risks of Kinder Morgan’s...”, 8.

<sup>26</sup> “Assessing the risks of Kinder Morgan’s....”, 10.

<sup>27</sup> David J Hughes. “Reassessment of Need of the Trans Mountain Pipeline Expansion Project.” *Canadian Centre for Policy Alternatives*, 2020.

<sup>28</sup> Hughes, “Reassessment of...,” 27.

<sup>29</sup> Hughes, “Reassessment of...,” 28.

<sup>30</sup> Janzwood, “Explaining Variation in...,” 13.

# *Injustice Behind Prison Walls: A Systematic Review of Solitary Confinement in Canada*

**A'aishah Abdul Hameed**

## **Introduction**

Solitary confinement continues to be a pervasive practice in Canadian corrections, reflecting the human rights crisis that exists within the criminal justice system. Solitary confinement, colloquially referred to as 'segregation' in federal institutions, has remained a constant feature in the Canadian correctional context. Despite the findings of numerous reports, inquests, legislative initiatives, and recommendations against the practice of solitary confinement, isolation continues to cause harm to incarcerated individuals.<sup>1</sup> The repressive nature of isolation remains a violent tool that is used by correctional agents. This paper will examine the ways in which the practice of solitary confinement is an unequivocal human rights abuse that adversely affects the prisoner experience while serving no rehabilitative function.

First, this analysis will identify the ways in which solitary confinement violates the rights protected under the Canadian Human Rights Act and the Canadian Charter of Rights and Freedoms. Next, it will further explore the cruel and dehumanizing nature of isolation in the context of incarceration. Finally, this analysis emphasizes the inadequate treatment and systemic inequalities experienced by those with pre-existing mental health issues.

## **Human Rights Crisis in Canadian Corrections**

On any given day in Canada, there are 850 inmates placed into solitary confinement in federal prisons.<sup>2</sup> These inmates have been isolated for prolonged periods, with many of them being young offenders or individuals experiencing mental health issues.<sup>3</sup> The conditions of isolation vary from institution to institution, but generally they are extremely atrocious and strip prisoners of their dignity, and vulnerable populations are disproportionately subjected to this mistreatment. Conditions within confinement may include prolonged periods of no human contact, inadequate food, and infrequent access to showers and the outdoors.<sup>4</sup> Prisoners, like any other members of society, deserve to be treated humanely.<sup>5</sup> Prisoner rights are protected and governed under the Canadian Human Rights Act and the Canadian Charter of Rights and Freedoms, specifically under sections 7 and 12.<sup>6</sup> Notwithstanding these protections, the use of solitary confinement continues in Canada, even though its use poses a potential infringement of those rights. As such, prisoners being held in isolation for unwarranted and extended periods of time is a violation of their legal rights and freedoms, irrespective of the prisoner's classification or the gravity of the offence.<sup>7</sup>

The Canadian Charter of Rights and Freedoms ensures prisoners legal rights and protection from cruel treatment.<sup>8</sup> Specifically, section 7 of the Charter guarantees "the right to life, liberty and security of the person" while section 12 guarantees the protection of prisoners from "cruel and unusual treatment or punishment."<sup>9</sup> Yet, solitary confinement continues to be widely administered in federal institutions as a form of penal control. In addition, a prison's institutional head can make decisions regarding segregation practices with



minimal independent and external review or oversight.<sup>10</sup> The result of this has been that the treatment received by prisoners in solitary confinement is often perceived as simply a part of the prison sentence, allowing the infringement of prisoners' Charter rights to continue. Overall, the treatment and conditions prisoners are subject to in solitary confinement violate their fundamental rights.

Human rights are universal and inalienable, and an individual's status as a prisoner is no exception to this rule.<sup>11</sup> As mentioned previously, Section 12 of the Charter guarantees that the rights of federal inmates are not subjected to cruel or unusual treatment and punishment.<sup>12</sup> However, conversations with prisoners have revealed the abysmal treatment common in solitary confinement, including "humiliating strip searches, dehumanizing remarks and harassment from prison guards."<sup>13</sup> These illustrations of dehumanization and loss of dignity threaten to violate Section 12 of the Charter. Furthermore, the idea of having a 'prison within a prison' contradicts an important goal of incarceration, which is to rehabilitate prisoners and prepare them for their eventual release into society. There are minimal rehabilitative functions for prisoners in solitary confinement, and the lack of interaction with others can exacerbate the conditions for prisoners altogether.<sup>14</sup> More specifically, the dehumanizing nature of solitary confinement does not foster an environment, nor does it cultivate the conditions, that allow for reintegration and rehabilitation.

Isolated prisoners have difficulty separating their thoughts from reality and are at a higher risk of self-harm and suicide.<sup>15</sup> Extended periods of incarceration for prisoners with mental health issues may lead them to experience more severe symptoms and aggressive reactions to their settings.<sup>16</sup> Reduced human communication prevents mentally ill individuals from participating in programs, thus hindering the conditions that are needed for prisoners to successfully rehabilitate and reform. While an inmate's placement in administrative segregation can be voluntary, most placements are involuntary or are for punitive measures.<sup>17</sup> This illustrates that Canadian corrections are focused on a retributive rather than a rehabilitative approach to incarceration. Placing prisoners in isolation without concern for their ability to rehabilitate — where their only means of meaningful contact is through food slots, and access to essential resources and program amenities is significantly reduced — is counter to those goals, indicating that security is prioritized over prisoner rights and rehabilitation.

### ***Brazeau v. Canada: Current Constitutional Challenges***

In the Canadian correctional context, solitary confinement is the product of institutional security, where punishment and incarceration mutually influence one another. Correctional Service Canada (CSC) broadly employs the use of 'administrative segregation' and maintains that it is not similar to solitary confinement regimes. However, what the CSC refers to as administrative segregation is ultimately no different than what is widely considered to be solitary confinement.<sup>18</sup> This might explain Canada's resistance to abolishing such systems of control as it permits segregation for administrative and punitive purposes.<sup>19</sup>

The relevance of discussions questioning the constitutionality of solitary confinement was demonstrated in the recent case of *Brazeau v. Canada*, a class action brought forward by Christopher Brazeau and David Kift, two federal inmates suffering from mental health

issues.<sup>20</sup> The central issue in *Brazeau* was whether the prolonged administrative segregation experienced by Mr. Brazeau and Mr. Kift constituted a violation of sections 7 and 12 of the Charter.<sup>21</sup> The Ontario Court of Appeal decided to uphold the trial court's decision that the plaintiffs' rights had been violated under sections 7 and 12 of the Charter.<sup>22</sup> Finding that the constitutionality of administrative segregation can cause serious physical and psychological harm, especially for those with pre-existing mental health illnesses, the court held that the federal government violated an individual's right to life and liberty as defined under section 7.<sup>23</sup> Further, the judge found evidence that prisoners with mental illnesses who were placed in administrative segregation constituted cruel and unusual punishment and torture. The ONCA decision in *Brazeau v. Canada* held that damages to the whole class were justifiable in accordance with the need for vindication and deterrence.<sup>24</sup>

The *Brazeau* case decision was informed in important ways by the ONCA precedent set in *Canadian Civil Liberties Association (CCLA) v. Canada* (2019). *CCLA v. Canada* challenged the constitutionality of sections 31-37 of the Corrections and Conditional Release Act, which are the sections that permit the use of administrative segregation in Canadian prisons. In addition to the trial court's decision that there was a Section 7 violation, the ONCA also found that prolonged segregation, defined as segregation lasting more than 15 consecutive days, violated Section 12 of the Charter.<sup>25</sup> The unconstitutionality and cruel nature of solitary confinement is being confirmed in Canadian courts, which reinforces the unacceptability of this practice and its effects. Additionally, it is interesting to note that the issue of solitary confinement is gaining heightened interest and priority in Canadian judicial conversations as an appeal to the *CCLA v. Canada* decision makes its way to the Supreme Court of Canada, waiting to be heard alongside *British Columbia Civil Liberties Association (BCCLA)*, a similar case from the British Columbia Court of Appeals.<sup>26</sup> This demonstrates the importance and gravity of the issue at hand as constitutional rights are at stake.

### **Cruel and Dehumanizing Notions of Solitary Confinement**

The United Nations expresses that solitary confinement exceeding 15 days constitutes a form of torture. Thus, the use of isolation as punishment should be prohibited.<sup>27</sup> The harsh and restrictive conditions experienced by inmates in isolation do not foster a setting conducive to reintegration and rehabilitation. A carceral environment where prisoners are at a greater risk of self-harm, suicide, and subjugation to use-of-force interventions should not be part of the prison sentence.<sup>28</sup> The notion of harsher punishment aligns with the tough on crime rhetoric in which criminals and prisoners are seen as violent and threatening, and solitary confinement is a necessary response to control unwanted behaviours. Thus, this perception of law-breaking individuals reinforces a prison system created to brutalize and demean incarcerated persons. With the endorsement of a tough on crime agenda, correctional officers can capitalize on this context of punitive law and order, which exempts them from accountability and civilian oversight.<sup>29</sup> In doing so, the inherently unconstitutional and blatant infraction of procedural justice that manifests in correctional settings becomes an ongoing cycle of abuse.

Enshrined under the International Covenant on Civil and Political Rights, Canada has committed to "ensuring that no one shall be subjected to torture or to cruel, inhuman or

degrading treatment or punishment.”<sup>30</sup> Solitary confinement, at its core, is an affront to constitutional rights, being that it is intrinsically cruel. Incarcerated individuals develop a sense of worthlessness stemming from the degrading environment of isolation. “When prisoners display their suffering through anger or physical violence,” Jones writes, “the system invalidates them as ‘defective’ or ‘dangerous’ and justifies the use of isolation to contain them.”<sup>31</sup> Thus, the practice of solitary confinement is normalized in the prison context, ignoring the remedial option of incarceration being used as a last resort.

Furthermore, experiences of segregation are the most dire among racialized communities, particularly Indigenous prisoners, as they are extremely overrepresented. Approximately one-third of Indigenous inmates spend time in solitary confinement for an average of five days more than non-Indigenous offenders.<sup>32</sup> Indigenous peoples have experienced a long history of intergenerational oppression and disproportionate harm at the hands of law enforcement, and Canada’s current acceptance of solitary confinement participates in the reproduction and reinforcement of those traumas.

### **Inadequate Mental Health Care in Carceral Settings**

The prevalence of mental health issues in prisons is met with punitive and security focused responses. These retributive responses are not attentive to the symptoms of mental health disorders, self-harming behaviours, and suicidal prisoners.<sup>33</sup> Because symptoms of mental health conditions are often misconstrued as behavioural problems, prisoners are placed in solitary confinement as a matter of security. Moreover, prisoners who experience mental illnesses have a difficult time adjusting to correctional environments and complying with rules. As such, they may display strange, violent, or problematic behaviour, which is perceived as an endangerment to themselves, other inmates, correctional staff, and overall facility safety.<sup>34</sup> The perceived security risk that these prisoners pose is what compels prison officers to place them into segregation. Since prisons are operated under a paradigm of punishment, restorative responses by frontline mental health workers are not the norm in corrections.<sup>35</sup> This explains the limited access to psychiatric and mental health treatment, specifically for those in solitary confinement. Furthermore, prison staff may overlook the need for psychiatric care in fear of prisoners malingering, but this leads to inmates being deprived of necessary support and resources.<sup>36</sup> Correctional facilities have inadequately responded to prisoners’ mental health needs, and hence mental health issues continue to plague Canadian prisons. The United Nations Human Rights Committee (UNHRC) recommends that solitary confinement be avoided for prisoners with mental health conditions.<sup>37</sup> Despite this, the use of segregation on such prisoners is well documented and present in Canadian corrections. Solitary confinement offers a superficial resolution to an otherwise systemic problem, reflecting a failure in the correctional system to seek alternative strategies that accommodate the needs of prisoners with mental health challenges.<sup>38</sup>

A majority of prisoners experience addiction or mental health problems.<sup>39</sup> By placing them in segregation units, it can make it very difficult for such prisoners to reintegrate into the community, even cause them to recidivate in the long term.<sup>40</sup> There have been several reports

of “prisoners being held in isolation units locked up 22 or 23 [hours] per day for weeks, despite having been diagnosed with serious mental illnesses.”<sup>41</sup> The systematic overreliance on segregation to resolve the challenges of accommodating prisoners to correctional facilities demonstrates the system’s lack of care for mental health and clinical needs. Correctional facilities fail to recognize the nexus between solitary confinement and mental illness, leading to a system that punishes psychiatric instability.

## **Medical Isolation and Systemic Inequalities**

Rutland, a member of the Anti-Carceral Group, discusses ‘medical’ isolation, the new standard approach of isolating prisoners in the age of the coronavirus pandemic.<sup>42</sup> This practice of medical isolation, which is analogous to solitary confinement, is equally cruel and tortuous in its effects. Prisoners in medical isolation are deprived of stimulation and social interaction, have no access to showers or protective gear such as hand sanitizers and face masks, and often have nothing to keep them occupied.<sup>43</sup> Additionally, mental health services delivered by nurses and clinicians are even more restricted under these circumstances, where services are limited to cell front therapy.<sup>44</sup> This further demonstrates the failure of prison facilities to ensure the wellbeing and safety of inmates. The increased use of medical isolation did not prevent the carceral death of Robert Langevin at Bordeaux prison.<sup>45</sup> Langevin, a detainee at the Montreal Detention Centre, had expressed concerns and advised authorities about his vulnerable health conditions weeks before being tested positive for COVID-19, which eventually took his life.<sup>46</sup> The overt misuse of solitary confinement illustrates the system’s failure to remedy the systemic inequalities present in segregation practices. The harsh realities endemic to punitive legal systems continue to repeat the indignities and atrocities inherent to the use of solitary confinement in Canadian prisons.

## **Conclusion**

To prevent the shift towards cruel and inhumane legal measures, future research is warranted to explore the need for enhanced oversight by adopting an independent adjudication framework.<sup>47</sup> Canada needs to mobilize a more dignified and humanizing approach to segregation practices, which addresses the unique needs of vulnerable prisoners, including those with mental health issues. The CSC needs to partner with experts and researchers to recognize the social, economic, and political factors influencing the prisoner experience. The issue of solitary confinement calls for a more humane and nuanced criminal justice paradigm that is sensitive to the unique and complex needs of prisoners.<sup>48</sup> In order to establish long-lasting penal reform, it is integral that Canada develops an alternative and more sophisticated approach to incarceration that does not reproduce the current failures of the penal system.<sup>49</sup>

The continued institutionalization of solitary confinement is a prevailing human rights crisis. The inherently cruel and degrading conditions prisoners are placed in violates fundamental legal rights, reflecting a carceral system that is oriented towards punishment and control instead of rehabilitation and reintegration. The ill treatment of prisoners “[results] from and [reinforces] a problematic set of legal norms,”<sup>50</sup> legitimizing a carceral system of excessively punitive

measures and interventions. In addressing and rectifying these systemic problems, Canadian penitentiaries can gain greater insight into criminal justice praxis and redress the issue of solitary confinement.

### Notes

<sup>1</sup> Jones, “Breaking Down the Walls: Coordinating Legal and Extra-Legal Strategies to Abolish Solitary Confinement in Canada,” 4.

<sup>2</sup> Kelsall, “Cruel and unusual punishment: solitary confinement in Canadian prisons,” 1345.

<sup>3</sup> Ibid.

<sup>4</sup> Jones, “Breaking Down the Walls: Coordinating Legal and Extra-Legal Strategies to Abolish Solitary Confinement in Canada,” 14.

<sup>5</sup> Jones, 7.

<sup>6</sup> Alex Hunter, “Charter, Punishment, and Human Rights,” Lecture Notes, University of Toronto Mississauga, May 13, 2020.

<sup>7</sup> Ibid.

<sup>8</sup> Coleman Brinker, “Solitary Confinement vs. the Charter of Rights and Freedoms,” *Centre for Constitutional Studies*, July 19, 2017.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Maria Ron Balsera, “Human Rights: universal, inalienable, and indivisible,” *Actionaid*, December 9, 2019.

<sup>12</sup> Coleman Brinker, “Solitary Confinement vs. the Charter of Rights and Freedoms,” *Centre for Constitutional Studies*, July 19, 2017.

<sup>13</sup> Jones, “Breaking Down the Walls: Coordinating Legal and Extra-Legal Strategies to Abolish Solitary Confinement in Canada,” 14.

<sup>14</sup> Alex Hunter, “Charter, Punishment, and Human Rights,” Lecture Notes, University of Toronto, Mississauga, May 13, 2020.

<sup>15</sup> Kelsall, “Cruel and unusual punishment: solitary confinement in Canadian prisons,” 1345.

<sup>16</sup> Simpson, McMaster, and Cohen, “Challenges for Canada in meeting the needs of persons with serious mental illness in prison,” 502.

<sup>17</sup> Kelsall, “Cruel and unusual punishment: solitary confinement in Canadian prisons,” 1345.

<sup>18</sup> Jones, “Breaking Down the Walls: Coordinating Legal and Extra-Legal Strategies to Abolish Solitary Confinement in Canada,” 10.

<sup>19</sup> Jones, “Breaking Down the Walls: Coordinating Legal and Extra-Legal Strategies to Abolish Solitary Confinement in Canada,” 9.

<sup>20</sup> *Brazeau v. Canada*, 2.

- <sup>21</sup> Ibid.
- <sup>22</sup> Alyssa Hall, “Ontario Court of Appeal Sets Aside \$20 Million Charter Damages Award In Solitary Confinement Class Action,” *The Litigator*, April 13, 2020.
- <sup>23</sup> *Brazeau v. Canada*, 8.
- <sup>24</sup> Henry Ngan, “Ontario Court Grants \$20 Million Summary Judgement Against Government of Canada for Unconstitutional Solitary Confinement of Class Members,” *CanLII Connects*, April 18, 2019.
- <sup>25</sup> *Canadian Civil Liberties Association v. Canada*, 3.
- <sup>26</sup> Alison Imrie, “SCC to Determine Constitutionality of Administrative Segregation,” *theCourt.ca*, March 18, 2020.
- <sup>27</sup> Kelsall, “Cruel and unusual punishment: solitary confinement in Canadian prisons,” 1345.
- <sup>28</sup> Zinger, “Human Rights and Federal Corrections,” 614.
- <sup>29</sup> Zinger, 610.
- <sup>30</sup> Jones, “Breaking Down the Walls: Coordinating Legal and Extra-Legal Strategies to Abolish Solitary Confinement in Canada,” 12.
- <sup>31</sup> Jones, 15.
- <sup>32</sup> Kelsall, “Cruel and unusual punishment: solitary confinement in Canadian prisons,” 1345.
- <sup>33</sup> Zinger, “Human Rights and Federal Corrections,” 620.
- <sup>34</sup> Dellazizzo, “Is Mental Illness Associated with Placement into Solitary Confinement in Correctional Settings? A Systematic Review and Meta-Analysis,” 2.
- <sup>35</sup> Zinger, “Human Rights and Federal Corrections,” 620.
- <sup>36</sup> Dellazizzo, “Is Mental Illness Associated with Placement into Solitary Confinement in Correctional Settings? A Systematic Review and Meta-Analysis,” 11.
- <sup>37</sup> Jones, “Breaking Down the Walls: Coordinating Legal and Extra-Legal Strategies to Abolish Solitary Confinement in Canada,” 13.
- <sup>38</sup> Dellazizzo, “Is Mental Illness Associated with Placement into Solitary Confinement in Correctional Settings? A Systematic Review and Meta-Analysis,” 4.
- <sup>39</sup> Alex Hunter, “Charter, Punishment, and Human Rights,” Lecture Notes, University of Toronto, Mississauga, May 13, 2020).
- <sup>40</sup> Ibid.<sup>41</sup> Webster, “Canadian prisons face new legal challenges over mental health,” 567.
- <sup>42</sup> Ted Rutland, “Confinement within confinement: It’s time to end medical isolation in prisons,” *Ricochet*, May 25, 2020.
- <sup>43</sup> Ibid.
- <sup>44</sup> Dellazizzo, “Is Mental Illness Associated with Placement into Solitary Confinement in Correctional Settings? A Systematic Review and Meta-Analysis,” 5.
- <sup>45</sup> Ted Rutland, “Confinement within confinement: It’s time to end medical isolation in prisons,” *Ricochet*, May 25, 2020.
- <sup>46</sup> Paul Cherry, “‘I don’t want to die here’: Bordeaux detainee told authorities of health concerns,” *Montreal Gazette*, May 21, 2020.
- <sup>47</sup> Zinger, “Human Rights and Federal Corrections,” 622.

<sup>48</sup> Bromwich and Kilty, “Introduction: Law, Vulnerability, and Segregation: What Have We Learned from Ashley Smith’s Carceral Death,” 163.

<sup>49</sup> Webster, “Controls over solitary confinement needed,” E4.

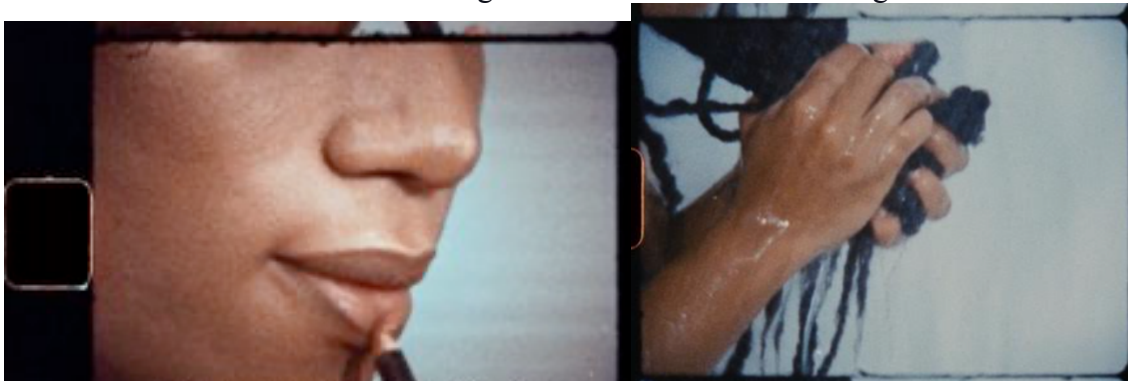
<sup>50</sup> Bromwich and Kilty, “Introduction: Law, Vulnerability, and Segregation: What Have We Learned from Ashley Smith’s Carceral Death,” 161.

# *Spatial Eruptions and the Natural Hair of Black Canadian Women*

**Kerry-Ann James**

In *Mama's Baby, Papa's Maybe: An American Grammar Book*, Hortense Spillers clarifies the ways in which African American women have been marked by the afterlife of slavery, complicating their gendering. During the Middle Passage, the African people on board the slave ship became cargo. The enslaved were no longer people but objects. Consequently, there is a rupture between the Black female body and the notion of femininity. Therefore, Black women are marked as objects that disturb Western systems of categorization, whether they be American or Canadian. However, Black femaleness in Canada is not analyzed to the same extent as it is in America. As Black Canadian scholar Katherine McKittrick has pointed out, Canada identifies itself as a nation that is Euro-white and non-Black.<sup>1</sup> Black women move through Canadian spaces in a manner that is distinct from their American counterparts. This essay will focus on the “absented presence” of Black women and how their hair (re)makes Canadian space while challenging ideas of femininity. In this essay I will conduct a close visual analysis of the short film *Wash Day* by Black Canadian filmmaker Kourtney Jackson and *The Kitchen Table Series: Untitled (Woman brushing hair)* by Carrie Mae Weems to explore how the hair of Black women ruptures Canadian spaces, traditional definitions of femininity, and locates a space for care.

The pathologizing of Black women is global. However, I'd like to turn my attention to the ways in which Black femaleness is treated in the Canadian social imagination and how it affects the 'place' of Black women. According to Agnes Calliste, Canada's immigration policies operate under the assumption that working-class Caribbean women are more likely to become public charges because they are fundamentally immoral and physically unfit for citizenship.<sup>2</sup> Calliste further posits that these stereotypes of the inherently "bad" Black woman make room to justify the restriction and deportation of Caribbean women, demonstrating the complex spatial relations between Canada and Black women concerning traditional beliefs surrounding Blackness.



Stills from *Wash Day*, Kourtney Jackson (2020)

*Wash Day* (2020) is a short film by Black Canadian filmmaker Kourtney Jackson. The film begins with an intimate extreme close-up of a Black trans woman washing her hair. The



camera closely follows the water trickling down her coils. A close-up shot of the woman massaging her scalp and body emphasizes the sensations of love and care that this ritual makes available to oneself. The first subject, the trans woman, expresses through voice-over narration that only after she began transitioning to female did her hair become so important that it was “everything” to her. Her hairstyle became a choice of life or death. She explains that wigs became a tool for freedom, and being a Black trans woman makes this a nuanced Canadian experience.<sup>3</sup> Black women must attempt to conform to traditional femininity in order to survive, but at the intersection of transness and Black femaleness, the stakes are exponentially higher. In a study that focused on Black women and professionalism, one woman notes that she decided to wear her short afro to work at a high-end hair salon in Yorkville, an affluent neighborhood in Toronto. To the Black hairstylist’s astonishment, her natural hair sparked a disturbing conversation between her white colleagues about how unprofessional Black hair is in its natural state.<sup>4</sup> The hair of Black women contributes to their imminent failure to adhere to normative (white) femininity, being as one of the defining characteristics of beauty is straight, flowing hair.<sup>5</sup> In *Wash Day* and the Black hairstylist’s experience, we can undoubtedly see that Black hair obstructs space, interrupting hegemonic ideals of feminine beauty.

Tied to the ideological and spatial obstruction evident in responses to Black women’s hair are dehumanizing and oppressive responses. In the film, the Black trans woman expresses that she has no agency over her body, so caring for her hair, which is an extension of her being, is a radical act in a society that associates curls and coils with unintelligibility, grossness, and (non)femininity.<sup>6</sup> I use the term (non)femininity instead of masculinity because on social media sites like Twitter and Instagram, posts that often liken Black women to dogs, apes, and inanimate objects are easily found. Black women are continually disavowed access to the realm of human. Furthermore, non-Black women’s tendency to touch Black women’s hair exemplifies the dehumanization that makes the presence of Black female bodies and hair shocking and disruptive. As Spillers has explained in *Mama’s Baby, Papa’s Maybe*, on the slave ship, in that hold, Black people became cargo; they became objects of capitalism.<sup>7</sup> Their bodies were no longer their own and they were no longer human. Black women return to objecthood in the occasion of unsolicited hair touching, better described as petting. The voice-over of another Black female subject in *Wash Day* describes the moment as an instance where “...people can feel so entitled to someone else, that your own personal space and your own personal dimension doesn’t matter anymore.”<sup>8</sup> This practice of petting and focusing on Black natural hair creates a highly isolating and demeaning moment that underscores the constant violation of Black women’s personal space. This violation professes that she is available for touching, inspection, and inquiry, which is reminiscent of the authority assumed by slave owners and imposed onto the female slaves on the auction block. The unauthorized touching of Black women is not a result of innocent curiosity but entitlement. That act is a reassertion of power over the Black female body. It is a response to the threatened nonconformity of her presence. For example, a workspace reorients its productive energy to the presence of a Black woman’s hair instead of her accomplishments or the tasks at hand. Straightening their hair or using synthetic hair then becomes a tool of economic mobility, a way to stabilize the space, although no matter the hairstyle a Black woman models, others will respond to it.<sup>9</sup>

Following Cheryl Thompson in "Black Women, Beauty, and Hair as a Matter Being," Black women access traditional femininity through adhering to an 'inauthentic' hair standard.<sup>10</sup> Nonetheless, to avoid focusing on issues of authenticity when speaking about Blackness, I turn to Shaunasea Brown, a Jamaican Canadian PhD candidate in the humanities at York University. Brown explains that the hair of Black women is trapped within a state of performance that makes them feel judged and watched.<sup>11</sup> This judging and watching becomes an internalization of surveillance as Black women have been labeled with 'good' (looser curl patterns) or 'bad' (tighter curl patterns) hair within and outside Black communities. The complicated practice of reading hair dates back to slavery when light skin and loose curls would dictate whether you would be working in the field or the house. Once again, we see how Black beauty is often concerned with spatial access and economic mobility and not loveliness. Looser curls, straightened hair, and straight synthetic hair are in proximity to whiteness and, therefore, relatively aid in maintaining the equilibrium of the space. The presence of unambiguous Blackness through specific Afrocentric hairstyles like afros or dreadlocks rupture white spaces because they are perceived as a threat to the implicit social order.



Figure 1. Untitled (mother and daughter), 1990, Carrie Mae Weems

In Shirley Tate's investigation of anti-racist aesthetics and Black beauty, she states that a racialized hierarchy is embedded in the language of skin and hair, so Black women need to negotiate and claim a space to nurture Black beauty and being. As previously mentioned, caring for natural hair is a radical act. For example, "wash day" alludes to a portion of or the entire day that Black women dedicate solely to putting an immense amount of care into their natural hair. This is a practice of self-care but also a celebration of the multiplicity of selfhood. In the rough Canadian winters, Black women adopt what is called protective styles. This includes and is not limited to Senegalese twists, single braids, crochet braids, and wigs with cornrows underneath to cover up natural hair and give them and their hair a break.<sup>12</sup> There have been cases in Canada, such as at Jack Astor's Bar & Grill and the clothing store Zara, where Black female employees have faced discrimination for wearing protective styles like braids and not straightening their hair. When Black women find a middle ground of wearing protective styles that are not 'disruptive' for survival and self-preservation, the pathologizing of Black women in Canadian society still prevails.

Black women's natural hair is read as inappropriate and disturbing, so the preservation of selfhood then becomes difficult. Carrie Mae Weems' *The Kitchen Table Series* (1990) includes 20 staged black-and-white photographs in which Weems is the main character. Each image varies in tone; it encompasses intimate, familial, and platonic relationships and, most importantly, selfhood's multiplicity. The kitchen is a space that is marked by 'feminine' labour, like cooking and cleaning. However, for Black women, the kitchen space is transformed into a place of self and interpersonal care. It extends beyond a site of domestic labour into a place of connection and appreciation. In *Untitled (mother and daughter)*, the mother figure brushes Carrie's hair and with her other hand, carefully supports her head. Carrie's eyes are closed, indicating a trust that allows her to slip away into herself. At this moment, she is a daughter accepting comfort. In the next photo, *Untitled (Woman and daughter with makeup)*, Carrie transforms into another role: she is the mother in this scene, taking a moment of self-care with her daughter. As they sit down at the kitchen table, mothers and daughters locate a safe and supportive space they aren't afforded otherwise.



Untitled (Woman and daughter with makeup), 1990, Carrie Mae Weems

Once again, we see that Black women's exclusion from the realm of the feminine and from the human necessitates the transformation of traditional spaces. These warm-hearted photos by Carrie Mae Weems, like the intimate shots in *Wash Day*, locate the space where Black women can tend to and embrace themselves without the direct pressure of dominant beauty standards. They have carved out their own space for care. In *Untitled (mother and daughter)*, Weems, as the daughter figure, closes her eyes, suggesting that she is at ease, she can finally rest. In this instance, the kitchen is a space where Weems, as a Black woman, can extend and receive care from another Black woman. They have to be there for each other because, in different spaces, such as the workplace, their hair is a problem that shifts the space negatively. The effect is negative not because Afro-textured hair is characteristically bad itself, but because the associations and behaviour prompted by non-Black people in Canadian space is negative. In the

kitchen, her young daughter learns how to navigate spaces through making up, yet she does not yet understand the significance of her hair as it is neatly parted and brushed into parts with barrettes. This space is vital for protection, survival, and self-love in a society that hates to see and continues to be disturbed by the hair of Black women. Finally, Brown states, "While some Black Canadian women have no intention of making a statement through their hair... Black women's hair is involved in an ongoing state of politics due to Canadian constructions of race. The limiting societal conditions attached to ideas of race uphold the subjugated positions of womanhood that Black Canadian women are forced to navigate."<sup>13</sup> The Canadian social imagination does not allow for the bold acceptance of Blackness or Black beauty. The presence of Black hair will always be a spatial issue where Black women must transform spaces to create systems of self and communal care in order to preserve themselves under these harsh and complex conditions.

## Notes

<sup>1</sup>Katherine McKittrick, *Demonic Grounds: Black Women and the Cartographies of Struggle* (University of Minnesota Press, 2006), 92.

<sup>2</sup> Agnes Calliste, "Race, Gender and Canadian Immigration Policy: Blacks from the Caribbean, 1900-1932," *Journal of Canadian Studies* 28, no. 4 (February 1994), 134., <https://doi.org/10.3138/jcs.28.4.131>.

<sup>3</sup> Kourtney Jackson, *Wash Day*, 2020.

<sup>4</sup> Shaunasea Brown, "'Don't Touch My Hair': Problematizing Representations of Black Women in Canada" 12, no. 8 (2018), 72.

<sup>5</sup> Cheryl Thompson, "Black Women, Beauty, and Hair as a Matter of Being," *Women's Studies* 38, no. 8 (October 15, 2009), 832.

<sup>6</sup> Jackson, *Wash Day*.

<sup>7</sup> Hortense J. Spillers, "Mama's Baby, Papa's Maybe: An American Grammar Book," *Diacritics* 17, no. 2 (1987): 65–81.

<sup>8</sup> Jackson, *Wash Day*.

<sup>9</sup> Thompson, 852.

<sup>10</sup> Thompson, 849.

<sup>1</sup> Brown, 68.

<sup>2</sup> Brown, 77.

<sup>3</sup> Brown, 81.

## *Screen Media Essay: “Kim’s Convenience”*

### **Madison Lau**

#### **SUMMARY**

“Kim’s Convenience” is a Canadian television show that premiered on CBS in 2016. The series is developed by Shawn White and written by Ins Choi, based on his 2011 play of the same name. The sitcom follows the lives of a Korean Canadian family that runs a convenience store in Downtown Toronto. Mr. and Mrs. Kim are first-generation immigrants and oftentimes affectionately referred to as ‘appa’ and ‘umma,’ which is Korean for ‘dad’ and ‘mom,’ respectively. They have two children who were born in Canada: Janet, who is a 20-year-old photography student at OCAD University, and Jung, her estranged older brother who works at a car rental company. Throughout the course of the show, the series explores the relationships between the family and a wide cast of supporting characters who serve to explore the ways in which the Kims interact with and adapt to life in Canada.

“Kim’s Convenience” is a Canadian television program that is based on a play, written by Ins Choi in 2011, about a Korean Canadian family that runs a convenience store in Toronto. At the very core of the show is a critical analysis of intergenerational conflict between first-generation and second-generation immigrants, as well as the intercultural hybridity of Asian cultures in Canada, best examined through the family’s interactions with a whole host of characters that appear throughout the series. The series also touches upon cultural conflicts between homeland and hostland, tackling the issue of how Asian cultural practices and behaviours are often framed as barbaric and outdated in popular media, especially when compared to the North American values of Canadian society. One of the challenges that comes with writing a sitcom about minority groups situated in a Western country is that it is difficult to find the correct balance between representation and stereotyping. “Kim’s Convenience” has managed to avoid stereotyping and racial prejudice, appealing to a wide range of audiences by using its comedic elements to enhance the plot for another purpose. In this case, the comedy deliberately subverts common racial stereotypes applied to Asian immigrants. The true value of the show lies in the fact that it provides multiple complex perspectives on a variety of issues in order to show that there is no singular Asian Canadian experience.

The first thing that the show attempts to accomplish is to subvert some of the common stereotypes of Asians that are often portrayed in popular media within Canada. Asian immigrants are commonly labelled as being the ‘model minority’: hardworking overachievers who lead successful lives in comparison to other immigrants, as well as by coming from families who are able to assimilate smoothly to the more socially accepted customs of white society.<sup>1</sup> This stereotype is most commonly prevalent in regard to academics, as Asian immigrants are often assumed to be particularly skilled in science and math. This stereotype often precedes the belief that individuals of Asian descent will undoubtedly enter professional occupations like medicine or law.<sup>2</sup> In actuality, this stereotype promotes a sense of othering, whereby other minorities or immigrants who cannot achieve these standards are forced into a competitive atmosphere, in turn damaging intracolloquial relationships between Asian Canadians and other racial minorities. By confining Asian culture to this stereotype within Canada, much of the Asian immigrant identity

and the struggles that come with it are erased. “Kim’s Convenience” provides an alternative representation of Asian immigrants that directly juxtaposes this stereotype through the second-generation siblings Janet and Jung. Though their parents are the proud owners of a small business, which could be a testament to their success as immigrants, the children do not follow the same progression of the model minority stereotype. Janet is a photography student at OCAD University, pursuing an arts degree against the general expectations of the model minority stereotype that is often linked to occupations that are seemingly more prestigious, associated with high salaries. Jung, on the other hand, works at a car rental company, having dropped out of secondary school after spending time in a juvenile detention facility for petty crime. Through the differential characterizations of both Janet and Jung, “Kim’s Convenience” paints a picture of resistance against stereotypical depictions of Asians and Asian culture in Canada in an attempt to dismantle the model minority stereotype that is commonly seen in Canadian screen media.

Another narrative that is often expressed in popular media is the belief that racial and residential segregation is prevalent amongst Asian Canadians, resulting in high concentrations of ethnic neighborhoods, wherein there is little interaction between people of different races.<sup>3</sup> This narrative eventually leads to an inability to form close relationships between different racial groups in a neighborhood and, as such, results in a sense of mutual distrust that negatively impacts integration into wider society.<sup>4</sup> “Kim’s Convenience” once again chooses to subvert this claim by setting the show in the multicultural Regent Park neighborhood of Toronto instead of shooting it in Koreatown. To that effect, the show focuses more on intragroup interactions between the Kim family and a variety of supporting characters with a diverse range of multicultural backgrounds. For example, Mr. Kim is shown to be close friends with both Mr. Chin, who is Chinese, and Mr. Mehta, who is Indian. They both frequently visit him in his convenience store to commiserate over their shared experience of owning small businesses and to give each other friendly advice. When the air conditioning breaks down in Mr. Kim’s store, Mr. Chin suggests that Mr. Kim seek out Frank, a white neighbourhood mechanic, to help with the repairs.<sup>5</sup> When Mr. Chin goes on a date with Russian hairstylists, Mr. Kim offers to help him impress them.<sup>6</sup> Mr. Mehta and Mr. Kim also often bond and reminisce over their strict upbringings before they immigrated to Canada.<sup>7</sup> The sense of camaraderie and support between these characters shows that they have built a sense of community amongst themselves, regardless of their ethnicity, suggesting that perhaps the Asian immigrant experience within Canada is not as ethnically homogenous as many believe it to be.

One of the main points of contention within this piece of media is the diasporic clash between culture and practices of homeland and hostland. “Kim’s Convenience” tackles the assimilation and integration of Asian cultures in Canada in many ways. For the purposes of this essay, the parenting styles of Mr. Kim and Janet’s teacher Mrs. Murray will be contrasted in order to examine this concept. Social context plays a large role in the formation of culture, as most of the time it is a learned construct based on an individual’s social background, such as where they grew up or how they were raised.<sup>8</sup> Korean culture tends to be based on more collectivist Confucian values and, as such, children are brought up in an environment where discipline is taken more seriously.<sup>9</sup> Conversely, in European-American culture prevalent in Canada, parents tend to raise their children using a more individualistic frameworks that allows them more liberty.<sup>10</sup> Mr. Kim’s parenting style is heavily influenced by his own upbringing back



in Korea, where his parents were stricter when it came to discipline. Mrs. Murray, on the other hand, is more influenced by Western pedagogy when it comes to educating her child. When Mr. Kim flicks her son lightly on the forehead as a disciplinary method because he was misbehaving in his store, Mrs. Murray immediately comes to the conclusion that Janet is living in an abusive environment, when in actuality, Mr. Kim was simply demonstrating a different mode of parenting.<sup>11</sup> Janet herself does not regard her father's parenting as abusive, and even defends him against Mrs. Murray's claims, but she refuses to listen to her and holds on to her own assumptions.<sup>12</sup> Mrs. Murray is a caricature that represents the everyman Canadian. She is part of the social majority within Canada who, instead of trying to acknowledge or understand different cultures, is quick to judge and come to the conclusion that practices different from their own are incorrect and barbaric. This is part of a larger, global issue, where hostlands often condemn cultural practices that are unfamiliar to them. Being the majority in power and holding the most influence within society, the beliefs and cultural practices of a hostland tend to overrule those of ethnic minorities. This further contributes to a social othering whereby Asians and Asian culture are unable to truly be integrated and accepted into greater Canadian society.

"Kim's Convenience" also addresses the theme of hybridity in terms of Asian cultures within Canada. Oftentimes, culture is conceptualized as something that exists statically and that cannot shift from a binary either-or paradigm,<sup>13</sup> but this viewpoint fails to acknowledge that much of the Asian immigrant experience and, in turn, culture, is continuously being deconstructed and reconstructed based on the social contexts and environments to which they are exposed. As a result, culture changes and adapts. Maintaining this idea that culture is stagnant serves to reinforce an 'us versus them' narrative that attacks an immigrant's sense of belonging and self by undermining their relationships with a variety of cultures. This is best showcased through Janet's noticeable difficulty reconciling with her heritage as a second-generation Korean immigrant in Canadian society. Eventually, this is further exacerbated by the arrival of her cousin Nayoung, who was born and raised in South Korea, is very sure of her own culture, and has a strong sense of belonging when it comes to her heritage.<sup>14</sup> Her character serves to highlight Janet's cultural hybridity and the struggles that come with it. This contrast between the two of them is pointedly showcased when they have lunch at a Korean restaurant with Janet's Canadian friends.<sup>15</sup> Janet's friends ask Nayoung how to eat the traditional tofu stew, but when Janet expresses a different opinion, her friends immediately retort that she has never even been to Korea, implying that she is not well versed in Korean culture in comparison to her cousin. Janet vents her frustration following this by stating, "I don't have to go to Korea, I am Korean!"<sup>16</sup> What this scenario captures is the idea that for Asian immigrants who did not grow up in their homelands, oftentimes people do not acknowledge them as truly being a part of that culture because they might not be as familiar with the cultural practices or customs. Moreover, Janet's photography professor at university also refuses to acknowledge her as Canadian, referring to her and her parents as refugees who fled to Canada despite her protests that they are not.<sup>17</sup> There is an effort here on the part of Choi to try and capture the sense of othering that Asian immigrants tend to face within Canada, where they are not considered fully Asian or Canadian in the context of the new society they have immigrated to.

"Kim's Convenience" also makes some meaningful commentary on intergenerational differences in ideology and relationships with culture between first-generation and second-

generation Asian immigrants, as well as the conflicts that grow out of this. The show conveys this through the relationships between Mr. Kim, Mrs. Kim, and their children, Janet and Jung. Studies have shown that some of the main factors that contribute to the development of intergenerational differences in Asian culture between adolescents and their parents include the development of autonomy within the child that affects the consolidation of ingrained familial values,<sup>18</sup> and a discontinuity in the process of enculturation or acculturation due to the difference in social environment and context.<sup>19</sup> There are multiple instances in which this is reflected on the show. In Korean culture, there tends to be an emphasis on parental authority and children are expected to listen to what they are told as a form of respect for their elders.<sup>20</sup> When Mr. Kim sells Janet's photographs without her permission and she gets upset, they delve into an argument with Mr. Kim telling Janet that everything she has is because of him and the struggles he went through to take care of her. He also adds that selling her photographs is his right as her father because it is a way for her to pay him back for raising her. Janet is viscerally angry with her father following this claim and tells him that the photos are hers because she took them and that his way of thinking is wrong.<sup>21</sup> Here we see both the hypothesized factors delineated earlier that lead to the development of an intergenerational conflict in culture and beliefs among Asian immigrants. Since Janet grew up in Canada, she was removed from a social context where she would have been socialized into traditional understandings of the behaviour and beliefs that Korean culture champions. This is different from Mr. Kim, who grew up in Korea. Naturally, this would mean that the way their relationships with culture and beliefs were formed would not be the same. This difference in social environment affected Janet's process of enculturation leading to an intergenerational conflict in belief systems. Moreover, she is shown to have developed her own sense of autonomy that directly goes against her father's values and beliefs when she tells him that the way he thinks is 'messed up'.<sup>22</sup> Using this example, "Kim's Convenience" wants the viewers to understand that there is no singular Asian Canadian experience. Immigrants and their cultures are shaped by a complex set of dynamics that differ from person to person, especially between generations. As such, "Kim's Convenience" attempts to convey the message that because each individual interprets culture differently, the essence of being Asian and of Asian cultures in Canada is not something that can be compartmentalized into the stereotypes that Canadian media tend to associate Asian cultures with.

Another dimension with regards to intergenerational immigrant differences in culture is brought to the forefront when Mr. Kim, Mr. Chin, and Mr. Mehta discuss the difference when it comes to the way they raise their own children in comparison to their parents. Mr. Kim complains to Mr. Chin that his father would not have even looked at his photographs, much less allowed him to pursue an arts degree like he has allowed Janet to.<sup>23</sup> Mr. Mehta and Mr. Kim also complain to each other that their children are spoiled and ungrateful of how well they treat them as they themselves were frequently subjected to corporal punishment from their parents for small mistakes when growing up.<sup>24</sup> Here, "Kim's Convenience" displays the process of cultural adaptation. The series wants to express to the viewers that the way Mr. Kim engages with cultural practices has shifted to a certain extent due to the fact that he too is an immigrant and therefore was exposed to social environments that were different from his parents. Though Mr. Kim does not resonate with Canadian culture as much as his children do, he does acknowledge that his own parenting and the way he interacts with culture has changed in accordance with his



current positionality as a first-generation immigrant. Janet and Mr. Kim are eventually able to reconcile any conflict of opinions that they had and affirm that they still love one another despite the fact that they may carry some differences in the way they interpret culture and cultural practices.<sup>25</sup> Mr. Kim also shows no ill will towards his father for the way he raised him.<sup>26</sup> What this conveys is the idea that though there may exist certain intergenerational differences in perceptions of Asian culture in Canada, that does not mean that they are irreconcilable. In fact, as we see in “Kim’s Convenience”, most immigrant families simply integrate these differences into the way they adapt to life in a new society.

To conclude, “Kim’s Convenience” highlights the various experiences of Asian immigrants in Canada as well as the struggles that come with adapting in accordance with the cultural mores and norms of the new society that they have come to reside in. Moreover, “Kim’s Convenience” also tackles issues of intergenerational conflict of cultures between first- and second-generation immigrants and the way immigrants sometimes develop warped senses of belonging due to their cultural hybridity from embodying both Asian and Canadian cultures. The series also attempts to subvert common stereotypes of Asian cultures in Canada to show that there is not a singular Asian Canadian experience. Using the approachability of a sitcom, the writers have been able to successfully garner a great amount of public appeal in order to spread this message to a larger audience.

### Notes

1. Lisa Kiang, Melissa R. Witkow and Taylor L. Thompson, “Model Minority Stereotyping, Perceived Discrimination, and Adjustment Among Adolescents from Asian American Backgrounds.” *Journal of Youth and Adolescence* 45, no. 7 (2016): 1366. <https://doi.org/10.1007/s10964-015-0336-7>.
2. Kiang, Witkow and Thompson, 1371.
3. Camille Zubrinsky Charles, “The Dynamics of Racial Residential Segregation,” *Annual Review of Sociology* 29, no. 1 (2003):172. <https://doi.org/10.1146/annurev.soc.29.010202.100002>.
4. Charles, 183.
5. “Kim’s Convenience,” season 1, episode 4, “Frank and Nayoung,” directed by Dawn Wilkinsin, aired October 25, 2016, <https://www.netflix.com/watch/80236364>.
6. “Kim’s Convenience,” season 1, episode 5, “Wingman,” directed by James Genn, aired November 1, 2016, <https://www.netflix.com/watch/80236365>.
7. “Kim’s Convenience,” season 1, episode 6, “Rude Kid,” directed by James Genn, aired November 15, 2016, <https://www.netflix.com/watch/80236366>.
8. Eunjung Kim et al., “Korean American Parents’ Reconstruction of Immigrant Parenting in the United States.” *Journal of Cultural Diversity* 19, no. 4 (2012): 131. <http://>

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9. Kim et al., 124.
10. Kim et al., 124.
11. “Kim’s Convenience,” season 1, episode 6.
12. “Kim’s Convenience,” season 1, episode 6.
13. Bic Ngo, “Beyond ‘Culture Clash’ Understandings of Immigrant Experiences.” *Theory into Practice* 47, no. 1 (2008): 5. <https://doi.org/10.1080/00405840701764656>.
14. “Kim’s Convenience,” season 1, episode 4.
15. “Kim’s Convenience,” season 1, episode 4.
16. “Kim’s Convenience,” season 1, episode 4.
17. “Kim’s Convenience,” season 1, episode 6.
18. Kyunghwa Kwak, “Adolescents and Their Parents: A Review of Intergenerational Family Relations for Immigrant and Non-Immigrant Families.” *Human Development* 46, no. 2/3 (2003): 118. <https://doi.org/10.1159/000068581>.
19. Kwak, 119.
20. Kim et al., 127.
21. “Kim’s Convenience,” season 1, episode 2, “Janet’s Photos,” directed by Kaedan Michlick, aired October 11, 2016, <https://www.netflix.com/watch/80236362>.
22. “Kim’s Convenience,” season 1, episode 2.
23. “Kim’s Convenience,” season 1, episode 2.
24. “Kim’s Convenience,” season 1, episode 6.
25. “Kim’s Convenience,” season 1, episode 6.
26. “Kim’s Convenience,” season 1, episode 4.

# *Canadian Nationalisms: Pierre Trudeau and the Canadian Charter of Rights and Freedoms*

**Omar Kassam**

Pierre Trudeau and the Canadian Charter of Rights and Freedoms have been truly defining forces of Canadian society, identity, and nationhood. As one of Canada's most celebrated modern prime ministers, Trudeau's legacy is dominated by his efforts to patriate the Constitution and adopt the Charter of Rights and Freedoms that is today a manifestation and an exhibition of Canadian self-identity. Trudeau's personal affinity for the constitutional protection of rights, influenced by his experiences in Quebec and abroad, was central to the Charter's realization in 1982, and the Charter itself has reshaped Canadian federalism, rights, and self-identified values.<sup>1</sup> First, through its enactment of national standards binding the provinces, and its enhanced of interprovincial mobility and language rights, the Charter imposed a unified vision of Canada. Second, through its constitutional entrenchment of rights, it limited parliamentary supremacy, giving a greater political role to the courts and opening up new avenues for the pursuit of rights that have resulted in seismic societal and national shifts. Finally, through its codification of Canadians' common values, the Charter has espoused a vision of Canada that has become central both to Canadians' perceptions of their country and to those of others around the world.

The significance of Pierre Trudeau himself as a father of the Charter of Rights and Freedoms can scarcely be overstated. While the arduous process of constitutional patriation and reform depended on the commitments and competences of many individuals, the Charter would not have been realized without Trudeau's steadfast conviction of its centrality. His affinity for the constitutional entrenchment of rights had in fact been cultivated long before his ministerial tenure. In 1944, a young Trudeau left his family home in Montreal to study overseas, first at Harvard, then at the Institut d'Études Politiques de Paris, and finally at the London School of Economics, where he grappled with philosophy, law, economics, and political science.<sup>2</sup> Upon returning to Canada five years later, however, he found himself appalled at the insularity and parochialism of Quebec's government.<sup>3</sup> As a so-called civic nationalist, Trudeau favoured communal institutions and public values as instruments for protecting Quebec culture and Francophones, derogating from the historical role of the Catholic Church as the chief inculcator and champion of national identity. Amidst the "Grande Noirceur" of Maurice Duplessis's premiership and his conservative commitment to religious and cultural purity, Trudeau took an active role in opposition to the Quebec government. In 1950, he co-founded and became an editor of *Cité Libre*, a political journal that published anti-establishment and pro-civil libertarian pieces by Quebec intellectuals critiquing the Duplessis government and the ethnonationalism that had characterized the province.<sup>4</sup> As the Quiet Revolution unfolded after Duplessis's death, one of Trudeau's proposals for satiating Quebec's emerging separatists and bolstering Canada's national identity was a constitutional bill of rights as an expression of national values.<sup>5</sup>

In 1965, Trudeau was elected to Parliament and joined the Liberal caucus as a member of Pearson's minority government.<sup>6</sup> Having recently emphasized in a paper on Quebec's constitutional disaffection that an entrenched bill of rights ought to be foremost in constitutional

reform, he reprised this view when he was appointed justice minister in 1967, declaring that constitutional rights were “the best basis on which to begin a dialogue on constitutional reform between the federal government and provincial governments” and to forge Canadian unity.<sup>7</sup> That November, Ontario premier John Robarts convened the Confederation of Tomorrow Conference at which Quebec conditioned its support for patriation on constitutional reforms affording the province greater powers and recognition. Conscious that any satisfactory concessions would be nationally unpalatable, Pearson’s government resisted sweeping proposals and countered instead with fiscal provisions, but this proved insufficient, and Pearson and Trudeau were forced to consider alternatives. The federal government’s chosen response was to champion a constitutional charter of rights as a means to unify the country in the face of Quebec nationalism and decentralizing provincial proclivities to include provisions for both democratic and linguistic rights.<sup>8</sup> When Trudeau succeeded Pearson as prime minister in 1968, he maintained this position, arguing that an expression of Canada’s common values was fundamental for constitutional change.<sup>9</sup>

In the May 1979 federal election, Trudeau’s Liberals were defeated by Joe Clark’s Progressive Conservatives, who formed a minority government but were defeated in the House of Commons less than a year later. In the month following the Liberals’ loss, separatist Quebec premier Lévesque announced that his government’s election promise of a referendum on sovereignty-association would be held the next spring. Despite having planned to resign as the Liberal leader following the party’s election loss, Trudeau had not yet been replaced and readily reprised his role for the February 1980 federal election triggered by the Progressive Conservatives’ budget defeat.<sup>10</sup> On election night, the Liberals won a majority, including a near-sweep of Quebec, and Trudeau returned to power with renewed resolve to unify the nation and reform its Constitution.<sup>11</sup> Exactly one month after resuming the premiership, however, Trudeau was faced with the prodigious provocation of Lévesque’s independence referendum—a poll with the potential to sunder the nation not only ideologically, but corporally. Trudeau immediately reversed his predecessor’s policy of federal non-intervention, assuming a substantial role both personally and institutionally in fervent determination to realize a federalist win. He argued passionately that it was in neither Quebecers’ political nor economic interests to secede and delivered several key speeches on the issue of the referendum, gravely cautioning Quebecers that no government had a mandate to negotiate the dissolution of the federation and promised to initiate constitutional reform if independence was rejected. Ultimately, the “no” side strongly prevailed in a 60-40 victory, to Trudeau’s immense gratification, and he was granted a decisive mandate to pursue renewed constitutional reform.<sup>12</sup>

From this robust position, he immediately informed the premiers that he intended to pursue patriation and reform along the lines of the 1971 Victoria Charter, including its majority amending formula and charter of rights, and vowed to do so unilaterally if their approvals could not be readily secured. As expected, the premiers requested in response additional powers over areas of present federal jurisdiction but were rebuffed as Trudeau blatantly refused to weaken federal prerogatives in exchange for the “people’s package” of the Charter. A first ministers’ constitutional conference held in September 1980 only exhibited these differences, ending in as much discord and disunity as it had begun. All the provincial premiers, with the exceptions of Ontario’s Bill Davis and New Brunswick’s Richard Hatfield (the “Gang of Eight”), were

vehemently opposed to Trudeau's patriation and reform package and pursued every political and judicial avenue available in the hope of torpedoing it. Together, they contended that the Charter would undermine democratic legislatures' authorities and that the majority-predicated amending formula would render provinces unequal, taking their case both to the Canadian people and to the politicians at Westminster. They also undertook legal challenges, suing in various provinces' courts to have Parliament's pending patriation request resolution deemed unconstitutional. Eventually, Trudeau sought a reference from the Supreme Court on the constitutionality of unilateral patriation, which it found to be legal but against constitutional convention.<sup>13</sup> To conform with convention, patriation should instead be supported by a "substantial number of provinces." The Court's opinion was deemed a win by both Trudeau and the Gang of Eight, and forced them back to the negotiating table once more in November 1981.<sup>14</sup>

Trudeau had to win the support of at least a few recalcitrant provinces but was determined to do so with the fewest concessions possible. To leverage Canadians' broad support for the Charter in the negotiations, he proposed to Lévesque a national referendum on the proposed reforms, which he immediately accepted. This gambit worked as intended, and the averse premiers, reluctant to contend with a Canadian public not on their side, agreed to negotiate an agreement based on Trudeau's plan. In what became known as the Kitchen Accord, the Attorneys General of Saskatchewan and Ontario met with Justice Minister Jean Chrétien in the kitchen of the National Congress Centre, where they agreed to approve the Charter if a notwithstanding clause was inserted to allow legislatures to temporarily override certain provisions and decided on a general amending formula requiring the consent of at least seven provinces comprising at least 50 percent of their total population. Trudeau himself was gravely disappointed by this watering-down of the Charter, both for its implications on individual rights and for national unity. As he remarked, "the Charter was defining a system of value such as liberty, equality, and the rights of association that Canadians from coast to coast could share."<sup>15</sup> Reluctantly, however, he was convinced by Davis of the necessity of the notwithstanding clause and agreed provided it did not apply to the Charter's official languages and minority language education provisions. With Trudeau's blessing, the Kitchen Accord was presented to the rest of the premiers and won their near-unanimous support. Only Quebec's René Lévesque refused to sign on. With a compromise plan now agreed to, the patriation package was presented to Britain for its approval and Canada's renewed patriated Constitution was ultimately proclaimed by its sovereign in Ottawa on April 17, 1982.<sup>16</sup>

Although, as prime minister, Pierre Trudeau personally played a decisive role in the adoption of Canada's Charter of Rights and Freedoms, he is not solely responsible for its realization. Trudeau depended from the outset on the two premiers supportive of his proposals, Bill Davis and Richard Hatfield, without whom the Charter would never have been seriously contemplated. Davis in particular supported the Charter early on for its capacity to limit government overreach into individual rights, and made this case to fellow Conservatives across the country.<sup>17</sup> After the 1980 Quebec independence referendum, Davis also felt an obligation to honour the commitment of the victorious "no" side to pursue genuine constitutional reform, despite its unpopularity with parts of his caucus, province, and country. Nonetheless, as he plainly relayed to Hugh Segal, then his associate secretary for federal-provincial relations, "Ontario made a promise to the people of Quebec in the referendum. Ontario will keep that

promise.”<sup>18</sup> As illustrated, the actualization of the Charter of Rights and Freedoms was a monumental undertaking requiring the efforts of many individuals across Canada and Britain. Trudeau himself held a personal ambition borne from his experiences of Duplessis’s Quebec to unify the country through a charter enshrining fundamental rights and values and used his platforms as justice minister and prime minister to pursue it, but depended ultimately on the support of key premiers, British legislators, and the Canadian public to realize his dream.

While the Charter failed to win Quebec’s approval, it effectively redefined the nature of the federation in several ways. First, it imposed national standards on matters otherwise within the exclusive preserves of respective provinces. Unlike mere federal legislation, the Charter’s status as a constitutional document binding all Canadian sovereigns meant that provincial laws could be challenged—and potentially struck down—on Charter grounds.<sup>19</sup> Predictably, most premiers thus resisted the Charter on grounds of intrusion into provincial sovereignty, though they were eventually assuaged with the addition of the temporary (albeit extendable) legislative override that constitutes the notwithstanding clause. Quebec, however, seeking to convey its displeasure with the lack of consensus in favour of the Charter, inserted the notwithstanding clause in each bill subsequently passed, practically shielding all legislation from Charter challenges and symbolically scorning the rest of the country for its ostensible arrogance.<sup>20</sup>

Second, section 6 of the Charter guarantees interprovincial mobility rights, to be fettered only by generally applicable non-discriminatory regulations, reasonable residency requirements for social services, and affirmative action for unemployment above the national average.<sup>21</sup> This provision of the Charter is one most emphatically linked to its unifying aim, seeking to remove arbitrary barriers (particularly restrictive and retributive regulatory and licensing regimes) to cross-country trade and migration.<sup>22</sup> While the efficacy of the Charter in facilitating interprovincial mobility is not unblemished, as evidenced by the continuation of largely capricious restrictions like those on interprovincial alcohol importation, it has nonetheless proven useful as a judicial tool to restrain laws contrary to the intent of Confederation. Without a constitutional mandate, obstructive provincial statutes would otherwise be beyond reproach, and the Charter has compelled legislatures to demonstrably justify the limits they seek to impose on Canadians’ mobility.<sup>23</sup>

Finally, the Charter advanced the federation through its entrenchment of linguistic rights, namely dual official federal languages and minority language education, in sections 16–23. While equal federal bilingualism had already been substantially established by ordinary statute with the Official Languages Act in 1969, the Charter elevated Canadian bilingualism to the constitutional level, both making it legally laborious to reverse and symbolically recognizing it alongside the other core principles of the nation enumerated in the Charter. Of more practical significance for most Canadians, however, were the Charter’s novel minority language education rights, which entitled Canadian English- or French-educated provincial minorities to have their children educated in their respective minority language, generally in public schools.<sup>24</sup> This provision was explicit in its unifying intent, seeking to appease Francophones by protecting their rights when living outside Quebec, though it also irked both the Quebec and Ontario governments by compelling them to cater educationally to their respective linguistic minorities, which would ordinarily encroach on their exclusive jurisdiction.<sup>25</sup> Crucially, however, both official bilingualism and minority language education were deliberately excluded from the

notwithstanding clause on the grounds that they were, in the words of Justice Minister Jean Chrétien, “fundamental to what Canada is all about.”<sup>26</sup> While the Charter did not present a quantum leap for bilingualism in the federation, it played a narrow but decisive role in cementing it both legally and symbolically, and in improving the practical experiences of many linguistic-minority residents. Despite competitive successive attempts to redefine the country’s constitutional principles and federal character, the Charter of Rights and Freedoms has endured as the ultimate expression of Canada’s core values.

Despite dominating popular consciousness as the ultimate expression of human rights in Canada, the Charter of Rights and Freedoms is merely the pinnacle of a succession of legal rights protections. The first guarantees of fundamental freedoms in the Dominion were not enshrined by the statute of any Canadian legislature, but read into its founding document, the British North America Act, 1867. Since the Act stipulated “a Constitution similar in Principle to that of the United Kingdom,” the Supreme Court found that it required (to a certain extent) the protection of free speech in a democratic society.<sup>27</sup> Just as the implied bill of rights provided Canada’s first inherent protections, the Canadian Bill of Rights, enacted by Parliament in 1960, was the earliest to explicitly enshrine human rights at the federal level. The Bill of Rights enumerated the freedoms of speech and religion and the rights to life, liberty, and personal security, fair administration of justice, and enjoyment of property, among others, many of which are found in the Charter today.<sup>28</sup> However, as an ordinary federal statute, it lacked constitutional status and applied only to Acts of Parliament, not laws passed by provincial legislatures. In practice, therefore, the Bill of Rights merely instructed the courts to apply federal laws in a manner consistent with the rights and freedoms prescribed in the Bill of Rights, having little practical effect on most laws.<sup>29</sup> The profound inadequacy of the Bill of Rights tilled fertile ground, however, for a subsequent deed of rights comprising part of Canada’s Constitution, taking form in the Charter of Rights and Freedoms.

While the Charter was not revolutionary in delimiting Canadians’ fundamental rights, its extensive power of judicial review marked a seismic shift in the centuries-old doctrine of parliamentary supremacy embodied in the heart of the Westminster model.<sup>30</sup> It was, in the words of Canada’s longest-serving chief justice, Beverly McLachlin, “a change breathtaking in scope, so large that one wonders, in retrospect, how it was accomplished.”<sup>31</sup> As she explains, the traditional supremacy of the Crown, acting through its legislative and executive apparatuses, was replaced by that of the law, and so elevated the courts as the interpreter of the law.<sup>32</sup> While the Supreme Court has struck down numerous legislative provisions for Charter violations, it has nonetheless sought to uphold the will and intent of Parliament and provincial legislatures insofar as practicable.<sup>33</sup> On a numerical level, in the first 10 years of the Charter’s application, the Supreme Court heard 195 cases concerning it, through which it annulled 18 provincial and 23 federal laws, for a total of 41. Although a significant increase compared to the Court’s pre-Charter invalidations, the topical and consequential range of the provisions in question lends little useful meaning to isolated figures.<sup>34</sup>

Instead, it is beneficial to examine key Charter cases that exceptionally transfigured Canadian society and nationhood. Stemming from the legal rights guaranteed in section 8 of the Charter, the 1984 case of *Hunter et al. v. Southam Inc.* led to the establishment of a binding precedent at the Supreme Court concerning the right to be free from unreasonable search and

seizure. Federal investigators had executed a warrantless search of the offices of the *Edmonton Journal*, and refused to divulge their purpose, cause for suspicion, or statutory violations presumed. While the search had been carried out in accordance with the Combines Investigation Act under whose authority the investigators operated, the Supreme Court found that the prior approval provisions contained in the Act were in contravention of the Charter because the officials charged with granting approvals to searches were necessarily subject to conflicting interests and could not be expected to act neutrally in consideration of the circumstances. On this basis, the Court struck down the objectionable provisions of the Act and ruled that the search of the *Edmonton Journal's* premises was illegal.<sup>35</sup> In this instance, the adoption of the Charter had a clear impact, both in this case and in legal precedent. While the search in question would have been legal prior to 1982, the enshrinement of certain legal rights in Canada's supreme law via the Charter upheld the freedoms of Canadians in spite of Parliament's permissiveness towards their derogation.

Just as *Hunter et al. v. Southam Inc.* entrenched the freedom from unreasonable search and seizure in legal precedent, the 1990 case of *Mahe v. Alberta* animated the right to minority language education comprising section 23 of the Charter. In this circumstance, French-speaking parents in Edmonton had submitted a proposal to the Alberta government for a new Francophone elementary school to serve the needs of the minority Francophone community in the area, to be administered by a separate, parent-led Francophone school board. This suggestion, however, was rejected both by the local school board and by other neighbouring ones because of the Alberta government's categorical policy prohibiting the creation of Francophone school authorities. Consequently, Mahe and other parents challenged the Alberta government's decision on the basis that it violated their minority language education rights, as enumerated in and protected by the Charter. In its decision, the Supreme Court reasoned that section 23 of the Charter did in fact, given sufficient numbers of Francophone students, warrant not only the public provision of French language education, but also that of a discrete governing body through which the parents of such students may exert influence comparable to that of Anglophone parents upon ordinary public school boards.<sup>36</sup> Through *Mahe v. Alberta*, the Charter right to minority language education that constitutes a central facet of official bilingualism was, for the first time, enforced upon a recalcitrant government when it previously would have proceeded unchecked. While Canada's national bilingual and bicultural character may have been formally professed, it would not have been practically embodied across the country without the Charter and its linguistic protections.

The addition of the Charter of Rights and Freedoms also opened up a new avenue for constitutional litigation and rights advancement. Rather than lobbying legislators to rewrite particular laws, individuals and interest groups could now make their cases directly to the courts to achieve the same outcome.<sup>37</sup> Aside from the privately funded organizations that undertake Charter challenges, the landscape of Canadian constitutional litigation has been drastically influenced by the federal Court Challenges Program. Introduced by the Trudeau government in 1978, the program was launched specifically to fund and support private challenges to Quebec's controversial Charter of the French Language (Bill 101) and other provincial language laws after the federal government sought to avoid precipitating a crisis in Canada-Quebec and wider federal-provincial relations.<sup>38</sup> When the Charter arrived in 1982, the program, having previously



supported just six cases, was significantly expanded and, finding itself aligned with the Liberal government's progressive social agenda, grew to develop a major influence on constitutional judicial action as a champion of equality rights in particular.<sup>39</sup> When Prime Minister Mulroney cancelled the program in 1992, he provoked intense and widespread criticism. The Canadian Human Rights Commission lambasted the government for treating human rights as superfluous, while the federal official languages commissioner expressed his distress at the cancellation and affirmed the importance of the program as "essential to the development and clarification of constitutional language rights in Canada."<sup>40</sup> The private constitutional litigation precipitated by the Charter and the associated Court Challenges Program have had an incalculable impact on Canadian law and society, animating the literal liberties of the Charter and cultivating a pervasive culture of respect for rights and values that characterizes Canada as a nation.

Beyond its effects on Canadian nationalism through federalism and justice, the Charter has fashioned Canadian identity as an expression of core national values. One such ideal entrenched in the Charter is that of multiculturalism, by virtue of section 27, which calls for the Charter to be interpreted "in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."<sup>41</sup> This clause is emblematically significant in not only recognizing at the constitutional level Canada's ethnic and cultural diversity, but in legally requiring its protection and enrichment by way of the application of the Charter. Furthermore, while section 27 may appear relatively ordinary today, it was nothing short of ground breaking at the time of its enactment just 11 years after Trudeau's government had adopted multiculturalism as an official federal policy, under which cultural groups were to be developed and supported in participating in Canadian society and cultural exchange.<sup>42</sup> Nonetheless, section 27 has come to be among the Charter's most respected and celebrated articles, receiving the approval of 86 percent of Canadians in a 2002 study.<sup>43</sup> As Canada continues to embrace multiculturalism as a framework for growth and development, the historic and contemporary significance of the Charter to its national identity and distinct character is immense.<sup>44</sup> Beyond multiculturalism, the Charter has become an icon that both espouses and embodies Canadians' common values, including the promotion of human, legal, and equality rights. In 2002, a survey found that 55 percent of Canadians regarded the Charter as uniting the country on the basis of common values.<sup>45</sup> Although these values are subject to change over time, they have remained fundamentally aligned with the Charter. In 2013, Canadians' top shared values were perceived to be human rights, respect for the rule of law, and gender equality, each receiving over 90 percent support.<sup>46</sup>

There is perhaps no more appropriate measure of the Charter's impact on Canadian nationhood than that which Canadians themselves ascribe to it. While the Charter has certainly not been, is not, and will never be universally appreciated, it has nonetheless cemented itself as a key national symbol of a majority of Canadians. In a 1991 survey, 70 percent of those polled classed the Charter as an integral part of Canadian identity, including 60 percent of Quebecers. While this is itself a strong signal of the Charter's national significance, it is only amplified by the Charter being the highest rated symbol among all those proposed in the survey.<sup>47</sup> In 2013, Statistics Canada likewise found the Charter to be Canadians' top national symbol, with over 90 percent considering it important and 70 percent considering it very important, surpassing even the maple leaf flag, O Canada, the RCMP, and hockey.<sup>48</sup> Canadians have also consistently

expressed support for the Charter as a positive nationalizing force. In 2007, 58 percent of poll respondents acknowledged the Charter as “moving the country in the right direction,” including 64 percent of those under 30.<sup>49</sup> Similarly, in 2015, just shy of its 35th anniversary, the Charter was found to be viewed as beneficial for Canada by 84 percent of Canadians.<sup>50</sup> Indeed, by any standard, the Charter has unquestionably surpassed all contemporaneous expectations of its symbolic stature.<sup>51</sup>

The Charter of Rights and Freedoms has garnered not only domestic recognition but also international acclaim as a successful model for protecting constitutional rights, inspiring spin-offs in countries around the world.<sup>52</sup> Foraying in 1982 into what was then the exclusive preserve of revolutionary republics like France and the United States, with bloody and harrowing histories of transformation leading to the triumphant realization of fundamental rights, Canada became the first Commonwealth country to adopt a constitutional bill of rights. The Charter, in contrast to the French Declaration of the Rights of Man and Citizen and the American Declaration of Independence, was, as with many things Canadian, considerably less sensational, if not less inspired. It did not proclaim any great truths to be self-evident, nor did it infer the universality of natural rights as did its aforementioned American and French counterparts, respectively. The Charter’s brief preamble recognizes only “the supremacy of God and the rule of law,” providing a much more muted introduction to the rights enumerated therein, although they extend further than many comparable declarations.<sup>53</sup> Specifically, the Canadian Charter prohibits discrimination on protected grounds including sex and sexual orientation (implicitly), as well as enshrines comprehensive rights against arbitrary search and detention and to a fair and timely trial.<sup>54</sup> The Charter is also uncontroversially interpreted by Canadian courts as an organic, evolving document to be considered with the intent and context of its origin but applied progressively in accordance with the circumstances of its present (the living tree doctrine). Together, the Charter’s uniqueness and domestic success have propelled it to the upper echelons of global constitutional models, surpassing American instruments as a popular template for constitutional rights and serving as source inspiration for common law counterparts in Hong Kong, Israel, and various former British colonies.<sup>55</sup> In this manner, the Charter has become not only a domestic symbol of identity but a prominent facet of the international perception of Canada as a nation.

The impact of the Canadian Charter of Rights and Freedoms, and by extension of Pierre Trudeau, go far beyond what is generally conceived in the popular imagination. The Charter does not merely guarantee Canadians’ basic rights against government intrusion. It is today a central component of Canada’s national identity and consciousness. Effected only with Trudeau’s personal commitment to realizing a constitutional bill of rights, the Charter has redefined Canada’s federal character, judicial rights, and collective values. By imposing unifying standards on the provinces, advancing rights and their judicial pursuit, and enshrining a values-based vision of Canada, the Charter has become, and will continue to lie, at the very heart of Canadian nationhood.

## Notes

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid, 209.

<sup>4</sup> Thomas Axworthy, *The Constitution & Canadian Charter of Rights and Freedoms* (University of Toronto, October 14, 2020).

<sup>5</sup> Michael D. Behiels, "Pierre Elliott Trudeau's Legacy: The Canadian Charter of Rights and Freedoms," in *A History of Human Rights in Canada: Essential Issues*, ed. Janet Miron (Toronto: Canadian Scholars' Press Inc., 2009), 201.

<sup>6</sup> Axworthy, *Constitution*.

<sup>7</sup> Omar Ha-Redeye, "Justice Minister Trudeau on a Constitutional Bill of Rights," *Slaw: Canada's Online Legal Magazine*, (Stem Legal, November 1, 2015). <http://www.slaw.ca/2015/11/01/justice-minister-trudeau-on-a-constitutional-bill-of-rights/>

<sup>8</sup> Peter H. Russell, "The Political Purposes of the Canadian Charter of Rights and Freedoms," *Canadian Bar Review* 61, no. 1 (1983): 32.

<sup>9</sup> Ibid, 33.

<sup>10</sup> Behiels, "Trudeau's Legacy," 204.

<sup>11</sup> Ibid, 204.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid, 205.

<sup>14</sup> Ibid, 206.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid, 207.

<sup>17</sup> Hugh Segal, "How We Got the Charter: A Reality Check," *Policy Options*, (Institute for Research on Public Policy, February 1, 2007). <https://policyoptions.irpp.org/magazines/the-charter-25/how-we-got-the-charter-a-reality-check/>

<sup>18</sup> Ibid.

<sup>19</sup> F.L. Morton, "The Effect of the Charter of Rights on Canadian Federalism," *Publius: The Journal of Federalism* 25, no. 3 (1995): 174.

<sup>20</sup> Ibid.

<sup>21</sup> Martha Jackman, "Interprovincial Mobility Rights Under the Charter," *University of Toronto Faculty of Law Review* 44 (1985): 29-30.

<sup>22</sup> Ibid, 16.

<sup>23</sup> Ibid, 40-41.

<sup>24</sup> Russell, "Political Purposes," 38.

<sup>25</sup> Ibid, 39.

<sup>26</sup> Ibid, 38.

<sup>27</sup> Dale Gibson, "Constitutional Amendment and the Implied Bill of Rights," *McGill Law Journal* 12, no. 4 (1966): 497.

<sup>28</sup> *Canadian Bill of Rights, Statutes of Canada* 1960, c. 44. <https://laws-lois.justice.gc.ca/eng/acts/c-12.3/page-1.html>.

- <sup>29</sup> Gerald V. LaForest, "The Canadian Charter of Rights and Freedoms: An Overview," *Canadian Bar Review* 61, no. 1 (1983): 22.
- <sup>30</sup> Axworthy, *Constitution*.
- <sup>31</sup> Beverly M. McLachlin, "The Charter: A New Role for the Judiciary?" *Alberta Law Review* 29, no. 3 (1991): 540.
- <sup>32</sup> Ibid, 541.
- <sup>33</sup> Ibid, 555.
- <sup>34</sup> Morton, "Effect of the Charter," 176.
- <sup>35</sup> Hunter et al. v. Southam Inc., [1984] 2 S.C.R. 145. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5274/index.do>
- <sup>36</sup> Mahe v. Alberta, [1990] 1 S.C.R. 342. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/580/index.do>
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- <sup>40</sup> Ibid, 368.
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- <sup>43</sup> "The Charter: Dividing or Uniting Canadians?" *The CRIC Papers* 5, (Montréal: Centre for Research and Information on Canada, 2002), 3.
- <sup>44</sup> Wayland, "Immigration, Multiculturalism," 54-56.
- <sup>45</sup> "The Charter: Dividing or Uniting Canadians," 2.
- <sup>46</sup> Maire Sinha, "Canadian Identity, 2013," Statistics Canada (Government of Canada, October 1, 2015). <https://www150.statcan.gc.ca/n1/pub/89-652-x/89-652-x2015005-eng.htm>
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- <sup>50</sup> "Canadians Have a More Favourable View of Their Supreme Court than Americans Have of Their Own," Angus Reid Institute, August 17, 2015. <http://angusreid.org/supreme-court/>
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- <sup>52</sup> Giuseppe Martinico, Richard Albert, Antonia Baraggia, and Cristina Fasone, "An Opportunity for Reflection – A Special Issue on 'The Constitution of Canada: History, Evolution, Influence and Reform,'" *Perspectives on Federalism* 9, no. 3 (2017): Ed -III.
- <sup>53</sup> John Ibbitson, "The Charter Proves to Be Canada's Gift to World," *The Globe and Mail*, April 16, 2012. <https://www.theglobeandmail.com/news/politics/the-charter-proves-to-be-canadas-gift-to-world/article4100561/>

<sup>54</sup> *Canadian Charter of Rights and Freedoms.*

<sup>55</sup> Ibbitson, “Canada's Gift to World.”

## *From Banff to Thaidene Nënë: Decolonizing Forest Conservation Through Indigenous-led Conservation*

**Erica Liu**

As a settler colonial nation, Canada's sovereign legitimacy is contingent upon its acquisition of territory for settlement, specifically through the dispossession of Indigenous peoples and the development of emptied lands.<sup>1</sup> Through the establishment of protected areas, and of national parks in particular, the settler state expropriates forests for ecological and economic gains while displacing their native inhabitants, implicitly tying acts of conservation to settler colonial goals.<sup>2</sup> This paper explores the resulting concept of colonial conservation through two case studies—of Banff National Park and of Thaidene Nënë National Park Reserve—which demonstrate the origin and subversion of the concept, respectively. Working against the legacy of Canadian national parks as tools of displacement and assimilation, Indigenous-led conservation, in the form of Indigenous Protected and Conserved Areas (IPCAs), helps to decolonize forest conservation while still enhancing its ecological goals. This paper begins by contextualizing protected areas as a form of forest conservation within Canadian settler colonialism by outlining conservation's shift from a fortress to an Indigenous-led approach. Then, through a decolonial lens, I will discuss the history of forest conservation in Banff National Park to reveal the preservation of game, not wildlife, as its main impetus and to position its protection of forests as both economically and politically salient. This historical perspective is important for recognizing Banff's forest conservation as part of the colonial project of Indigenous displacement and assimilation. Then, I will argue that Indigenous-led conservation, in the form of IPCAs, works not only to decolonize conservation, but also to improve the ecological effectiveness of protected areas. Lastly, I will present Thaidene Nënë National Park Reserve (TDN) as a counterexample to Banff National Park by elucidating TDN's ability to effect conservation while centring Indigenous self-determination.

### **From Fortress to Reconciliation: Approaches to Forest Conservation in Canada**

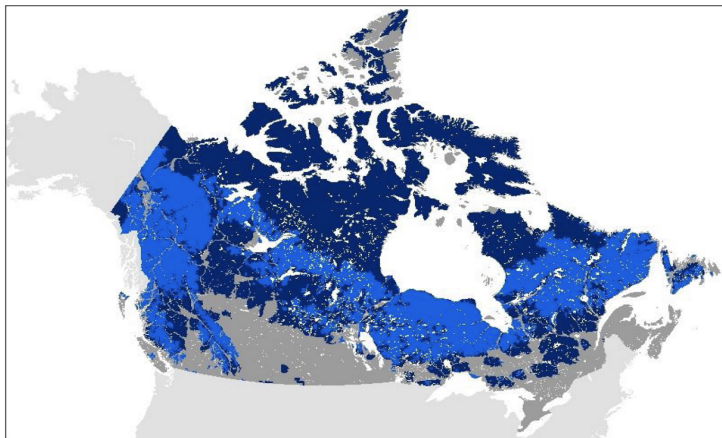


Fig. 1. Canada's Intact Forest Layer [light blue]. Map by Artelle et al. [2019].

Canada contains over 340 million hectares of intact forest landscapes, which contribute greatly to both biodiversity and ecosystem services, making its geography exceptionally conducive to large-scale conservation efforts, such as the designation of protected areas (see Fig. 1).<sup>3</sup> According to the International Union for Conservation of Nature (IUCN), a protected area is defined as a legally demarcated geographical space reserved for the conservation of nature, ecological services, and cultural values.<sup>4</sup> Historically, when developing national parks as protected areas, Canada has abided by the fortress approach, which privileges the protection of nature over that of people, neglecting the preservation of cultural values.<sup>5</sup> The fortress approach positions conservation as solely state governed, incompatible with human habitation, and as a justifiable reason for the forcible removal of people from biodiversity protection zones.<sup>6</sup> Fortress conservation demands the creation of protected areas as pure wilderness, effectively emptying lands of human existence for sanitized, pure biodiversity. This approach creates a false dichotomy where Indigenous life, which exists in co-constitution with its terrestrial lands, is incompatible with forest conservation, making the displacement of the former necessary for the execution of the latter. Such erasure of Indigenous presence is conducive to colonial goals of delegitimizing Indigenous land claims in order to render such lands claimable by the state.<sup>7</sup>

However, with the 2005 Durban Accord and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), global recognition of the need to reconcile conservation with social equity has emerged.<sup>8</sup> Around the same time, the Convention on Biological Diversity established the global Aichi Biodiversity Targets to encourage the prevention of biodiversity loss.<sup>9</sup> In response to both demands, Canada set forth The 2020 Biodiversity Goals and Targets for Canada, in which Target 1 demands the conservation of 17 percent of Canada's terrestrial areas by 2020 through the establishment of protected areas.<sup>10</sup> With the Truth and Reconciliation Commission's Calls to Action in mind, Canada asked the Indigenous Circle of Experts (ICE) to outline an equitable pathway to achieving Target 1.<sup>11</sup> The outcome was the publication of the *We Rise Together* report, which posits Indigenous-led conservation through IPCAs as a just means to achieving Target 1.<sup>12</sup> This report represents a substantial shift in Canada's conservation strategy, from that of fortress to that of reconciliation. However, in order to understand the importance and implications of such policy measures, my analysis will begin in 1887, with the establishment of Banff National Park.<sup>13</sup>

## **Banff National Park: Colonial Conservation**

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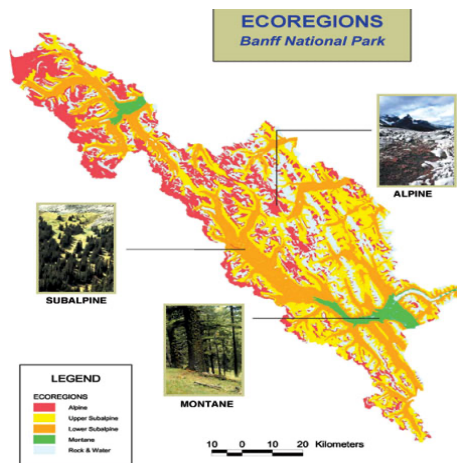


Fig. 2. Map of the ecoregions of Banff National Park. Reprinted from Parks Canada, In *Banff National Park*, 2017, Retrieved August 1<sup>st</sup>, 2020, from <https://www.pc.gc.ca/en/pn-np/ab/banff/decouvrir-discover/ecosystemes-ecosystems/ecoregions>. Copyright Parks Canada.

Banff National Park, Canada's first national park, protects vast stretches of subalpine, alpine, and montane forests from industrial activity; however, this does not preclude the Canadian state from commodifying the forests for experiential consumption (see Fig. 2).<sup>14</sup> With the completion of the Canadian Pacific Railway, settlers, mainly tourists and sport hunters, could now access the park, paying to visually consume its landscapes or to experience the wilderness it represented.<sup>15</sup> Their significant contributions to the economy motivated the state to maintain the park in a manner conducive to capital. For example, park authorities engaged in strict predator control to help large game, which the tourists preferred for their docility, proliferate; they were economically incentivized to disrupt the balance of Banff's ecosystem for tourist appeal.<sup>16</sup> The state also maintained the park's forests as fertile breeding grounds for the game desired by sport hunters.<sup>17</sup> Gordon Hewitt, a zoologist for the park, emphasized the need to maintain a "surplus wild-life population" to serve as a "constant supply of big-game" for sportsmen who bring tremendous revenue to the park through hunting.<sup>18</sup> Motivated by capitalism, the state protected Banff's forests for their economic value, and not necessarily for their biological richness or ecological importance.

Simultaneously, in part due to their economic importance, sportsmen and their supporters gained prominence as political activists, appealing to wildlife conservation as a way of securing game supply.<sup>19</sup> They specifically targeted the Stoney Nakoda tribe. The Stoney, the original inhabitants of the lands now contained within the park, depended on the wildlife of the park's forests for sustenance, having engaged in traditional hunting practices for centuries.<sup>20</sup> However, with the mass influx of settlers to the region posing as an anthropogenic disturbance, the park's wildlife populations were rapidly depleted.<sup>21</sup> The hunting advocates blamed the Stoney for this depletion, claiming that they "kill more game in a week than all of the sportsmen kill in a year".<sup>22</sup> This led to a ban on sustenance hunting in Banff in 1890 and the imposition of game wardens to enforce this ban in 1909, specifically targeting the Stoney.<sup>23</sup> While such villainization was economically motivated, specifically, to restrict Indigenous hunting rights so that game could proliferate for profit, it also served political, colonial purposes.



By presenting its protection of game supply as a form of wildlife conservation, the Canadian state appropriated conservation as a colonial strategy to assimilate and displace the Stoney. The ban on hunting, presented as a measure to protect wildlife, disregarded the Stoney's dependence on hunting for survival, as settlers widely believed that hunting was reserved for pleasure and not necessity.<sup>24</sup> In fact, hunting for food was conflated with the idea of incivility, contributing to an image of the Stoney as uncivilized savages. Therefore, by banning hunting within the park, the state effectively forced the Stoney to transition to agriculture as a means of survival, disrupting their traditional practices and coercing their assimilation to a more 'civilized' way of living.<sup>25</sup> Furthermore, George Stewart, Banff's first superintendent, declared that the Stoney's "destruction of game" would be inevitable unless they were expelled from the park.<sup>26</sup> Settlers positioned the Stoney as a threat to wildlife conservation efforts in the park, and, therefore, justified corralling them within state-designated reserves.<sup>27</sup> The state used forest conservation in Banff to secure populations of profitable game before positing its protection as dependent on the disappearance of the Stoney.

Banff is not a unique case but is representative of Canada's fortress conservation efforts on a broad scale. Fortress conservation is colonial in that it aids in the dispossession of Indigenous peoples for the capitalist benefit of the settler state. Recognizing the historical interconnections between conservation and colonialism helps to disrupt the perpetuation of national parks as politically neutral. More broadly, this recognition challenges understandings of conservation as purely scientific and, therefore, inherently benevolent. This acknowledgement is necessary in order to prevent conservation efforts that come at the expense of Indigenous peoples in the future. A way in which Canada aligns conservation with reconciliation and Indigenous rights is through the support of IPCAs.

### **The Benefits of IPCAs for Conservation**

IPCAs are a form of Indigenous-led conservation in that they require Indigenous-led governance of protected areas, and place equal importance on the preservation of Indigenous culture and ecological biodiversity.<sup>28</sup> In order for IPCAs to reconcile conservation with the preservation of Indigenous rights, they must resist reproducing conditions of settler colonialism, such as allowing the state to extract knowledge and appropriate land from Indigenous peoples for settler goals. To this point, IPCAs recognize Indigenous rights and land titles as inherent, rather than "contingent on their compatibility with [state] conservation targets".<sup>29</sup> This acknowledges the intrinsic value of Indigenous life instead of basing its value on its usefulness to state projects. As well, by identifying Indigenous peoples "as authorities in their territories", IPCAs position Indigenous nations as equal to the state in decisions of governance, rather than consultants serving state-dictated conservation projects.<sup>30</sup> IPCAs contribute to the decolonization of conservation by respecting Indigenous self-determination, especially pertaining to the use of land.<sup>31</sup>

Beyond improving the social equity of conservation, IPCAs also enhance the feasibility and scale of area-based conservation efforts in Canada. First, conservation, as a form of settler use of land, is unlikely to succeed when in conflict with Indigenous self-determination.<sup>32</sup> This is in part because Canada's legal geography now reflects the global shift in discourse, as epitomized in UNDRIP, towards recognizing Indigenous rights to land as inherent. This is

evident in section 35 of the Constitution Act, 1982, wherein the state guarantees Indigenous treaty rights, creating a framework in which proposed land usage requires the consultation of affected Indigenous nations.<sup>33</sup> For example, in the 2014 decision regarding *Tsilhqot'in Nation v. British Columbia*, the judge deemed the government's consultation with Indigenous peoples insufficient and, therefore, stalled the installation of pipelines across unceded Indigenous lands.<sup>34</sup> While the designation of forests as protected areas differs in its ecological impact compared to the imposition of pipelines, it is politically similar in that it is an imposition of the colonial state's will upon Indigenous lands and creates conflicts that can hinder conservation practices. In fact, Indigenous nations opposed the Canadian Boreal Forest Agreement, which sought to legally designate 29 million hectares of boreal forest as protected areas and, therefore, preclusive of timber harvesting, on the grounds of their exclusion from its negotiations and considerations.<sup>35</sup> IPCAs help circumvent conflicts between state conservation goals and Indigenous self-determination by placing Indigenous peoples and the state in a nation-to-nation relationship, whereby both parties are equally involved in forest governance decisions.<sup>36</sup>

Second, forest conservation is only as effective as the ability of those responsible to prevent human-caused degradation of the region.<sup>37</sup> The expansive scale of protected areas like national parks makes them difficult to monitor and expensive to protect, jeopardizing the ability of local authorities to enforce conservation efforts. However, Indigenous peoples have lived on these lands, engaged with these forests, and acted as their informal protectors long before their conversion to parklands, making Indigenous peoples especially apt for supporting enforcement mechanisms. The familiarity of specific nations with certain forest regions, such as the Stoney with the subalpine forests of the Rocky Mountains, provides them with the unique ability of stewarding vast expanses of land inaccessible or foreign to the settler state. The implementation of guardian programs maximizes this advantage by formalizing the ability of Indigenous peoples to care for their territories as located within protected areas.<sup>38</sup> However, such programs risk appropriating Indigenous labour for the purpose of settler-led conservation, which would effectively exploit Indigenous positionality in servitude of the state. This perpetuates uneven colonial relations of power rather than establishing a nation-to-nation relationship as demanded by reconciliation.<sup>39</sup> Instead, IPCAs grant Indigenous nations equal authoritative power over an area as that held by the states involved, which is especially fitting when the area's conservation effectiveness is dependent upon Indigenous efforts.<sup>40</sup> IPCAs emphasize the need for Indigenous nations to share in, if not lead, both the maintenance (e.g., caring for the land) and governance of forest areas.<sup>41</sup>

Third, IPCAs help restore Indigenous relations with the land as necessary for forest conservation. According to Leanne Simpson (2014), a Mississauga Nishnaabeg writer and scholar, much of Indigenous knowledge stems from coming to know the land in an interdependent manner through acts of living *with*, rather than just *on*, the land.<sup>42</sup> This knowledge complements ecological science to increase the effectiveness of conservation efforts.<sup>43</sup> Whereas ecological science depends on costly quantitative assessments often interrupted by spatial and temporal factors, Indigenous knowledge obtains qualitative information from a vast network of interconnected individuals constantly transmuting mundane observations into applicable knowledge.<sup>44</sup> Furthermore, Indigenous care, as per Indigenous place-based knowledge, is as effective as state control when it comes to protecting forests from

industrial activities and degradation.<sup>45</sup> This is in part because Indigenous knowledge is attuned to “variability on fine spatiotemporal scales” and is capable of integrating “qualitative observations made over widespread areas” into cohesive data.<sup>46</sup> Through continuous interactions with the forest ecosystem, and based on a history of ecological knowledge accumulated over generations, Indigenous peoples can recognize subtle changes in the environment, such as abnormalities in a species’ behaviour, at a speed and specificity that is difficult for top-down management schemes to achieve.<sup>47</sup> Therefore, IPCAs emphasize the need to ensure that Indigenous nations can continue to live within protected areas, acquiring knowledge beneficial to forest conservation through acts of everyday life.<sup>48</sup>

IPCAs also recognize humans as essential to the well-being of ecosystems rather than as dichotomous like in the fortress approach.<sup>49</sup> In Canada, Indigenous lands often contain greater biodiversity than state-governed parks.<sup>50</sup> Globally, according to the IUCN, over 80 percent of lands that are home to especially concentrated biodiversity are also home to Indigenous nations.<sup>51</sup> In fact, the “largest tract of remaining Carolinian Forest”, one of Canada’s most endangered forest regions, exists in tandem with Indigenous peoples on the Six Nations of the Grand River Territory.<sup>52</sup> When the state removes Indigenous peoples from their lands and assimilates their cultures through residential schools, the state disrupts intrinsic connections between the peoples and their territorial forests, interrupting the Indigenous stewardship that has nurtured forest regions for millennia.<sup>53</sup> For example, High Park in Toronto is a part of the Black Oak Savannah, which once covered much of Ontario; however, the maintenance of this Savannah required periodic burning by Indigenous peoples.<sup>54</sup> When settlers arrived and displaced Indigenous peoples from this forest region, much of the savannah disappeared as a result of both urban development and a lack of ecological care.<sup>55</sup> The exclusion of Indigenous peoples from areas of high ecological value undermines environmental functioning and erases the cultural values that protected areas are tasked with preserving. Therefore, rather than trying to divorce the human and natural worlds as mutually exclusive realms to the detriment of both humans and nature IPCAs focus on their interconnections, positing humans as a keystone species essential to the health of forests.<sup>56</sup>

### **Thaidene Nënë National Park Reserve: Conservation as Reconciliation**

Moving away from the colonial fortress approach, forest conservation in Canada now engages in Indigenous-led, equitable approaches, creating national parks that exist in direct contradiction with the initiation, governance, and economy of Banff National Park. In particular, stretching over 33,000 square kilometres, is the Thaidene Nënë National Park Reserve (TDN), which is an IPCA in the Northwest Territories home to the Lutsel K'e Dene First Nation (LKDFN). TDN protects the boreal forests of the region while preserving the cultural significance of the area to the LKDFN peoples, working to conserve biodiversity while respecting Indigenous life.<sup>57</sup> In 1969, the federal government had planned to convert the region to a protected area, as the East Arm National Park, which would have limited LKDFN’s ability to maintain its traditional lifestyle within the region.<sup>58</sup> This proposal is not unlike the state’s conversion of Stoney territory to a national park, which bans Indigenous survival practices. However, TDN differs from Banff in that the LKDFN, after rejecting the initial offer, later approached Parks Canada in 2001 to establish the area as a national park.<sup>59</sup> This shift in initiation

from the state to Indigenous peoples is politically significant. Due to the structural imbalance of power between the federal government and Indigenous nations, Indigenous-led conservation requires Indigenous peoples to request the establishment of a protected area rather than just respond to the state's demands.<sup>60</sup> This works to protect Indigenous peoples from the coercive powers of the state, as evident in Banff when the state effectively forced the Stoney from the park, and lays the groundwork for a nation-to-nation governance structure. Specifically, LKDFN and Parks Canada appointed an equal number of members to the governing body that manages and operates TDN to the benefit of both LKDFN's cultural survivability and Canada's conservation goals.<sup>61</sup> The building of a reciprocal relationship, where LKDFN functions as its own self-determining entity working in collaboration with the federal state, directly contravenes the colonial legacy of national parks, such as Banff National Park, which remain under government control. Furthermore, the governing body established a Thaidene Nënë Trust, which provides capital for the operation of the park and funds LKDFN initiatives that support Indigenous peoples both economically and culturally.<sup>62</sup> For example, the trust funds educational opportunities for LKDFN peoples wishing to work within the park, establishing a means of generating income while keeping LKDFN connected to its traditional territory.<sup>63</sup> This is in opposition to Banff's economy of exclusion, which functions at the expense of the Stoney to accumulate capital for settler gain. The governmental and economic differences between the parks at TDN and Banff speak to the progress of Indigenous-state relations as it moves towards effecting conservation in tandem with reconciliation.

## **Conclusion**

Banff National Park, as representative of Canada's early efforts at establishing protected areas, demonstrates the interconnections between colonialism and forest conservation, specifically how the latter was conducive to the former. However, Canada's progression from a fortress to a reconciliation conservation approach has allowed for the emergence of decolonial protected areas in the form of IPCAs. IPCAs, as a form of Indigenous-led conservation, render protected areas both socially just and ecologically effective. TDN serves as a prime example of an IPCA that achieves conservation goals while respecting Indigenous self-determination. As a settler colonial nation, Canada has both a legal and moral duty to fulfill conservation targets in a just and equitable manner.

## **Notes**

<sup>1</sup> Miriam Moore, "Decolonizing Park Management: A Framework for the Co-management of National Parks and Protected Areas," (master's thesis, Simon Fraser University, 2016).

<sup>2</sup> Ibid.

<sup>3</sup> Peter Lee et al., "Canada's Large Intact Forest Landscapes" (report from Global Forest Watch Canada, Edmonton, 2003).

<sup>4</sup> Melanie Zurba et al. “Indigenous Protected and Conserved Areas (IPCAs), Aichi Target 11 and Canada’s Pathway to Target 1: Focusing Conservation on Reconciliation,” *Land* 8, no. 10 (2019): 1-20.

<sup>5</sup> Miriam Moore, “Decolonizing Park Management: A Framework for the Co-management of National Parks and Protected Areas,” (master’s thesis, Simon Fraser University, 2016).

<sup>6</sup> Ibid.

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<sup>8</sup> Melanie Zurba et al. “Indigenous Protected and Conserved Areas (IPCAs), Aichi Target 11 and Canada’s Pathway to Target 1: Focusing Conservation on Reconciliation,” *Land* 8, no. 10 (2019): 1-20.

<sup>9</sup> Ibid.

<sup>10</sup> “Pathway to Canada Target 1,” Conservation 2020. <https://www.conservation2020canada.ca/home>

<sup>11</sup> Melanie Zurba et al. “Indigenous Protected and Conserved Areas (IPCAs), Aichi Target 11 and Canada’s Pathway to Target 1: Focusing Conservation on Reconciliation,” *Land* 8, no. 10 (2019): 1-20.

<sup>12</sup> Ibid.

<sup>13</sup> Theodore Binnema and Melanie Niemi. “‘Let the Line Be Drawn Now’: Wilderness, Conservation, and the Exclusion of Aboriginal People from Banff National Park in Canada,” *Environmental History* 11, no. 4 (2006): 724-750.

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid, 734.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid, 732.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid, 729.

<sup>27</sup> Ibid.

<sup>28</sup> Indigenous Circle of Experts, “We Rise Together: Achieving Pathway to Canada Target 1 through the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation” (report for Her Majesty the Queen in Right of Canada, 2018).

<sup>29</sup> Kyle A. Artelle et al. “Supporting resurgent Indigenous-led governance: A nascent mechanism for just and effective conservation,” *Biological Conservation* 240, (2019): 6. <https://doi.org/10.1016/j.biocon.2019.108284>

<sup>30</sup> Ibid.

- <sup>31</sup> Indigenous Circle of Experts, “We Rise Together: Achieving Pathway to Canada Target 1 through the creation of Indigenous Protected and Conserved Areas in the spirit and practice of reconciliation” (report for Her Majesty the Queen in Right of Canada, 2018).
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- <sup>33</sup> Ibid.
- <sup>34</sup> Ibid.
- <sup>35</sup> Ibid.
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<sup>63</sup> Ibid.



# *Presidentialization of the Canadian Prime Minister's Role and the Ineffectiveness of Restraints on Prime Ministerial Power*

## **Vurjeet Madan**

The nature of the power role held by the Canadian prime minister (PM) is systematically dominant, and ultimately supersedes most decision-making roles in Canadian Parliament. Canada follows the Westminster model and its constitutional conventions, derived from Britain as a result of being a dominion.<sup>1</sup> As a result, the Canadian Parliament has an executive and a legislative branch in which the structural roles of the PM are entirely unwritten and left open to interpretation. Whilst noting the constraints against an autonomic PM role, the federalist approach to provincial advocacy, the media's critique, and the elected members of parliament (MP) system ultimately fail to create a truly meaningful impact in governance. Consequently, the PM's power prevails over all other sources of decision making within the Canadian parliament. This is in light of all the sources of the PM's power: the accessibility and influence provided by the Privy Council Office (PCO) and Prime Minister's Office (PMO), the PM's role in cabinet meetings, international representation, and production of mandate letters, all of which pave the way for the PM to have a commanding and presidentialized role.

### **Sources of the Prime Minister's Power**

#### *PMO and PCO*

A large portion of the PM's power is enforced by advisory bodies, such as the PMO and PCO.<sup>2</sup> These bodies, though solely secretariats in writing, are also well-known, implied advisors to the PM.<sup>3</sup> It is of value to mention that the PCO is officially a secretariat of the cabinet, but its work is consistently lacking in this field and focuses primarily on concerns directly relating to the PM.<sup>4</sup> Both offices have become major influencers in policy decision making and are major supports to the PM.<sup>5</sup> A key concern with the influence of the PMO and PCO is the high degree of accessibility that these bodies have to the PM, something that, comparatively, the cabinet lacks.<sup>6</sup> The PMO and PCO are able to instinctively and spontaneously provide the PM with advice on decisions that are not thereafter discussed or challenged within court. These bodies also manage the PM's appointment process, which grants them leeway and influence in the prioritization of these appointments as a result.<sup>7</sup> What can then be seen is a broadness in influence from these executive bodies. This is emphasized in the documented and since unrevised role of the PCO, which states that the office is responsible for providing advice and support to the PM's "full range" of responsibilities.<sup>8</sup> As of now, one can see how the accessibility, ability to prioritize decisions, and breadth of the PMO and PCO make the staffers major proponents of the PM's exclusivity of power, excluding the cabinet in such decisions.

#### *PM's role in cabinet meetings*

Another source of the PM's power arrives from their king-like, presidentialized role in meeting discussions.<sup>9</sup> Not only does this example emphasize the PM's leeway in conventions, but also the role of precedence in a PM's rule.

To better understand this presidentialized role, Pierre Trudeau's time in office is an effective example to discuss. Prime Minister Pierre Trudeau was irritable of the time-consuming tediousness of answering questions arising from cabinet committee discussions.<sup>10</sup> The discussions are known to serve as an opportunity for the cabinet to review, discuss, and challenge any appendix item scheduled.<sup>11</sup> Trudeau would often retaliate any such challenge and automatically send the minister back to review the decision. Using precedence, the PMs who followed after Pierre Trudeau did the same.<sup>12</sup> There was no stated requirement for any of these prime ministers to genuinely respond to or address challenges brought forth by cabinet members and, as a result of the power they held, PMs would deflect such inconveniences. This is an example of how both precedence and unwritten convention are sources for the PM to act on their own whims without experiencing any major consequences or backlash.

Further, cabinet meetings are introduced with a PCO-drafted briefing of the agenda.<sup>13</sup> Again, the role of the PCO's influence on prioritization can be seen here, notably with no input from the cabinet itself. The PM and PCO have the power to steer the plans of cabinet meetings without compulsory consultation from other bodies. The PM also has full control on the nomination process for unelected officials, such as judges, senators, and deputy ministers, further demonstrating the king-like and autonomic role of power held by the PM.<sup>14</sup> The structure of cabinet meetings demonstrates one of the most transparent ways in which the PM can abuse their advantageous power, wherein their say in cabinet discussions, nominations, and prioritizations is held at the top of the parliamentary pyramid, influenced by convention and precedence.

### ***Globalization***

Globalization has placed great upward pressure on the PM's power.<sup>15</sup> Best seen in the representative role the PM plays as Canada's face and as the decision-maker at large global conventions, the PM has a "free-hand" in all international negotiations.<sup>16</sup> As the face of Canada and the first political actor during international exposure, the PM's judgement is the most impactful on international decisions, supported by the PMO.<sup>17</sup> Perhaps it is best summed up by former PM Chretien's exchange with former U.S. president Clinton, in which Clinton expressed uncertainty on whether the new unchosen Canadian trade minister would agree on the negotiations.<sup>18</sup> In response, Chretien confidently remarked: "Then I will have a new trade minister the following morning".<sup>19</sup> This is an impeccable example of the sheer confidence of power that is held by a Canadian PM, emerging from a presidentialized and CEO-style attitude. The PM's influence on international affairs demonstrates the level of impact their power can achieve, and how it sources from a presidentialized approach.

### ***Mandate Letters***

A specific responsibility that enhances the PM's control is the production of mandate letters sent to newly appointed ministers, written with the assistance of the PCO.<sup>20</sup> These letters consist of guidelines and act as a template for the ministers, which are tailored to the responsibilities of the specific recipient.<sup>21</sup> These letters have a history of being taken quite seriously, as they outline the do's and don'ts of ministerial power as reviewed by the PM.<sup>22</sup> Mandate letters often convey a tone of "keeping things going" and of avoiding the generation of

new, time-consuming challenges for the PM.<sup>23</sup> Such letters emphasize the prioritization process that the PM expects from cabinet ministers, and how they directly convey such expectations. This demonstrates how the PM has the ability to explicitly cherry-pick the role of the ministers and the extent of their power. The mandate letters are a way that the PM asserts their power among the ministers and showcases a way in which their authoritative rule arrives through specific practices, by drafting and revising such letters.

## **Restraints on PM power and their effectiveness**

### ***Federalism***

Perhaps the most effective restraint due to its structural nature, federalism refers to the combined regional and general government structure of a country seen in Canada with provincial representation and the role of premiers.<sup>24</sup> The constraint of federalism is most effective in the case of social policy, where premiers are able to have meaningful influence on decisions concerning health, education, and more.<sup>25</sup> Federalism is a restraint to the power of the PM because it provides a structural platform for the conflicts of interest that arise between the executive branch and the premiers for each province. This, consequently, leaves the central powers in Ottawa “hamstrung” to provinces, weakening the autonomic, CEO-like power of the PM.<sup>26</sup>

Though, in cases like social policy, premiers certainly have influence on the direction of decisions, the executive branch has the ability to manipulate the budget on such policies, weakening their effects.<sup>27</sup> Essentially, federalism may weaken the central power in a direct manner, but loopholes and manipulation allow the PM to maintain authority and indirectly keep their agenda intact.<sup>28</sup> Though, compared to other restraints, federalism certainly has a meaningful degree of impact, the executive branch can still receive the upper hand in decisions through preliminary maneuvering of resources, such as the budget that premiers rely on to carry out their agendas. Thus, federalism as a restraint for PM power is only effective comparatively and fails in the grand scheme of meaningful checks to prevent presidentialization.

### ***Parliament***

The parliamentary system is often referred to as another restraint that prevents imbalanced power on the PM’s end. The best example of this is the requirement of the confidence of the House of Commons in the decisions of the PM, something that is a strict requirement for a PM’s decision to proceed. Within the House of Commons are the MPs, who are elected representatives, which furthers the concept of accountability and, in theory, counters the autonomic nature of the PM’s power. In addition, the implemented question period in parliament provides more opportunities for MPs to ask questions.<sup>29</sup> In addition to this, the system of the opposition party is one that is meant to critique and challenge the elected government and bring in a different party’s perspective, which can impose hostility and stimulate new conversations and challenges to the PM and elected government.<sup>30</sup>

The ultimate downfall of parliament as a means of restraint is a result of party discipline. As compared to the U.S. Congress, where members are not required to agree with their party’s decision and can challenge them, Canadian MPs are known for their obedience to party agendas.<sup>31</sup> The convention of partisan loyalty essentially counteracts parliament’s ability to

confidently challenge proposals, as MPs will abide by the overarching decisions advocated by their respective parties.<sup>32</sup> In the rare case that an MP decides to speak up on their disagreement in the House, they usually resign out of convention.<sup>33</sup> This was seen in the case of Michael Chong who, knowing the consequences, publicly disagreed on the national unity conflict concerning Quebec and went on to resign from cabinet.<sup>34</sup> Party loyalty allows fewer opportunities to discuss and challenge decisions, thereby supporting a PM's unquestioned agenda. One can also argue that there is an element of fear fuelling the MPs' desire to avoid "social suicide", arriving as a by-product of the imposed system of party obedience. This forces MPs to decide their own personal threshold for obedience and to what degree they will accept being puppeteered, until they speak their mind and consequently resign for doing so.<sup>35</sup>

Another reason why parliament is not an adequate constraint against inequitable PM power is the imbalance of resources between the elected Government and the Opposition.<sup>36</sup> Again, it is the manipulation and advantageous loopholes of unwritten convention that permit this imbalance to continue without question. This is because the PM leads the direction of the briefing agenda and the priority of items, and is able to strategically manipulate the agenda to their advantage. This occurs even more often when a particularly inexperienced Opposition party that does not have the "parliamentary savvy" of the executive branch is in office.<sup>37</sup> To overcome this factor, the Opposition party cannot lack and must consist of politically intelligent individuals, which is not always the case. Due to this reliance on "parliamentary savvy" and the executive's imbalanced access to resources, the parliament is an inefficient system in terms of restraining the PM's overruling authority.<sup>38</sup>

## ***Media***

The media is the bridge between Canadians and the parliament in Ottawa. For this reason, news channels and newspapers have the ability to place attention and focus towards issues that critique prime-ministerial power. An issue that could have been relatively minor within the government has the power to become high-profile and urgent solely from the media's effect on Canadians.

Although the media has the capability of providing influential criticism of the PM, and in some cases has done so, this is ultimately dependent on a number of factors that can weaken the media's power of constraint and make it less reliable. One such factor is the reality that, as the overall business model of a news outlet is dependent on the demands of its viewers, these outlets will only provide attention and critique to PM decisions if they are of interest to their viewers, measured by budgets and audience ratings.<sup>39</sup> Such news outlets are focused on providing information that their viewers will find to be integral and significant. Many Canadians are inattentive towards the happenings of internal governance, and lack the interest required for governmental issues to be aired frequently on the news.<sup>40</sup> In addition, there are strategic ways for the PM to maneuver around the media's criticism, such as by presenting themselves with more charm and "choreographing" events that Canadians will desire and support.<sup>41</sup> Surface-level likeability and popularity can overshadow meaningful criticism from the media. This reliance on viewer demand, the inattentiveness from Canadians, and a PM's media strategy ultimately makes the media less powerful in countering the imbalance of power held by the PM.

### ***Reflecting on the ineffectiveness of PM power restraints***

The systems of federalism and parliament, along with the media, are only preventative measures for exploitation of PM power in theory; they fail at the hands of viewer demand in the media, and convention and systematic favoring of the PM in the case of federalism and parliament. As noted, though parliament and federalism can be seen to have a variety of approaches to challenging and incorporating new perspectives, the PM has the ability to shake off such hindrances with the power of direction that they wield. Because of these CEO-like perks, systems of restraint become much less significant. This is enhanced further by the sources of PM power discussed before, such as the PCO-drafted briefings of cabinet meetings that steer the agenda's priorities in favour of the PM.<sup>42</sup> The PM has their hand in every pool of powerful decisions, and their hierarchical status provides them with numerous ways to strategically maneuver around challenges and inconveniences.

### ***Concluding remarks***

In analyzing the various ways in which the PM acquires advantageous power and distinguishing how systems of restraint are ineffective for counteracting such power, it is clear that the role of the Canadian prime minister is a presidentialized one. Such dominance in the executive branch is upheld by the versatility in the sources of power held by the PM.<sup>43</sup> Almost treated like a monarch, MPs fear challenging their “king” out of conventional partisan loyalty.<sup>44</sup> The PM's ability to make use of the interpretive nature of conventions and the structural nature of authority at every level of governance creates a borderline autonomous regime within Canada. At first look, federalism can deceive Canadians in assuming democratic distribution of power, with premier representation; however, it stands to reason that the PM's power overrules that of the premiers by a significant degree, and the executive branch as a whole can shapeshift the direction of premier decisions from Ottawa. These systems of restraints are weakened and rendered ineffective due to the ultimate power of influence held by the PM, proving how there is a systemic imbalance of power in the Canadian parliamentary system, which would require meticulous reform to overcome.

### **Notes**

<sup>1</sup> Herman Bakvis, “Executive Dominance and Presidentialization,” In *The Presidentialization of Politics: A Comparative Study of Modern Democracies* (Oxford: Oxford University Press, 2005), 1.

<sup>2</sup> Patrick N. Malcolmoson, et al., “The Crown and Its Servants,” In *The Canadian Regime: an introduction to parliamentary government in Canada* (Toronto: University of Toronto Press, 2016), 115.

<sup>3</sup> Donald J. Savoie, “Power at the Apex: Executive Dominance,” In *Canadian Politics* (Toronto: University of Toronto Press, 2014), 140.

<sup>4</sup> Ibid.

- <sup>5</sup> Patrick N. Malcolmoson, et al., “The Crown and Its Servants,” In *The Canadian Regime: an introduction to parliamentary government in Canada* (Toronto: University of Toronto Press, 2016), 115.
- <sup>6</sup> Donald J. Savoie, “Power at the Apex: Executive Dominance,” In *Canadian Politics* (Toronto: University of Toronto Press, 2014), 140.
- <sup>7</sup> Ibid., 142.
- <sup>8</sup> Ibid., 140.
- <sup>9</sup> Ibid.
- <sup>10</sup> Ibid., 142.
- <sup>11</sup> Ibid., 141-142.
- <sup>12</sup> Ibid., 141.
- <sup>13</sup> Donald J. Savoie, “The Centre Rules: Executive Dominance,” In *Canadian Politics*, (Toronto: University of Toronto Press, 2014), 51.
- <sup>14</sup> Donald J. Savoie, “Power at the Apex: Executive Dominance,” In *Canadian Politics* (Toronto: University of Toronto Press, 2014), 141.
- <sup>15</sup> Ibid., 144.
- <sup>16</sup> Ibid.
- <sup>17</sup> Hugh Mellon, “Coming to Terms with Political Realities: Exploring the Breadth of Prime-Ministerial Power,” In *Crosscurrents* (Toronto: Nelson Education, 2014), 108.
- <sup>18</sup> Donald J. Savoie, “Power at the Apex: Executive Dominance,” In *Canadian Politics* (Toronto: University of Toronto Press, 2014), 145.
- <sup>19</sup> Ibid.
- <sup>20</sup> Ibid., 146.
- <sup>21</sup> Ibid.
- <sup>22</sup> Ibid., 147.
- <sup>23</sup> Ibid., 146.
- <sup>24</sup> Herman Bakvis, “Executive Dominance and Presidentialization,” In *The Presidentialization of Politics: A Comparative Study of Modern Democracies* (Oxford: Oxford University Press, 2005), 11.
- <sup>25</sup> Ibid., 13.
- <sup>26</sup> Ibid.
- <sup>27</sup> Hugh Mellon, “Coming to Terms with Political Realities: Exploring the Breadth of Prime-Ministerial Power,” In *Crosscurrents* (Toronto: Nelson Education, 2014), 116.
- <sup>28</sup> Ibid.
- <sup>29</sup> Herman Bakvis, “Executive Dominance and Presidentialization,” In *The Presidentialization of Politics: A Comparative Study of Modern Democracies* (Oxford: Oxford University Press, 2005), 12.
- <sup>30</sup> Ibid.
- <sup>31</sup> Jennifer Ditchburn, “Shouldn’t we want MPs who don’t conform?” In *Policy Options* (Ottawa: Institute for Research on Public Policy, 2019), 2.
- <sup>32</sup> Ibid.
- <sup>33</sup> David Pond, “Lecture 3: Prime Minister and Cabinet,” In *POL214* (Toronto: University of Toronto, 03/11/2020).

<sup>34</sup> David Pond, “Lecture 3: Prime Minister and Cabinet,” In *POL214* (Toronto: University of Toronto, 03/11/2020).

<sup>35</sup> Jennifer Ditchburn, “Shouldn’t we want MPs who don’t conform?” In *Policy Options* (Ottawa: Institute for Research on Public Policy, 2019), 1-2.

<sup>36</sup> Hugh Mellon, “Coming to Terms with Political Realities: Exploring the Breadth of Prime-Ministerial Power,” In *Crosscurrents* (Toronto: Nelson Education, 2014), 114.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid., 115.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Donald J. Savoie, “Power at the Apex: Executive Dominance,” In *Canadian Politics* (Toronto: University of Toronto Press, 2014), 141.

<sup>43</sup> Hugh Mellon, “Coming to Terms with Political Realities: Exploring the Breadth of Prime-Ministerial Power,” In *Crosscurrents* (Toronto: Nelson Education, 2014), 116.

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# *A Call for More Indigenous Representation in Hockey: Fred Sasakamoose and His Contributions to Canadian Identity and Hockey*

**Claire Posno**

There are selective Canadians who leave their legacies to past, present, and future generations, shaping Canadian identities. Fred Sasakamoose, one of the first Indigenous Canadians to play in the National Hockey League (NHL), is no exception to the long list of influential hockey heroes spread across our nation. Sasakamoose's impact on Canadian ideas and identity is very distinct from other members of the NHL. A household name, extraordinary statistics, and a significant fanbase are not the characteristics that Sasakamoose is known for. Rather, his contributions have broken barriers in diversity and the inclusion of Indigenous peoples in professional sports. Additionally, Sasakamoose's legacy shines a light of skepticism towards Canada's accepting, multicultural, and diverse image, which emphasizes the steps that must ensue for sports to be more representative of the nation. The benefits of having activities, like hockey, be more inclusive towards all racial backgrounds are numerous and generational. For example, the weight and significance of a young child being represented during Hockey Night in Canada by a professional athlete creates lasting sentiments that will strengthen individual and national identity.

To appreciate Sasakamoose's legacy, we must acknowledge his sacrifices and struggles that largely stem from his association with Canada's dark past: residential schools. In this paper, I will use Sasakamoose's story and Hockey Night in Canada to illustrate how identity and ideas have been enriched and to emphasize the steps needed for further inclusivity in Canada's hockey culture. I will discuss the benefits of listening to Canadian narratives, Canada's mobility rights, and imagined communities. Subsequently, I will reflect on Canadian multiculturalism and geography. Following, I will discuss hockey as a language, politics in sport, and actions taken toward hockey diversity. Concluding, I will highlight Sasakamoose's contributions to Canadian identity and offer recommendations for progressive improvement in hockey.

Everyone in Canada deserves their story to be heard, and I must emphasize the importance of listening to numerous narratives to broaden our Canadian perspectives. Entering into a dialogue allows progressive solutions to form, though we must understand when the stories are ends in themselves and do not need fixing.<sup>1</sup> With this, I am going to illustrate Sasakamoose's early life, which includes Canadian ideas and identities that are often purposely hidden. The intentional forgetfulness and ignorance of a nation's discriminatory past can be termed as historical amnesia.<sup>2</sup> Thus, by making visible Canada's hidden truths through Sasakamoose's narratives, we can be lifted from historical amnesia. This is essential in creating more diversity in hockey. Uncovering these truths enables us to appreciate Sasakamoose's successes and sacrifices, and conceptualize the strides Canada has made in hockey diversity, while also holding some skepticism to keep pushing the sport forward. Frederick "Fred" Sasakamoose's story begins when he was born on a reserve in Saskatchewan as a member of the Cree nation in 1933.<sup>3</sup> Sasakamoose and his family were listed under the



Indian Act where every aspect of their lives on the reserve was monitored.<sup>4</sup> A local Indian agent controlled Sasakamoose's voluntary movement to explore the reserve, yet when he desired to remain at home and not be taken to residential school, his wishes were dismissed and forcible movement resulted. Acknowledging Sasakamoose's constraints can help us conceptualize his multifaceted story, which will initiate questioning and criticism to imagine a more representative Canadian hockey culture. Mobility is an inevitable action in hockey and a right we are granted in Canada. Section 6 of the Canadian Charter of Rights and Freedoms states that everyone in Canada has the right to move and reside in any province.<sup>5</sup> The introduction of the Charter in 1982 was implemented to neutralize competing understandings of nationalism to work through diverging cultures and ideas.<sup>6</sup> Unfortunately, before the Charter was introduced, countless Indigenous persons faced oppression and disruption, and continue to face maltreatment today.

Sasakamoose was one of the many who was subject to the government's projects of assimilation of Indigenous culture. With restrictions to exercise a culture and identity freely, which many Canadians take for granted, the ability to find hope in situations of change, uncertainty, and displacement are essential. Sasakamoose relied on hockey throughout his nine years at the residential school, which helped him survive the realities of abuse and trauma.<sup>7</sup> The ability to move, glide, and have freedom on the ice was a privilege that Sasakamoose savoured. Most hockey players who grow up to play professionally have people who inspire their continuation and passion in the sport. Prior to residential school, Sasakamoose's inspiration was his grandfather.<sup>8</sup> For many Canadians, learning to skate with guidance from their grandparents is a shared memory young hockey players experience and reflect upon.<sup>9</sup> On the other hand, having these cherished moments taken away would generate lasting effects, which occurred to Sasakamoose. However, Father Georges Roussel restored some pride and excitement for hockey during Sasakamoose's time in residential school.<sup>10</sup> Father Roussel was a friendly figure, which allowed Sasakamoose to reminisce upon the fond memories of his grandfather and fed his urge to continue hockey. Revealing Sasakamoose's experiences when he was at the hands of an unequal system provides a message to Canadians, which is to appreciate the movement that we are granted and remember the restricted experiences felt by Indigenous peoples for having different upbringings and identities.

A country depends on shared sentiments and identities from the population to imagine and create dominant national narratives. Using Benedict Anderson's concept of imagined communities, I will illustrate both the problematic and beneficial aspects of collective imaginations. Anderson states that the style in which communities are imagined creates similarities and differences between them.<sup>11</sup> To better understand Anderson's idea, I will compare how Sasakamoose imagined hockey after residential school at 15, with children of the same age who were not subject to attending residential school. Given this, Sasakamoose made significant improvements in hockey throughout residential school and developed a strong attachment to the sport. I presume that longing to return home to his family was a constant wish, which most likely would have impeded his progress in the sport.<sup>12</sup> Thus, Sasakamoose's imagination of hockey would have had negative views about Canada and its treatment of Indigenous peoples.

Sasakamoose had natural abilities, so he was asked to attend a training camp far from his home. However, he was reluctant to leave due to the anticipation of interacting with individuals who had different imaginations of diversity, hockey, and Canada, which would make inclusion challenging.<sup>13</sup> Anderson notes that members from the same imagined community will have consistent agreement and similar experiences. Further, when members from different imagined communities meet, there are possibilities of biases toward the other group.<sup>14</sup> Unfortunately, this was the case for Sasakamoose when he interacted with children from a different imagined community. The other children had the idea that hockey should be for the whites, which caused Sasakamoose to question and become ashamed of his identity of being Indigenous.<sup>15</sup> Sasakamoose had to experience prejudices inflicted upon him by his own teammates, which is the result of contrasting imaginations being acted upon irrationally, rather than respected and worked through. Sasakamoose persisted with hockey despite the experiences that proved discouraging, which illustrates his strength and devotion when subjected to the problematic aspects of different imagined communities.

To understand the significance of Sasakamoose's accomplishments as an Indigenous individual, we must turn to Canadian multiculturalism at the time of his career. Multiculturalism is a key element of the nation's identity, however, have diversity and inclusion always been part of the Canadian discourse? Sasakamoose's hockey career and the adversity he faced throughout his life act as a microcosm for Canadian multiculturalism. In 1988, Canada adopted the Multiculturalism Act, which strengthened national identity both domestically and internationally. Additionally, the Multiculturalism Act creates an inclusive image for Canadians to praise and accept, which can be reproduced by other nations to enhance diversity.<sup>16</sup> However, Sasakamoose's professional career with the NHL began in 1953, which was before the nation prioritized inclusivity.<sup>17</sup> We must remember that sports tell stories about a nation's identity,<sup>18</sup> and Sasakamoose's narratives illustrate the shifts of inclusivity in both hockey and Canada. Before signing with the NHL, he was named the most valuable player of his junior hockey league and was offered a peace pipe and headdress.<sup>19</sup> Additionally, Sasakamoose received the Order of Canada in 2018, which "recognizes Canadian citizens who have made outstanding achievements, are dedicated to the community or have served the nation."<sup>20</sup> These offerings represent something bigger in the context of Canadian identity and culture. Sasakamoose's recognition alludes to the adoption of the Multiculturalism Act, where the incentive is to erase inequalities and ensure all cultures have intrinsic value.<sup>21</sup> When Sasakamoose received this recognition, his talent was not only being acknowledged, but his Indigenous culture was too. Thus, Canadian multiculturalism is not solely about offerings and welcoming words; it is ensuring all individuals can maintain a connection to any culture and environment.

The Canadian geography, which includes snow-covered landscapes and extensive frozen lakes, push the themes of the nation forward. Canada is vast, and the individuals within each province are both connected and disconnected in numerous ways. Given this, Jean Charest states that Canada is a northern country that relies heavily on the influence of its provinces.<sup>22</sup> This statement could be dismissed for its simplicity. However, turning to Sasakamoose's narratives and the stories of Hockey Night in Canada, we can understand the pull of the nation's natural surroundings. Sasakamoose created strong ties to his environment when living on the

reserve. For instance, his first hockey lessons were taught on a frozen lake.<sup>23</sup> The descriptions of Sasakamoose's stories create feelings of familiarity and comfort because the Canadian winter backdrop is a given for numerous provinces and an anticipated component in the outdoor games of Hockey Night in Canada. There is a sense of magic and nostalgia when professional hockey players complete an outdoor game due to the fond memories so many Canadians have of playing hockey outdoors while growing up. With outdoor hockey games widely broadcasted, everyone across Canada has opportunities to connect with national symbols. A nation desires its citizens to accept symbols, which are created for connectivity and belonging.<sup>24</sup> Further, when people have stories that contain symbolic elements, such as Sasakamoose's descriptions of his grandfather ice fishing while he plays hockey,<sup>25</sup> Canadian identity is reproduced and strengthened. By continuing these crucial conversations that contain Canadian symbols, we can appreciate the beauty and significance of Canadian geography and the unconventional, yet impactful, perspectives.

Sports can be viewed as a language where, similar to French and English, sports have their own jargon, which offers opportunities to be heard and seen. In hockey, there are common movements, gestures, and plays that allow others to receive these signals and contribute to the conversation of sport.<sup>26</sup> Languages are a significant part of a nation's identity, which proves beneficial in various sectors of Canadian life. With the adoption of French in 1982 as the official second language in Canada, many were able to exercise their culture and identity unapologetically.<sup>27</sup> In comparison, when individuals are able to contribute to hockey with their signals and skills, they broaden their own talent and passion. This can be interpreted through Sasakamoose when he received the opportunity to play in the NHL for the Chicago Blackhawks.<sup>28</sup> By continuing his hockey career on the professional scene, Sasakamoose was able to broaden his 'hockey language' in a new context while surrounded by others who could contribute to the dialogue. When French was recognized as an official language across Canada, there were opportunities to broaden individual perspectives.<sup>29</sup>

There are immense benefits to having one's language recognized. However, there is great isolation and division when a language is suppressed. Most people desire to contribute to a language, whether that be of sport or semantics. Yet, restrictions can be placed on one's right to skate or speak freely. This scenario is true for both Sasakamoose in residential school and numerous Francophones who felt their language was threatened. Given Sasakamoose's scenario, his ability to speak Cree was removed in residential school, leaving him with a language barrier within his own family.<sup>30</sup> This should illustrate that language, both in sport and semantics, is "not simply a way of communicating. A language is a way of thinking. It's a way of being, a way of life. If you take that away, you've destroyed an entire culture."<sup>31</sup> Thus, language must be a collaborative engagement where individuals are celebrated for their abilities and perspectives rather than targeted and stigmatized for their differences.

Politics in sport are both constraining and liberating as individuals can express their opinions and experiences, which reveals crucial topics that are not always discussed on a large platform. Inevitably, Hockey Night in Canada will include topics apart from the hockey world that will be controversial for some though widely accepted by others. For Sasakamoose, a disrupted upbringing caused by Canadian projects of assimilation are included in his legacy.

Further, the images of romanticized hockey heroes and their ability to construct a national identity that is based on pride and strength is both constructive and problematic.<sup>32</sup> For instance, connecting with a professional hockey player and removing oneself from politics can allow individuals to enjoy the sport without confronting sensitive topics. However, it is a privilege to remove oneself from politics, and for many Canadian hockey fans and players, this is not their reality. Thus, Sasakamoose used his platform to lift individuals from their ignorance of Canada's dark past. Sharing stories of struggle and family separation to a platform that seeks victory allows individuals like Sasakamoose to disrupt the popular image of sport and national identity. Additionally, having the ability to discuss lived experiences freely can illustrate a nation in a positive light because, rather than suppressing shameful incidents, the nation is seeking to listen to the stories, which will reflect attributes of bravery in the citizens. However, we must be aware that Sasakamoose's story and others similar to his are not used as a form of tokenism to place Canada on a pedestal for overcoming diverging identities.<sup>33</sup> Rather, Sasakamoose's ability to discuss politics in hockey should act as a movement toward diversity, inclusion, and reconciliation.

If hockey is to continue to be a pillar for Canadian identity, action must take place on various levels to welcome individuals of all backgrounds. We must shift the hockey dialogue away from Eurocentric ideas to others that honour diverse passions and curiosity.<sup>34</sup> For instance, when Sasakamoose shares his stories to younger Indigenous peoples, motivation is established where resources can be lacking.<sup>35</sup> Community leaders have voiced their appreciation for Sasakamoose and his involvement with Indigenous youth. When positive lived experiences are offered in areas that are often saturated with drug abuse, suicide, and alcoholism, there is proof that becoming a professional hockey player is not an impossible feat despite apparently rigid constraints.<sup>36</sup> The protection and continuation of Indigenous cultures must be prioritized on small and large scales with guidance and support at the forefront. For example, Sasakamoose has promoted youth hockey activities while also offering traditional knowledge on hunting and fishing.<sup>37</sup> On a larger scale, the Truth and Reconciliation Commission of Canada released various calls to action for the government to share stories of Indigenous athletes, provide more funding for development and growth in sport, and ensure officials are inclusive of Indigenous peoples and their culture.<sup>38</sup> I ask, how can these contributions positively impact Hockey Night in Canada? Canada is vast, diverse, and greatly associated with hockey. Thus, having Indigenous athletes consistently included in the game could broaden the image of our national sport. This would be beneficial, as pride for the nation could be extended to all communities in Canada rather than those that have been represented in the sport for generations.<sup>39</sup> We must recognize the knowledge and narratives of Indigenous communities and their deservingness of a stage as big as Hockey Night in Canada to balance inequalities and enrich lived experiences.

Throughout this paper, I have illustrated that Hockey Night in Canada is a significant symbol of our nation's identity. However, we must extend the conversation to those who have left an unconventional legacy on the game if we want hockey to remain a central aspect of our country. Sasakamoose was one of the first Indigenous hockey players to play for the NHL. However, he underwent great sacrifices to get to this level of athleticism and recognition. Uncovering Sasakamoose's story, we can conceptualize the impact of Canadian assimilation

projects, which expose various truths about the nation that are often suppressed under words of multiculturalism, inclusion, and pride. Sasakamoose's narratives disrupt elements that can be taken for granted, such as the comfort of growing up with family, the ability to feel connected to a nation's identity, and being represented in sport. The differences that Sasakamoose has felt throughout his life highlight the problematic features of national identity and ideas. For instance, when belonging and acceptance are unwelcomed, having admiration and dignity for a nation can be difficult. I ask, how can we improve individual experiences for those who do not feel connected to Canadian values, identity, and ideas? We must begin by listening to the stories of those who have found cracks in the nation's systems where opportunity, support, and inclusion are minimal. Turning to individuals like Sasakamoose to hear his insights allows us to understand the differences that make up Canadian culture and identity, and work through them rather than against them. Once a foundation of trust and understanding is established, we can open up areas, such as the hockey arena, which has conventionally welcomed white communities. With this, Sasakamoose has significantly contributed to the extensive roster of Canadian hockey greats. A meaningful message is offered to Canadians, which is to remember the nation's past, to appreciate the progressive developments of the present, and continue to evolve our idea of Canadian identity to create a space of inclusivity for generations in the future.

### Notes

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<sup>2</sup> Ofelia Cuevas, "Cops and the Visual Economy of Punishment," *CR10 Publications Collective* (AK Press, 2008), 45.

<sup>3</sup> Larry Loyie and Constance Brissenden, "Fred Sasakamoose," *The Canadian Encyclopedia*, July 2018. <https://www.thecanadianencyclopedia.ca/en/article/fred-sasakamoose>.

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- <sup>9</sup> Brian Gibson, "Bleeding Red, White, and Yellow Ghosts of World Championships Past," *Queen's Quarterly* 120, no. 3 (2013): 4.
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- <sup>12</sup> Lakoff, "The Story Of Fred Sasakamoose."
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<sup>36</sup> Lakoff, "The Story Of Fred Sasakamoose."

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## *Women and Policing: Inequality and Criminal Justice*

### **Dellannia Segreti**

It is evident that individuals face multiple injustices when they come into contact with the Canadian criminal justice system. In looking specifically at the intersection between inequality and criminal justice, and by focusing on gender and policing, the inequalities faced by female victims of assault and/or intimate partner violence when interacting with Canadian police can be further explored. The purpose of this essay is to acknowledge that women face injustices within the criminal justice system, especially when encountering the police. This injustice results from the role of “real rape” and “real victim” stereotypes. This will be demonstrated through police knowledge and perceptions of the criminal justice system as well as their investigation practices.

In order to demonstrate that women are faced with injustices when reporting to police, it is necessary to acknowledge that there is a deeply ingrained understanding of which experiences are justified and elicit judicial action, which can lead to the re-victimization of women. This can be connected to underreporting of sexual violence as well as to the low rate of cases brought to a just trial. This emphasizes the importance of justice in the police system, as it is a victim’s first point of contact with the criminal justice system.

It is important to note, when looking at the inequalities present between women and policing, that not all women’s experiences are the same and that their interactions with the police are impacted by many aspects. This brings to light the importance of using an intersectional approach to assessing prejudice in the criminal justice system, as intersectionality acknowledges that there is a relationship among multiple dimensions of social relations and statuses that intersect, meaning they cannot be looked at in isolation.<sup>1</sup> However, for the purpose of this analysis, the effects of social statuses will be looked at in isolation while acknowledging that not all women’s experiences with the police are equal.

#### ***“Real Rape” and “Real Victim” Stereotypes***

“Real rape” and “real victim” stereotypes undermine the validity of rape cases that are brought forth by women to the justice system. As police are gatekeepers to the criminal justice system, the process of attrition in sexual assault cases is often related to the discretion of individual officers.<sup>2</sup> This acts as an active barrier into the justice system, making it harder for women to seek justice. Sexual assault cases that are reported to the police are surrounded by “real rape” and “real victim” myths.<sup>3</sup> It is only in sexual assault cases that co-present with physical violence that we see an increase in the number of women who bring their experiences to the attention of the police. Dumont and colleagues found there to be a positive association between reporting sexual assault to the police and the two overtly violent components of the “real rape” myth: use of physical force and the occurrence of physical injury.<sup>4</sup> The social criterion of violent crime requires visible injuries on the victim, which validates and accepts those who are victims of sexual assault.<sup>5</sup> The occurrence of physical injuries and the use of physical force are used to mark the severity of the offence. This perception of harm is related to the motivation to take corrective actions and report offences to the police. The Violence Against Women Survey demonstrated that only six percent of assaults are reported to the police.<sup>6</sup> This



low statistic of six percent further emphasizes that women are faced with the socially accepted notion of the “real rape” and “real victim” myths. They are forced to judge their situation and report only when their experience meets certain criteria set out by society. This acts as a second traumatization for women and involves the minimization of a case’s severity, which is further corroborated by common instances in which police convince victims that they have no case.<sup>7</sup>

The characterization of the socially accepted notions of what is considered “legitimate” or “real rape” serve as barriers to justice for women, assisting them in defining their experiences. This forces female victims to first recognize and convince themselves prior to reporting that they have experienced sexual assault and that their experience fits the “real rape” criteria.<sup>8</sup> The reality of women’s experiences with police and the bias of power that police have in being gateways into the criminal justice system is evident through the “real rape” and “real victim” stereotypes.

### ***Police Perceptions and Practices***

Police act as gatekeepers into the justice system, which emphasizes the power that police perceptions have in the experiences of women. More specifically, police perceptions of the Canadian criminal justice system’s response to sexual violence influence their decisions and produce bias. Police officers’ actions and responses to sexual violence are influenced by their understanding of the barriers to justice within the criminal justice system as they interpret the obstacles to achieving justice, due in part to their experiences of cases floundering in courts.<sup>9</sup> Police actions are structured and constrained, in part, by legislative and court processes, which ultimately disregard the victim’s needs. The deindividualization of criminal cases leaves an inadequate opportunity for addressing systemic issues in legal processes.<sup>10</sup> Women’s stories are constantly shaped in order to fit within the legal context, which comes from the criminal justice system’s responses to sexual violence. This has long been critiqued for failing or further victimizing complaints, as well as for resisting women’s demands for equal protection under the law.<sup>11</sup> The police’s re-victimizing actions towards women and their perceptions of the “real victim” leads women to be persuaded at the scene to not move forward with charges. This is influenced by a police officer’s knowledge that very few cases of sexual violence are successfully prosecuted in court and that the process may be long and re-victimizing with little reward.<sup>12</sup> This “real victim” discourse leaves the victims feeling belittled, disrespected, and even dismissed. Police are women’s first contact into the criminal justice system and one of the primary contributors to secondary victimization. It is through the police’s perceptions of the criminal justice system that they further victimize and subordinate women in society.

Additionally, police investigation practices play a large role in how they respond to sexual assault cases and further victimize women. This is because goals, missions, policies, and procedures all play important roles in how both organizations and their employees respond to sexual assault related work and socially construct sexual assault.<sup>13</sup> The policing practices behind the trend of sexual assaults can be attributed to police investigators continuing to dismiss a disproportionate number of sexual assault reports as being unfounded, and the techniques the police use to assess the credibility and truthfulness of survivor-reported sexual assault.<sup>14</sup> Quinlan looked at the wide range of investigative techniques used by the police to determine the truthfulness of a sexual assault report and concluded that the police’s investigative techniques lack any form of standardization, and that many of the techniques used by police hinge on

normative assumptions about how “real victims” respond to sexual assault.<sup>15</sup> Police tend to hold the same societal beliefs and attitudes held by members of the general population and, therefore, maintain similar normative assumptions of what is “real rape”. This bears an overwhelming presence on the experiences of female victims while encountering the police.

Looking at Canada’s implemented pro-arrest policy, a specific police investigation policy, we see that police are permitted to arrest those who they personally accuse of committing the violent act at the scene, which in many cases leads to the arresting of both the victim and perpetrator at the scene.<sup>16</sup> After the implementation of pro-arrest policies, there was an increase in the arrest rates for women associated with intimate partner violence.<sup>17</sup> Women were being arrested for intimate partner violence when their behaviour was defensive rather than aggressive. As a result, women were being re-victimized as they were forced to defend themselves again against their abuser.<sup>18</sup> This emphasizes the flaw of this policy and alludes to the idea that the police force is ultimately unable to identify victims of sexual assault, in relation to the situation, in a proper and effective manner.<sup>19</sup> Police practices, as seen within the pro-arrest policy, act as a deterrent for women with regards to reporting. Pro-arrest policies leave the outcome to the individual lawman’s judgement, which is biased and at times not always just. This evidently leads to an increase in innocent women being arrested and being further victimized in the process of responding to sexual assault crimes.

### **Conclusion**

The police are gateways for women victims into the criminal justice system. It is unfortunate that women are hesitant to bring their experiences to the police as a result of the re-victimization and inequality that is faced. The “real rape” and “real victim” stereotypes play a major role in the ways in which police respond to women’s sexual assault and/or intimate partner violence cases. Through police perceptions of the criminal justice system’s response to sexual violence in conjunction with police investigative practices, women are subject to re-victimization and inequality in the justice system, which act as barriers to justice.

### **Notes**

<sup>1</sup> Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color* (Stanford Law Review: 1991), 1241-99.

<sup>2</sup> Vicki Vopni, *Young Women’s Experiences with Reporting Sexual Assault to Police* (Canadian Women Studies: 2006), 107-114.

<sup>3</sup> Janice DuMont, Karen-Lee Miller, and Terri L. Myhr, *The Role of “Real Rape” and “Real Victim” Stereotypes in the Police Reporting Practices of Sexually Assaulted Women* (Violence Against Women: 2003), 466-486.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Vicki Vopni, *Young Women's Experiences with Reporting Sexual Assault to Police* (Canadian Women Studies: 2006), 107-114.

<sup>8</sup> Ibid.

<sup>9</sup> Dale Spencer, Alexa Dodge, Rose Ricciardelli, and Dale Ballucci, *I Think It's Really Victimized Victims Almost Every Time: Police Perceptions of Criminal Justice Responses to Sexual Violence* (Critical Criminology: 2018), 189-209.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Rachel M. Vanema, *Police Officer Schema of Sexual Assault Reports: Real Rape, Ambiguous Cases, and False Reports* (Journal of Interpersonal Violence: 2016), 872-99.

<sup>14</sup> Andrea Quinlan, *Suspect Survivors: Police Investigation Practices in Sexual Assault Cases in Ontario, Canada* (Women and Criminal Justice: 2016), 301-318.

<sup>15</sup> Ibid.

<sup>16</sup> Cheryl Fraehlich and Jane Ursel, *Arresting Women: Pro-arrest Policies, Debates, and Developments* (Journal of Family Violence: 2014), 507-518.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

## *Compromise, Rule of Law, Equality: Beverly McLachlin, the Supreme Court and Canadian Identity*

### **Katherine Shackleton**

Canada is ruled not by the Queen or the prime minister, but the Constitution. As the body responsible for upholding the Constitution, the Supreme Court of Canada is the country's most influential institution. At the head of the Court is the chief justice, a position occupied for an unprecedented 17 years by Beverley McLachlin, the first woman to hold the job. In total, McLachlin sat on Canada's highest court for nearly three decades and, during this time, her leadership and the Court's jurisprudence have both responded to and formed Canadian identity. For example, she embodied the Canadian virtue of compromise by encouraging consensus in the Court as chief justice. Several of her most important judgements also reflect the importance of balancing and accommodating different interests in Canada's diverse society. In addition, the Court acts as the manifestation of the rule of law and, in this capacity, has consistently ensured that this fundamental Canadian philosophy is respected. Moreover, the Court safeguarded equality rights and multiculturalism, two areas in which Canadian identity is rooted. To that end, McLachlin's symbolic significance as the first female chief justice is evidence of Canada's belief in gender parity. Overall, during McLachlin's tenure, the Supreme Court contributed to Canada's identity by both reflecting and shaping three tenets of our national consciousness: compromise and accommodation, the rule of law, and equality.

In order to illustrate the Supreme Court's contributions to Canadian identity, some background on its role in society is necessary. Created a few years after Confederation, the role of the Court was revolutionized after the repatriation in 1982. Since 1982, the Court has been responsible for interpreting the broad range of provisions included in the Canadian Charter of Rights and Freedoms, as well as the rest of the Constitution, in order to determine the constitutionality of certain pieces of legislation.<sup>1</sup> Only the Supreme Court can make a binding declaration of invalidity for an unconstitutional law. Aside from automatic appeals and reference questions, the Court selects which cases to hear on the basis of the legal questions they contain and their public importance.<sup>2</sup> The Court consists of nine justices, including the chief justice, appointed by the prime minister.<sup>3</sup> The additional duties of the chief justice include deciding which judges will hear certain cases, chairing the Canadian Judicial Council, and overseeing the administrative aspects of the Supreme Court.<sup>4</sup> The Court is in a unique position to both respond to changes in the values of Canadians as well as formulate those values through their decisions.

Former chief justice Antonio Lamer describes the Court as the defender of "values that Canadians hold dear."<sup>5</sup> Thus, the Court must be guided by what matters to Canadians and they must also protect these principles from actors such as the government who seek to override them. However, the Court is not a faceless institution. It is composed of individual justices and these justices hold substantial influence considering the weight of their decisions. Canada's longest serving, and first female, chief justice is Beverley McLachlin. She was born in Pincher Creek, Alberta in 1943.<sup>6</sup> She obtained her Bachelor of Arts in philosophy from the

University of Alberta in 1965 before earning her law degree, also from the University of Alberta, in 1968.<sup>7</sup> After being appointed to the Vancouver County Court as a judge in 1981, she quickly rose through the judicial ranks and was appointed by Prime Minister Brian Mulroney to the Supreme Court of Canada in 1989.<sup>8</sup> After serving for 11 years as an associate justice, she was elevated by Prime Minister Jean Chrétien to the position of Chief Justice of Canada in 2000.<sup>9</sup> For the next 17 years, McLachlin was Canada's top judge. She retired in December 2017 and was succeeded as chief justice by Richard Wagner.

I will now begin demonstrating how McLachlin contributed to Canadian identity over the course of nearly three decades on the Supreme Court. The first contribution that she and her fellow justices made in this respect was their exemplification of the Canadian principles of compromise and accommodation. Sarah Wayland lists "the importance of accommodation and dialogue" as one of the values Canadians hold in common.<sup>10</sup> Similarly, in a guest lecture in CDN267 Canadian Nationalisms at the University of Toronto, Dr. Tom Axworthy spoke at length on the significance of tolerance in Canada's past and present. He noted that the accommodation of different nationalisms within Canada, specifically Quebec and Indigenous nationalisms, has been a central part of this country since its very inception.<sup>11</sup> In addition, the idea of compromise was integral to the birth of the Charter.<sup>12</sup> Thus, Canadian identity is closely connected with a focus on compromise and accommodation. The Supreme Court of Canada, under McLachlin especially, has advanced the importance of these values.

The most obvious example of this is the increased collegiality of the McLachlin court compared to under previous chief justices. For example, univocal decisions (wherein all the judges agreed on both the outcome and the reasons for that outcome) occurred in 57 percent of cases.<sup>13</sup> By contrast, this figure was only 42 percent under her predecessor, Antonio Lamer.<sup>14</sup> A more comprehensive analysis that accounted for differences between an 8-1 decision and a 3-3-1-1-1 decision involving both concurrent and dissenting reasons reveals that fragmentation was reduced by about one-third in McLachlin's court.<sup>15</sup> Moreover, along with more a unified court in terms of its decisions, there was an increase in decisions attributed to multiple, and sometimes all, justices. Typically, the reasons for the majority are written by one justice and, if there are dissenting or concurring opinions, those justices write their own reasons. However, under McLachlin, there was a significant rise in the amount of co-authored and "By the Court" (no identified lead author) decisions.<sup>16</sup> It seems that McLachlin worked hard to encourage compromise in the form of co-authorships instead of separate concurrences.<sup>17</sup> In addition, it is worth noting that, unlike the three chief justices who preceded her, McLachlin's court did not contain easily identifiable groups of justices who frequently voted together.<sup>18</sup> Clearly, statistical evidence indicates that, under McLachlin, there was more consensus in the Court's decisions.

The collegiality of the Court is incredibly important in terms of Canadian identity. Here in Canada, the Supreme Court has avoided the partisanship that plagues the American Supreme Court. Instead of a collection of individuals, the Supreme Court of Canada is viewed as an institution. Consensus and compromise on the part of our justices, led by McLachlin, is what prevents the politicization of our judiciary. If there were clear voting blocs along party lines, then the appointment of new justices would be newsworthy, and yet it is not. Thus, the Supreme Court

exemplifies the willingness to accommodate other viewpoints that underpins Canadian identity, particularly in relation to our southern neighbour.

The principle of compromise is also evident in the actual jurisprudence during McLachlin's time on the Supreme Court. In section 1 (s. 1) of the Charter, all of the rights and freedoms it contains are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."<sup>19</sup> In other words, none of the provisions in the Charter are absolute. They must be balanced with other government objectives such as public safety or the prevention of discrimination. It falls to the courts to determine whether certain laws infringe on rights in a constitutional manner. As McLachlin states, "the Court's function under s. 1 is that of weighing and balancing."<sup>20</sup>

In order to assess whether laws found to infringe a Charter right are justifiable under s. 1, the Supreme Court developed a framework, known as the Oakes test, in 1986.<sup>21</sup> Oakes was adjudicated before McLachlin joined the Court, but it underpinned all subsequent s. 1 jurisprudence and so a short explanation of the test is warranted. In order for a law to satisfy the Oakes test, it must have a "pressing and substantial objective" and that objective must be attained in a proportional way.<sup>22</sup> The determination of proportionality rests on the law's connection to its purpose, the extent of the infringement on rights, and the relationship between the infringement and the seriousness of the law's purpose.<sup>23</sup> In non-legal terms, Oakes essentially articulates a set of conditions used to assess whether a given law strikes an appropriate balance between the protection of individual rights and the interests of society as a whole. Interestingly, this test has been fairly controversial within legal scholarship.<sup>24</sup> However, despite debate about the specific nature of the balance in Oakes, it is nonetheless a balance. Thus, Oakes not only reflects the importance of compromise to Canadian identity, but actually imposes the need for compromise on governments.

One of the most prominent examples of this balance can be found in Canada's hate speech laws. This legislation came before the Supreme Court in 1990 in *Keegstra*. This case concerned James Keegstra, an Alberta high school teacher, who told his students that Jewish people were "child killers" and "sadistic."<sup>25</sup> He was convicted of promoting hatred against an identifiable group but appealed on the basis that the hate speech laws violated his freedom of expression under the Charter.<sup>26</sup> In his case, the Court considered the constitutionality of Canada's hate speech laws through a section 1 Oakes test analysis. They concluded by a 4-3 margin that the laws were constitutional, meaning Keegstra's conviction was upheld and the hate speech laws remained in effect. Both the dissenting reasons and those of the majority stress the harm created by hate speech in relation not only to the members of target groups but the unity of Canadian society at large.<sup>27</sup> The chief justice at the time, Brian Dickson, writes that the consequences of hate speech "bear heavily in a nation that prides itself on tolerance and ... respect for many racial, religious and cultural groups in our society."<sup>28</sup> McLachlin echoes this assertion, adding that "the animosity created by ignorance and hatred further exacerbates the divisions of a nation."<sup>29</sup> These considerations are weighed against the necessity of free expression in order to promote a healthy democracy, which allows for meaningful discussions about societal issues.<sup>30</sup> Notably, McLachlin dissented in this case, but this does not indicate that McLachlin disregarded the need for compromise. Rather, the substance of her dissent was primarily connected to the overbroad nature of the law as well as its effectiveness in meeting the objective of preventing

hate.<sup>31</sup> Overall, the Keegstra decision, in both the majority and the dissent, and the hate speech laws it upheld are illustrative of the compromises that define Canadian society and identity.

Another case that required the Court to engage with the idea of compromise was *Seaboyer* in 1991. In this case, the Court used the Oakes test to evaluate the constitutionality of Parliament's recently introduced rape shield law placing a blanket prohibition on all evidence in sexual assault cases related to the complainant's sexual history. On the one hand, the Court considered the legislative objectives of this Criminal Code provision: the elimination of sexual discrimination at trial and the encouragement of victims to report sexual assault based on the knowledge that their sexual history would not be dissected.<sup>32</sup> This had to be balanced with the accused's right to a fair trial and the presumption of innocence until proven guilty. For McLachlin, writing on behalf of the 7-2 majority, the rape shield laws as they were in 1991 violated the Charter and could not be justified by the Oakes test. She found that the infringement on the accused's right to a fair trial was not sufficiently minimized and the objective of preventing wrongful conviction outweighed the need to protect a complainant's past from scrutiny.<sup>33</sup> In her view, there were certain situations that warranted evidence relating to the complainant's sexual history and she provided a series of guidelines for trial judges to follow when deciding whether such evidence was admissible.<sup>34</sup> Feminist scholars feared that this decision would allow judges, informed by sexist myths, to admit irrelevant evidence.<sup>35</sup> The balance struck by the Court in *Seaboyer* was incredibly unpopular. McLachlin describes the "wrath of feminist critics" coming down on both the decision and her personally.<sup>36</sup> This compromise was and is difficult to accept for many women, but it nevertheless stands as a clear example of the value of compromise and accommodation. Sometimes, we have to tolerate certain elements within our society that we may not agree with, but this is a necessary aspect of life in a country that is based on the virtue of fair and just accommodation.

Another point of compromise in Canadian society is federalism. Jean Charest notes that Canada is "a country of provinces."<sup>37</sup> As such, provinces and the federal government often find themselves at odds and both parties will often have to make concessions. The Supreme Court has made several decisions regarding provincial versus federal jurisdiction, including *Reference re Senate Reform* in 2014. The Senate, originally intended to differ from the elected House of Commons by providing equal regional representation regardless of population variances, was established at the time of Confederation to assure that regional interests were considered in the legislative process.<sup>38</sup> It also evolved to allow groups who may be underrepresented in the House of Commons, such as ethnic minorities, to add their input.<sup>39</sup> On the other hand, in 2013, the Senate was a fairly controversial body and had been for some time. This prompted Stephen Harper's government to introduce legislation that would reform the Senate by instituting senator in-waiting elections and implementing a term limit for senators. However, in response to concerns about the constitutionality of this bill, they sent a reference to the Supreme Court, which asked the Court to answer six legal questions related to Parliament's authority to unilaterally alter, or perhaps abolish, the Senate.

McLachlin's Court unanimously held that holding senator-in-waiting (or consultative) elections would require the consent of seven out of ten provinces and that abolishing the Senate would require unanimous provincial and Parliamentary support.<sup>40</sup> As J. Gareth Morley explains, this decision was rooted in historical evidence presented to the Court

indicating that the Senate was intended to be an integral part of Canada's structure.<sup>41</sup> Provisions which, taken literally, allow Parliament to make unilateral changes to the Senate were deemed to exclude abolition since this was not the aim of the writers.<sup>42</sup> In other words, the decision is "a vindication of the actual political compromise that led to the amending formula."<sup>43</sup> Essentially, the Supreme Court limited federal authority in order to preserve the federal-provincial compromise that had been reached at the time of Confederation and, later, the *Constitution Act, 1982*. Hence, the Supreme Court protected old compromises and ensured that, if substantial changes to the Senate were to occur in future, provincial interests would be accommodated.

At the very beginning of the Charter, it reads that "Canada is founded upon principles that recognize the supremacy of God and the rule of law."<sup>44</sup> The rule of law is a crucial pillar of Canada's democratic consciousness. Its inclusion at the very top of our Charter speaks to its relevance. Constitutions "tell of how Canadians see themselves and what their country represents."<sup>45</sup> If this is accepted, then it follows that the rule of law is paramount to the way Canadians view their own identity. The manifestation of the rule of law in Canada is the Supreme Court. However, the Supreme Court's contribution to the rule of law in Canada goes beyond its mere existence. It has actively handed down judgements that protect Canadians from government abuses and unmistakably enforce the supremacy of law. I will illustrate key decisions from Beverley McLachlin's time on the Supreme Court where this can be observed.

The first example can be found in the Court's decisions in *Nur* and *Lloyd*. These two cases concerned mandatory minimum sentences, which are Criminal Code provisions requiring judges to impose a minimum sentence for certain offences regardless of specific circumstances. In 2015, the Court concluded in *Nur* that the mandatory minimum sentence of three years for firearm possession was unconstitutional.<sup>46</sup> In *Lloyd*, in 2016, the Court invalidated the one-year mandatory minimum sentence for drug trafficking offences.<sup>47</sup> McLachlin wrote both decisions. *Nur* and *Lloyd* consider the compliance of these sentences with s. 12 of the Charter, which protects against cruel and unusual punishment.<sup>48</sup> In both instances, this question is answered with respect to a "reasonably foreseeable" scenario.<sup>49</sup> What this means is that the accused need not claim that the mandatory minimum sentence is unconstitutional for them but rather that it *could* result in an unjustifiable s. 12 violation for a hypothetical offender who is likely to arise.<sup>50</sup> The court's willingness to consider reasonable hypotheticals for mandatory minimums is hugely meaningful for the rule of law. McLachlin notes that if the courts ruled on constitutionality based only on the offender in the case at bar, there would be a risk that "bad law might remain on the books indefinitely."<sup>51</sup> This engages the rule of law because it guarantees that no Canadian is subject to laws that violate the Constitution.<sup>52</sup> The decisions regarding mandatory minimums also affirm the rule of law because they clearly convey to Parliament and legislatures that measures intended to further a "tough on crime" mandate must not contravene the Constitution. To elaborate, the Harper government established a slew of mandatory minimums in order to, in the words of Harper's former justice minister Rob Nicholson, "crack down on crime and ensure the safety and security of our neighbourhoods."<sup>53</sup> These are political objectives; research overwhelmingly suggests that minimum sentences are *not* effective in reducing crime.<sup>54</sup> Thus, the Supreme Court of Canada in these two decisions ensured that the rule of law remained intact and that individual rights would not be compromised for political purposes.



In 1989, McLachlin wrote her first Supreme Court of Canada majority judgement in *MacKeigan v. Hickman*. In it, she strongly defended judicial independence as a cornerstone of the rule of law. The majority held that provincial inquiry commissions are not allowed to question judges as to why they made a particular decision or why judges are chosen to hear certain cases.<sup>55</sup> The substance of judicial decision making, as well as the administrative aspects like the assignment of judges, were found to be essential requirements of institutional autonomy and, thus, immune from scrutiny from other branches of government.<sup>56</sup> Judicial independence is imperative in societies governed by the rule of law. Judges must be able to make decisions based on the law and the facts of the case rather than succumb to pressure from outside forces like the government, lobbyists, or any other person.<sup>57</sup> Judicial independence is a prerequisite for impartiality and the fair application of the law.<sup>58</sup> The rule of law is meaningless if the judiciary is unable to fulfill its function as the guarantor of this principle. Sometimes, judges are forced to make unpopular decisions, but they must be able to make these decisions without fear of criticism from the executive because otherwise, their obligation to administer justice would be threatened. Thus, McLachlin's decision in *MacKeigan v. Hickman* is crucial to Canadian identity because it strengthened judicial independence and safeguarded the rule of law, an integral component of Canadian consciousness.

The third pillar of Canadian identity that defined Beverley McLachlin's time on the Supreme Court of Canada is equality. The protection of minority interests, like the virtue of tolerance and accommodation, has been integral to Canada since the arrival of the first settlers. Of course, the measures taken since the Quebec Act to preserve French language and culture are obvious instances of the importance of minority rights here in Canada. Similarly, Canada's commitment to multiculturalism and its role in our identity formation is intrinsically linked to ideals of equal treatment for all. The *Constitution Act, 1982* also includes special provisions to safeguard minority interests. For example, s. 35 protects existing Indigenous treaty rights and thus honours the unique commitments made by previous governments to Indigenous Peoples.<sup>59</sup> Lastly, s. 15 of the Charter guarantees that minorities, as well as historically disadvantaged groups, are given "equal protection and equal benefit of the law."<sup>60</sup> Hence, any conception of what it means to be Canadian is related, at least in some way, to our commitment to the preservation and promotion of equality rights.

There are numerous decisions by the Supreme Court that support this objective, but I will first highlight how Supreme Court jurisprudence helped to make same-sex marriage legal in Canada. In 1995, McLachlin concurred in a 9-0 decision in *Egan v. Canada* that sexual orientation qualified as an analogous ground under s. 15 of the Charter and therefore could be a basis for discrimination.<sup>61</sup> In the years following *Egan*, several lower courts ruled that the Charter did demand equal legal recognition for same-sex couples and this led Parliament in 2000 to amend 68 laws in order to comply.<sup>62</sup> By 2004, five provinces and one territory had decided it was unconstitutional to deny marriage rights to gay couples, prompting Parliament to draft legislation legalizing gay marriage.<sup>63</sup> A draft of this legislation was then sent to the Supreme Court of Canada as a reference, and they confirmed its constitutionality in *Reference re Same Sex Marriage*.<sup>64</sup> Notably, the Court declined to directly respond to the question of whether same sex marriage rights were implied by the Charter, but they also did not overrule lower court decisions that had held that exclusively opposite-sex definitions of marriage

were unconstitutional.<sup>65</sup> In any event, their response was not necessary since Parliament had already declared their plans to move forward with the new definition and, as the Court stressed, many couples had already married in the jurisdictions where it was allowed.<sup>66</sup> Thus, the *Civil Marriage Act* of 2005 resulted from a back-and-forth process between Parliament and the courts. Integral to this exchange was the Supreme Court of Canada's interpretation of s. 15 of the Charter to include sexual orientation and their refusal to overturn lower court findings in support of equal marriage rights. Overall, it is evident that the Supreme Court played a central role in protecting the LGBTQ+ community from unfair treatment under the law.

In 2006, the Supreme Court of Canada took a strong stance on religious minority rights in *Multani v. Commission scolaire Marguerite-Bourgeoys*. In this case, the Court unanimously ruled that it was unconstitutional to issue an outright ban on students wearing kirpans in schools because it unjustifiably infringed upon freedom of religion.<sup>67</sup> The majority, which included McLachlin, relied on multiculturalism to discredit the argument that kirpans in schools could lead to division and promote violence.<sup>68</sup> The decision also pointed out that a complete ban on kirpans would hinder "the development of an educational culture respectful of the rights of others."<sup>69</sup> Also, they state that it conveys a message to students which suggests some religions are less worthy of protection than others.<sup>70</sup> By including these consequences as part of their reasoning for why kirpans should be allowed, the judgement is identifying the achievement of these goals as an assumed goal or objective of this country. In deciding *Multani*, the Court lent substantial weight to Canada's values of diversity and multiculturalism. This shows how the way Canadians see themselves (diverse, welcoming) influences the Court. Similarly, beyond simply channelling Canadian values to inform its decisions, the Court ensured with *Multani* that minority religious rights would be protected. So, once again, the Court was guided by elements of Canadian identity. Having relied on the protection of minorities as a central principle in order to reach its conclusion, the Court then reinforced this value by forbidding the unconditional ban on wearing kirpans. In doing so, the Court unambiguously signalled that minority religious rights are to be given equal status.

Relatedly, any assessment of Beverley McLachlin's contributions to the promotion of equality in Canada would be incomplete without a mention of her status as Canada's first female chief justice. In her autobiography, *Truth Be Told: My Journey Through Life and the Law*, McLachlin reveals that until her (future) husband suggested the law, she had never even considered the profession.<sup>71</sup> In response to his suggestion, she said: "I can't see myself as a lawyer."<sup>72</sup> She explains that she had never heard of a female lawyer at that point in her life.<sup>73</sup> I cannot help but wonder how many women before McLachlin were excluded from the law for the simple reason that they did not think it was an option. For many Canadians, the only judge they can name is the chief justice. Personally, as a young woman hoping to one day become a lawyer, I can attest to the significance of Canada having a woman at the head of our judiciary. Unlike McLachlin, I have always known that the law is open to women. Certainly, there are barriers other than gender surrounding law school, but that does not detract from McLachlin's importance as a clear example for young Canadian girls that they can both participate and succeed in the legal field and beyond. This is not lost on McLachlin herself. She explains that, at first, she did not think about her success along gender lines.<sup>74</sup> However, as she began to recognize the representational and symbolic value of women being in positions of

power, she acknowledged that her being the chief justice “sends the message that women can do whatever they want to do.”<sup>75</sup> She goes on to say that, out of all her contributions to Canada and the world, this message “is as important as anything I ever did.”<sup>76</sup>

All things considered, it is evident that the Supreme Court of Canada during McLachlin’s three decades as a member has both relied on and enshrined three central components of Canadian identity: compromise and accommodation, the rule of law, and equality. The importance of compromise is reflected in the increased collegiality of McLachlin’s Court as well as the applications of the Oakes test. Opposing federal and provincial interests were balanced in the *Senate Reform* reference. Furthermore, the decisions of the McLachlin court with respect to mandatory minimums, and her first written judgement in *MacKeigan v. Hickman*, upheld the rule of law, a crucial component of Canadian identity. Additionally, during McLachlin’s time on the Court, the protection of minorities was prioritized and this reflects the central role that equality occupies in Canada’s national consciousness. Finally, and arguably most importantly, McLachlin’s rise to the top of the judiciary symbolizes Canada’s belief in equality and offers proof for all young Canadians that they can succeed in this country regardless of gender.

## Notes

<sup>1</sup>Supreme Court of Canada, *The Supreme Court of Canada and Its Justices, 1875-2000: A Commemorative Book* (Ottawa: Dundurn Group and the Supreme Court of Canada in Cooperation with Public Works and Government Services Canada, 2000), 27.

<sup>2</sup>“Role of the Court,” Supreme Court of Canada, updated August 23, 2017. <https://www.scc-csc.ca/court-cour/role-eng.aspx#:~:text=The%20Supreme%20Court%20of%20Canada%20is%20Canada's%20final%20court%20of,of%20law%20applicable%20within%20Canada.>

<sup>3</sup>Supreme Court Act, R. S. C., 1985, c. S-26. <https://laws-lois.justice.gc.ca/PDF/S-26.pdf>.

<sup>4</sup>Ian Greene and Peter McCormick, *Beverley McLachlin: The Legacy of a Supreme Court Chief Justice* (Toronto: James Lorimer & Company Ltd., 2019), Kindle Edition, chapter 4.

<sup>5</sup>Supreme Court of Canada, *The Supreme Court of Canada and Its Justices, 1875-2000: A Commemorative Book*, 29.

<sup>6</sup>Beverley McLachlin, *Truth Be Told: My Journey Through Life and the Law* (Toronto: Simon & Schuster Canada, 2019), 9.

<sup>7</sup>McLachlin, *Truth Be Told: My Journey Through Life and the Law*, 95 & 119.

<sup>8</sup>McLachlin, *Truth Be Told: My Journey Through Life and the Law*, 170 & 199.

<sup>9</sup>McLachlin, *Truth Be Told: My Journey Through Life and the Law*, 278.

<sup>10</sup>Sarah V. Wayland, “Immigration, Multiculturalism, and National Identity in Canada,” *International Journal on Minority and Group Rights* 5, no. 1 (1997): 56.

- <sup>11</sup>Tom Axworthy, “The Constitution & Canadian Charter of Rights and Freedoms” (October 14, 2020).
- <sup>12</sup>Axworthy, “The Constitution & Canadian Charter of Rights and Freedoms.”
- <sup>13</sup>Greene and McCormick, *Beverley McLachlin: The Legacy of a Supreme Court Chief Justice*, chapter 7.
- <sup>14</sup>*Ibid.*
- <sup>15</sup>*Ibid.*
- <sup>16</sup>*Ibid.*
- <sup>17</sup>*Ibid.*
- <sup>18</sup>*Ibid.*
- <sup>19</sup>*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 91(24).
- <sup>20</sup>*R v. Keegstra*, [1990] 3 S.C.R. 697, at p. 844.
- <sup>21</sup>Dwight Newman, “The Limitation of Rights: A Comparative Evolution and Ideology of the Oakes and Sparrow Tests,” *Saskatchewan Law Review* 62, no. 2 (1999): 543.
- <sup>22</sup>Dwight Newman, “The Limitation of Rights: A Comparative Evolution and Ideology of the Oakes and Sparrow Tests,” 547.
- <sup>23</sup>*Ibid.*
- <sup>24</sup>Dwight Newman, “The Limitation of Rights: A Comparative Evolution and Ideology of the Oakes and Sparrow Tests,” 548.
- <sup>25</sup>*R v. Keegstra*, [1990] 3 S.C.R. 697, at p. 714.
- <sup>26</sup>*R v. Keegstra*, [1990] 3 S.C.R. 697, at p. 713.
- <sup>27</sup>Richard Moon, “Drawing Lines in a Culture of Prejudice: *R. v. Keegstra* and the Restriction of Hate Propaganda,” *University of British Columbia Law Review* 26, no. 1 (1992): 114.
- <sup>28</sup>*R v. Keegstra*, [1990] 3 S.C.R. 697, at p. 746-7.
- <sup>29</sup>*R v. Keegstra*, [1990] 3 S.C.R. 697, at p. 847.
- <sup>30</sup>*R v. Keegstra*, [1990] 3 S.C.R. 697, at p. 702.
- <sup>31</sup>Moon, “Drawing Lines in a Culture of Prejudice: *R. v. Keegstra* and the Restriction of Hate Propaganda,” 100.
- <sup>32</sup>Martha Shaffer, “*Seaboyer v R.*: A Case Comment,” *Canadian Journal of Women and the Law* 5, no. 1 (1992): 206.
- <sup>33</sup>Shaffer, “*Seaboyer v R.*: A Case Comment,” 207.
- <sup>34</sup>*Ibid.*
- <sup>35</sup>Shaffer, “*Seaboyer v R.*: A Case Comment,” 208.
- <sup>36</sup>McLachlin, *Truth Be Told*, 232.
- <sup>37</sup>Jean Charest, “Canada - A Country of Provinces,” February 7, 2014, The Lavin Agency Speakers Bureau, Toronto, Canada, 2:23. <https://www.youtube.com/watch?v=NvfNII8fGR4>.
- <sup>38</sup>Reference re Senate Reform, 2014 SCC 32, [2014] 1 S.C.R. 704, at para. 15.
- <sup>39</sup>Reference re Senate Reform, 2014 SCC 32, [2014] 1 S.C.R. 704, at para. 16.
- <sup>40</sup>Reference re Senate Reform, 2014 SCC 32, [2014] 1 S.C.R. 704, at para. 53 & 97.
- <sup>41</sup>J. Gareth Morley, “Dead Hands, Living Trees, Historic Compromises: The Senate Reform and Supreme Court Act References Bring the Originalism Debate to Canada,” *Osgoode Hall Law Journal* 53, no. 3 (2016): 793-4.

- <sup>42</sup>J. Gareth Morley, “Dead Hands, Living Trees, Historic Compromises: The Senate Reform and Supreme Court Act References Bring the Originalism Debate to Canada,” 793-4.
- <sup>43</sup>J. Gareth Morley, “Dead Hands, Living Trees, Historic Compromises: The Senate Reform and Supreme Court Act References Bring the Originalism Debate to Canada,” 795.
- <sup>44</sup>*Canadian Charter of Rights and Freedoms*.
- <sup>45</sup>Nelson Wiseman, *In Search of Canadian Political Culture* (Vancouver: UBC Press, 2007), 60.
- <sup>46</sup>R. v. Nur, 2015 SCC 15, [2015] 1 S.C.R. 773, at para. 4.
- <sup>47</sup>R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130, at para. 2.
- <sup>48</sup>R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130, at para. 22.
- <sup>49</sup>R. v. Lloyd, 2016 SCC 13, [2016] 1 S.C.R. 130, at para 25; R. v. Nur, 2015 SCC 15, [2015] 1 S.C.R. 773, at para. 4.
- <sup>50</sup>R. v. Nur, 2015 SCC 15, [2015] 1 S.C.R. 773, at para. 56.
- <sup>51</sup>R. v. Nur, 2015 SCC 15, [2015] 1 S.C.R. 773, at para. 51.
- <sup>52</sup>R. v. Nur, 2015 SCC 15, [2015] 1 S.C.R. 773, at para. 51.
- <sup>53</sup>Benjamin L. Berger, “A More Lasting Comfort? The Politics of Minimum Sentences, the Rule of Law and R. v. Ferguson,” *The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference* 47 (2009): 106.
- <sup>54</sup>Berger, “A More Lasting Comfort? The Politics of Minimum Sentences, the Rule of Law and R. v. Ferguson,” 106.
- <sup>55</sup>Peter H. Russell, “Case Comments: Whether a Provincial Commission of Inquiry Can Require Judges to Explain How and Why They Made Certain Decisions: *MacKeigan v. Hickman*,” *Canadian Bar Review* 69, no. 3 (September, 1990): 560.
- <sup>56</sup>Russell, “Case Comments: Whether a Provincial Commission of Inquiry Can Require Judges to Explain How and Why They Made Certain Decisions: *MacKeigan v. Hickman*,” 562.
- <sup>57</sup>Warren J. Newman, “The Rule of Law, the Separation of Powers and Judicial Independence in Canada,” in *The Oxford Handbook of the Canadian Constitution*, ed. Peter Oliver, Patrick Macklem and Nathalie Des Rosiers (New York: Oxford University Press, 2017), 1046.
- <sup>58</sup>Warren J. Newman, “The Rule of Law, the Separation of Powers and Judicial Independence in Canada,” 1046.
- <sup>59</sup>Reference re Secession of Quebec, [1998] 2 S.C.R. 217, at para. 82.
- <sup>60</sup>*The Canadian Charter of Rights and Freedoms*.
- <sup>61</sup>Robert Wintemute, “Discrimination against same-sex couples: Sections 15(1) and 1 of the Charter: *Egan v. Canada*,” *Canadian Bar Review* 74, no. 4 (December 1995): 683.
- <sup>62</sup>Irwin Cotler, “Marriage in Canada—Evolution or Revolution?” *Family Court Review* 44, no. 1 (January 2006): 64.
- <sup>63</sup>Cotler, “Marriage in Canada—Evolution or Revolution?” 66.
- <sup>64</sup>*Ibid.*
- <sup>65</sup>Cotler, “Marriage in Canada—Evolution or Revolution?” 65.
- <sup>66</sup>*Ibid.*
- <sup>67</sup>Multani v. Commission scolaire Marguerite Bourgeoys, 2006 SCC 6, [2006] 1 S.C.R. 256, at para. 2.
- <sup>68</sup>Multani v. Commission scolaire Marguerite Bourgeoys, 2006 SCC 6, [2006] 1 S.C.R. 256, at para. 71.

<sup>69</sup> Multani v. Commission scolaire Marguerite Bourgeoys, 2006 SCC 6, [2006] 1 S.C.R. 256, at para. 78.

<sup>70</sup> Multani v. Commission scolaire Marguerite Bourgeoys, 2006 SCC 6, [2006] 1 S.C.R. 256, at para. 79.

<sup>71</sup> McLachlin, *Truth Be Told: My Journey Through Life and the Law*, 99.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> *The Agenda with Steve Paikin*, “Reflecting on Canada’s Justice System,” featuring Steve Paikin, Beverley McLachlin, TVO, December 12, 2018, 10:56. <https://www.tvo.org/video/reflecting-on-canadas-justice-system>.

<sup>75</sup> *The Agenda with Steve Paikin*, “Reflecting on Canada’s Justice System,” 11:29.

<sup>76</sup> *The Agenda with Steve Paikin*, “Reflecting on Canada’s Justice System,” 11:44.

## *Shifting from the Patriarchy in Late Nights on Air*

### **Krizia Tarantino**

Elizabeth Hay's work of Canadian fiction, *Late Nights on Air*, is a narrative that challenges how women are represented in the tradition of the Canadian North. In order to combat issues of patriarchal society, Hay empowers women to find their identity in the North to dismantle how the quest narrative has typically been presented exclusively for men. The patriarchal ideals tend to situate women in the domestic sphere and make them reliant on their male counterparts as they are represented as the unwilling participants following their husbands within the context of the wilderness narrative. The journey into the North as we see follows Joseph Campbell's mythological journey of the hero where: "[...] the adventure of the hero normally follows the pattern [...] a separation from the world, a penetration to some source of power, and a life-enhancing return."<sup>1</sup> This essay will explore how women are able to deviate from the patriarchal quest narrative and find a sense of self in the North while using Campbell's structure of the hero's journey: separation, initiation, and return to civilization.

Hay's novel deviates from the traditional patriarchal wilderness narrative as she situates her female characters in the role of quester, thus investing both Dido and Gwen with the chance to dismantle the inherently patriarchal quest narrative and find their own identities. By situating Dido and Gwen on their own individual quests, Hay focuses on how inherently sexist the male quest narrative is by subverting the normative understanding of the quest as a male journey to enlightenment. While Dido and Gwen have their own respective journeys in nature, by placing them both in the role of quester, Hay asserts that the construction of the North is a test for both women and men. In giving agency to Dido and Gwen, in spite of Dido's romantic entanglements, Hay reveals how the North gives women the space to find their voice and shift away from patriarchal norms. Hay's novel offers two representations of women in the North: women who are unable to break free from patriarchal norms, and women who succeed in doing so. The women who are able to break free from patriarchal restrictions take on conventionally masculine characteristics by venturing into the North to test their resilience and find their identities.

Hay addresses the binary between men and women in two distinct ways: women as secondary figures to men, and women as independent people with their own voices. In order to dismantle the binary that exists between men and women, Hay begins with an exploration of the male narrative in the North. The journals about John Hornby, Edgar Christian, and Harold Alard's quests into the North explore how the North is a rite of passage into manhood.<sup>2</sup> Hay argues that men in the North "[...] learn how to survive in the bush but also to behave as the civilized white men they must become; they learn about the responsibilities of meeting and surmounting challenges [...]."<sup>3</sup> Man's journey into the North is a test of masculinity and survival, while women are not the focal point of these narratives, as they are usually the wives of the explorers.<sup>4</sup> Thus, to understand how Hay moves away from the representation of women as secondary figures into the focal point of their own narratives, we need to look at the amount of time that elapses between John Hornby's narrative and that of Gwen. The narrative of John

Hornby's death in the Barrens occurs in 1927, while the story of Gwen embarking on a journey takes place in the 1970s. The time elapsed between the two narratives showcases how the narrative quest has transformed over time from an external battle with the natural world to an internal battle concerning identity. The Hornby narrative aligns with Canadian explorer narratives, which depict "[...] explorers as masculine and the interior which they "penetrated" as feminine and submissive."<sup>5</sup> Most explorer narratives personify the natural world as a malevolent female force that must be tamed by man. The preoccupation with the external world in the Hornby narrative aligns with the Franklin expedition of 1845.<sup>6</sup> As Cavell points out, the Arctic narrative in the 1930s, during the Franklin expedition, involved a "[...] deadly female monster which first trapped and then destroyed the Franklin expedition."<sup>7</sup> The exploration narrative, like the Franklin expedition, set a precedent for male explorers: they are to tame the natural world. In *Survival*, Margaret Atwood reinforces the male quest narrative as a battle with external obstacles that negates female identities by explaining how the obstacles explorers encounter "[...] are external — the land, the climate and so forth."<sup>8</sup> Thus, the North is a feminized space that men must penetrate and tame.

The discourse of settlement of the North is inherently sexist. However, Hay counters this narrative by applying Atwood's argument that the obstacles in the North "[...] tend to become both harder to identify and more internal [...]."<sup>9</sup> The time that elapsed between the Hornby narrative and Gwen's narrative (1927-1970) showcases a movement away from sexist discourse in the North towards inclusion of women. Gwen's journey into the North is portrayed as an internal obstacle as she is unable to find her voice in a patriarchal society. Her journey signifies the movement away from the male quest narrative that is inherently sexist into a female quest for identity against patriarchal norms. In Gwen's journey, the North is not depicted as a feminized space, but as an internal obstacle that she must conquer. In the scene where Gwen departs from urban life, Hay writes that "[...] she'd driven from Georgian Bay in Ontario, more than three thousand miles [...] and if she could find work and stay for a while."<sup>10</sup> Her journey into Georgian Bay counters the male quest narrative by illustrating how women too can find identity in the North. Gwen's discovery of her own identity begins with her job as a radio announcer as she must establish her voice. The radio signifies an internal obstacle as she is forced to confront her own identity. In one particular moment from the novel, Hay summarizes this internal obstacle: "She seems to want to erase herself, so it's strange she's on the radio."<sup>11</sup> In learning how to become a radio announcer and cultivating her own voice, and by extension her identity, Hay reveals how Gwen's journey into the North has progressed from an external obstacle to an internal one. The time elapsed between the two narratives of John Hornby and Gwen reveals how the North transitioned from a malevolent feminized space into a North devoid of patriarchal normalities over time. Hay's construction of the North uses time as a way to diverge from the representations of women as being secondary to men into the representation of women as independent beings.

The depiction of women in the North is inherently sexist, as traditional explorer narratives portray how the wilderness is a grail test for white male identity. In exploring how women are traditionally depicted in traditional explorer narratives, Dido is unable to find her identity in the North. Dido, as her name suggests, is devoid of subjective development.<sup>12</sup> Hay explains, "Dido was the Queen of Carthage [...] not only has Aeneas ruined her life by leaving



her and sailing off to find Rome, but in founding Rome he's set in motion the last days of her beloved Carthage [...]"<sup>13</sup> Because Hay alludes to Virgil's *Aeneid*, she is establishing how Dido will be unable to find her identity in the North because of her romantic entanglement with Eddy. In a moment during her relationship with Eddy, he claims her: "Her voice had the same calm, thrilling energy on air, but in person she seemed distracted, and people remarked on it... it was strange to see her briskness vanish and confidence recede."<sup>14</sup> Dido's inability to break free from Eddy consequently aligns her situation with the tradition of the North: women are secondary figures to men. However, in looking at Dido's quest into the North, which ultimately fails, her journey can be broken down into three stages: separation, initiation, and return. In the separation stage of her quest, Dido separates from her love affairs and says, "we both came north to escape love affairs."<sup>15</sup> Yet, she is unsuccessful in detaching from the traditional explorer narrative that portrays women as secondary figures to men.<sup>15</sup> Campbell, in his description of the separation stage, asserts that "[...] the world in which [the character] [...] suffers [...] is symbolical deficiency,"<sup>16</sup> meaning that Dido's journey into the North is initiated by her lack of identity. However, the second stage, which is the initiation stage, marks Dido's regressive character development. Unlike Gwen, whose quest is about finding her voice, Dido does not face this challenge because she presumably has a voice already.<sup>17</sup> Dido's voice, however, did not undergo the same process as Gwen's, but was a gift given from Dido's father's dreams. Because Dido has a voice, Gwen assumes that Dido does not need to embark on a journey of self-discovery: "Dido lived outside the embarrassment in the free and easy woods of herself."<sup>18</sup> Dido's character is unable to separate herself from the initiation stage of the quest, making her mission into the North unsuccessful. Her failed journey into the North parallels Farah Mendlesohn's analysis of the hero's journey: "The journeyman succeeds or fails to the extent he listens to those wiser or more knowledgeable [...] whether these be spiritual [...] or human guides."<sup>19</sup> In aligning Dido with Mendlesohn's analysis of the hero, Dido ultimately listens to Eddy, becomes stuck in the initiation stage, and emerges from her quest from the North as submissive and voiceless.

Hay complicates Dido's identity by stating that her quest and inevitable downfall is caused by her relationship with Eddy. As a result of her broken heart, her self-development shatters and, as Gwen says, she develops a "darkened personality," a personality that "darkened and shifted."<sup>20</sup> Her inability to initiate her voice, as it is consumed by Eddy, showcases how she reverts to the original explorer narrative as a secondary figure to man. In her return to civilization, Dido returns with a loss of self. It is Dido's quest into the North that showcases how the North is a test for males, rather than for females to form their identities. However, it is important to note that, in Dido's relationship with Harry, she deviates from the narrative that women are secondary figures to men in the North because she personifies the "[...] femme fatale wilderness that cannot be conquered."<sup>21</sup> Yet, she regresses by returning to Eddy and becoming self-destructive. Therefore, Dido is unsuccessful in her journey into the North and, thus, in her return to civilization, she remains stuck in the initiation stage. Dido is a complex character that offers two representations of women in the North: the suppressed, in her relationship with Eddy, and the progressive, in her relationship with Harry. Her relationship with Eddy relies on the traditional settler narrative of the North: the North as a feminized space for men alone to penetrate. Cavell, in "The True Northwest Passage: explorers in Anglo-Canadian nationalist narratives," elaborates on the construction of the North in explorer narratives: the "North could

be "penetrated" by those who were open-minded enough to accept the way of life evolved by the original inhabitants of the region."<sup>22</sup> In his view, the North was destined to be settled and exploited by white Canadians [...]."<sup>23</sup> Thus, this idea that land is a feminized space, a "female deity" that must be penetrated, exploited, and tamed by man, parallels Eddy's and Dido's relationship.<sup>24</sup> Dido ventures into the North to find herself, but becomes involved again with Eddy, and is ultimately exploited by him. However, her relationship with Harry does not follow this same structure. In her relationship with Harry, she breaks free from the settler narrative and personifies the femme fatale land that cannot be conquered.<sup>25</sup> Despite this, Dido returns to a pattern of self-destructiveness, going back to Eddy. Her inability to find a sense of self, despite heading north, is caused by traditional settler narratives. Therefore, to align with Atwood, she falls into "Position One of Basic Plot Victims" from *Survival*. Dido denies that she is a victim and spends "[...] much time explaining away the obvious, suppressing anger and pretending visible facts do not exist."<sup>26</sup> In denying her status as a victim, she succumbs to the inherently sexist representation of women in the North.

Unlike Dido, who is unable to escape the sexist portrayals of women in the North, Gwen is able to break free. To capitulate Campbell's analysis of the hero's journey, in the separation stage Gwen goes into the North because she lacks "symbolical deficiency"—her identity.<sup>27</sup> Gwen's character reflects how atypical it is for a woman to travel into the North without a husband as, in traditional settler narratives, women are taken by their husbands into the North.<sup>28</sup> Gwen's journey is structured like Dido's, defined by stages of separation, initiation, and return.<sup>29</sup> In Gwen's separation from civilization, she analyzes whether her decision to leave and head to the North makes her brave: "Gwen considered for a moment whether this made her brave. In truth, she was always afraid, always worried."<sup>30</sup> Questioning her bravery reveals Gwen's dejection because she does not know who she is. She says, "How can you be a personality on the air when you have no personality."<sup>31</sup> Gwen's revelation about her lack of identity and decision to leave Georgian Bay subverts sexist representations of women in the North by putting her in the role of active agent. Her journey into the North is described by Campbell as the temptation to break free from society and its institutions. He writes, "The familiar life of horizon has been outgrown; the old concepts, ideals, and emotional patterns no longer fit; the time for the passing of a threshold is at hand."<sup>32</sup> Because Gwen is taking initiative and refusing to be suppressed, she paves a new narrative for women in the North by finding her identity. In the second stage of her quest of identity, the initiation stage, Gwen is able to find her voice by being a radio announcer and listening to sound. As a radio announcer, she learns to look inwards, by connecting her own story with the stories that she is broadcasting. By looking inwards, she allows herself to be a part of the story: "You have to let yourself into the story."<sup>33</sup> By letting herself become a part of the stories she tells, she becomes a part of a new narrative that gives women agency and a voice against traditional sexist views of women in the North. In integrating herself into these stories, Gwen becomes more confident: "Now she spoke rather more confidently."<sup>34</sup>

Because voice is a part of the initiation stage, sound too plays a vital role in Gwen's quest for her identity. Voice and sound are synonymous for people working in radio, but it is Gwen's fascination with sound effects and voices that is integral to her representation of the North, which allows her to continue cultivating her identity.<sup>35</sup> For example, in the final trek of John Hornby, Gwen, like Hornby, records the sounds of the natural world: "Chunks of ice floated by. Canded

ice, the long vertical ice crystals that form when meltwater on a frozen lake works its tricking way down to the water below, had bunched against the shore. The candles trickled and chimed, and Gwen taped the sound.”<sup>36</sup> In taping the sound of the natural world, Gwen is able to realize her fear of being suppressed. Her fear of being suppressed is conveyed to Eleanor: “I’m afraid of being taken over.”<sup>37</sup> Her fear of being suppressed aligns with Atwood’s analysis of the paralyzed artist: “[...] the artist is not completely self-enclosed, but sees himself as a man with a vision communicable in words or images he wishes to make accessible to others.”<sup>38</sup> Having the radio as an outlet allows her to escape her fear of being suppressed and allows her to find her identity.

In confronting her fear, Gwen is able to find her identity, find her voice through radio by listening to the sounds of nature. The North is a feminized space that white men must enter in order to test their identity.<sup>39</sup> As explorer narratives indicate, narratives of the North were centred around masculinity and transition into becoming men; whereas women were seen as secondary characters.<sup>40</sup> But, in Gwen finding her identity through voice and sound, she reconfigures this narrative by stating how women too can find a sense of self in the North. In her return to civilization, Gwen finally realizes her vocation as a listener: “It was listening to people with real problems tell her their troubles.”<sup>41</sup> Her vocation as a listener signifies how sound and listening are a part of her initiation stage. Sound and listening are synonymous with the radio and, thus, draw on the tradition of soundscapes in the North. It is Gwen’s journey that allows Hay to move away from sexist depictions of women in the North. Gwen’s journey aligns with Atwood’s *Survival*, “Basic Victim positions: Position Four: To be a creative non-victim,” as Gwen’s “energy is no longer suppressed [...]” and creative activity becomes possible.<sup>42</sup> Because Gwen is able to escape civilization, take initiative in finding her voice and returning to civilization with a sense of self, she is able to digress from sexist portrayals of women in the North.

Hay’s novel is able to address the binaries between men and women by giving agency to women in the North. Hay firstly looks at the binaries between nature and culture, and the urban and the wild, by showcasing how the wilderness plot develops. In showcasing these binaries, Hay reveals the development of both natural and human processes. In conflating geographical and human development, Hay is able to shift away from patriarchal representations of the North. Cavell cites how important geography has been in Canadian narratives: “For as long as Canadians have written about their country’s history, geographical exploration has been seen as an integral part of nation-building.”<sup>43</sup> The narratives about the exploration of Canadian land have been subject to change over time. For example, the men who travelled through the St. Lawrence “[...] westward to the Pacific—Samuel de Champlain, Pierre Gaultier de Varennes de la Verendrye, and Alexander Mackenzie [...] have a special place in Canada’s nationalist mythology.”<sup>44</sup> Whereas, from the late 19th century to the early 20th century, the narratives about the land were highly romanticized.<sup>45</sup> The contrasting narratives about Canadian geography showcase how the interpretation of the land changed over time. Further, Hornby and Gwen’s narratives reinforce this concept, as Hornby’s narrative is sexist and Gwen’s narrative showcases how women can also find their vocation in the North. In Gwen’s assessment of the North, “Gwen formed an image of the North as an open page in a book of wonders illustrated and illuminated with rare animals and subtle plants. Here North was the tropics made simple and cool. A rather more knowable place, since it held on to all the traces of passage, to every weathered bone and

fire-cracked rock.”<sup>46</sup> Gwen’s assessment of the North addresses how the evolution of the North is managed by both geological and human processes.

In the development of the North, Hay reveals how explorer narratives, like John Hornby’s narrative, are inherently sexist. The Hornby narrative showcases how the North is a place to test masculinity and a passageway into manhood. In the North, the boys who are transitioning to men learn “[...] how to survive in the bush but also how to behave as civilized white men they must become [...] they learn to recognize their own mastery and superiority over nature, Natives, weaker males, and all females.”<sup>47</sup> While the Hornby narrative focuses on the grail test of men in the wilderness, Hay puts women in the role of quester. The explorers in the Hornby narrative do not adequately prepare for the harsh Canadian winter and ultimately succumb to it: “two years later, in July 1928, a party of geologists led by Harry Wilson was travelling by canoe from Great Slave Lake to Hudson Bay[...] they discovered a derelict cabin and two bodies ‘apparently seen in blankets’ in the right of the cabin door, and inside a third body on a bunk.”<sup>48</sup> Their death by nature aligns with Atwood’s construction of nature as a monster: “Water and snow, then, are the usual implements [...]”<sup>49</sup> Their death signifies a failed journey into the North. However, their death also complicates the wilderness plot, as Hay showcases how explorer narratives are inherently sexist, while also undercutting this theme by showcasing how nature consumes the men. Their death reveals how our understanding of the wilderness and it being focused on men is just a construction. In detaching from the traditional narrative, Hay showcases how women can also find their identities in the North. It is important to note how Atwood, in *Survival*, reinforces how explorer narratives are inherently sexist, with the “poor sweet wife, who exists to be abandoned when the lure of the North gets to be too much and the husband goes off to do the required mushing, prospecting, and freezing to death.”<sup>50</sup> To dismantle this tradition, Hay explains how both the wilderness and human forces must develop in order to include women. Thus, as said in lecture, the “*real* North must have room for both wilderness and development.”<sup>51</sup> Therefore, in addressing the binaries between nature and culture, and urban and the wild, Hay breaks down the binaries between men and women. In stating how the evolution of the wilderness is caused by these collapses, Hay is giving women like Gwen a space to find their identity in the North and digresses from patriarchal depictions of women.

The North traditionally depicts women as secondary figures, and Hay is able to shift away from these depictions by showcasing the North as a space for women as well as men. In *Late Nights on Air*, Elizabeth Hay examines how the quest narrative is inherently sexist. Hay juxtaposes the journey of Dido with that of Gwen, who is able to digress from the sexist depictions of women in the North and find her identity. Hay reveals how the North is a constructed space that allows women to find their voice. Their quest follows the structure of the hero’s journey and can be described by Campbell as “[...] the universal mythological formula of the adventure hero [...] reproduced, to the detail. These are deeply significant motifs of the perils, obstacles, and good fortunes of the way [...]” of Dido and Gwen’s journeys.<sup>52</sup> Campbell’s hero’s journey and the journeys of Dido and Gwen showcase how the obstacles they encounter are inevitable, but necessary. Dido, unfortunately, does not overcome her obstacles of identity and succumbs to the temptations of her romantic relationship with Eddy; Gwen does overcome these obstacles and is able to return to civilization with a new sense of self.

*Late Nights on Air* digresses from early settler narratives, like the story of John Hornby, and from the inherently sexist narratives, by showcasing how women, like Gwen, can also find a sense of self in the North. Gwen is able to find her identity in two ways: by finding her voice and as a listener. In finding her voice as a radio announcer, she is able to cultivate her identity; by listening to sound, she is able to connect to the wildness and break free from patriarchal constructions of women. Gwen's newfound sense of identity allows her to become an independent being and is the focal point of her own explorer narrative.

## Notes

1. Joseph Campbell, *The hero with a thousand faces*. (California: New World Library, 2008), 28.
2. Vikki Visvis, "Canadian Fiction" (Lecture, University of Toronto, May 21 2020).
3. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 181.
4. Margaret Atwood, *Survival* (Toronto: House of Anasi, 1972), 90.
5. Janice Cavell, "The True Northwest Passage: Explorers in Anglo-Canadian Nationalist Narratives." (*Northern Review* (Whitehorse), 2010).
6. Janice Cavell, "The True Northwest Passage: Explorers in Anglo-Canadian Nationalist Narratives." (*Northern Review* (Whitehorse), 2010).
7. Janice Cavell, "The True Northwest Passage: Explorers in Anglo-Canadian Nationalist Narratives." (*Northern Review* (Whitehorse), 2010).
8. Margaret Atwood, *Survival* (Toronto: House of Anasi, 1972), 33.
9. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 33.
10. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 12.
11. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 45.
12. Vikki Visvis, "Canadian Fiction" (Lecture, University of Toronto, May 26 2020).
13. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 85.
14. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 192.
15. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 55.
16. Joseph Campbell, *The hero with a thousand faces*. (California: New World Library, 2008), 30.
17. Vikki Visvis, "Canadian Fiction" (Lecture, University of Toronto, May 21 2020).
18. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 35.
19. Farah Mendlesohn, *Rhetorics of Fantasy* (Connecticut: Wesleyan University Press, 2013), 4.
20. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 232.
21. Vikki Visvis, "Canadian Fiction" (Lecture, University of Toronto, May 26 2020).
22. Janice Cavell, "The True Northwest Passage: Explorers in Anglo-Canadian Nationalist Narratives." (*Northern Review* (Whitehorse), 2010).
23. Janice Cavell, "The True Northwest Passage: Explorers in Anglo-Canadian Nationalist Narratives." (*Northern Review* (Whitehorse), 2010).
24. Margaret Atwood, *Survival* (Toronto: House of Anasi, 1972), 94.
25. Vikki Visvis, "Canadian Fiction" (Lecture, University of Toronto, May 26 2020).
26. Margaret Atwood, *Survival* (Toronto: House of Anasi, 1972), 36.
27. Joseph Campbell, *The hero with a thousand faces*. (California: New World Library, 2008), 28.
28. Vikki Visvis, "Canadian Fiction" (Lecture, University of Toronto, May 21 2020).
29. Vikki Visvis, "Canadian Fiction" (Lecture, University of Toronto, May 26 2020).
30. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 17.
31. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 20.
32. Joseph Campbell, *The hero with a thousand faces*. (California: New World Library, 2008), 48.
33. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 70.
34. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 105.

35. Vikki Visvis, "Canadian Fiction" (Lecture, University of Toronto, May 21 2020).
36. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 248.
37. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 276.
38. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 181.
39. Vikki Visvis, "Canadian Fiction" (Lecture, University of Toronto, May 26 2020).
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42. Margaret Atwood, *Survival* (Toronto: House of Anansi, 1972), 38.
43. Janice Cavell, "The True Northwest Passage: Explorers in Anglo-Canadian Nationalist Narratives." (*Northern Review* (Whitehorse), 2010).
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46. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 146.
47. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 182.
48. Elizabeth Hay, *Late Nights on Air* (Toronto: McClelland & Stewart, 2007), 124.
49. Margaret Atwood, *Survival* (Toronto: House of Anansi, 1972), 55.
50. Margaret Atwood, *Survival* (Toronto: House of Anansi, 1972), 90-1.
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## *Finding an Identity in Obasan*

### **Sonia Uppal**

Joy Kogawa's *Obasan* provides a unique perspective into the treatment of Japanese Canadians during World War II and the intergenerational trauma that this created for the Japanese community. In particular, the novel depicts the trauma related to Japanese identity within the context of hybridity and the inability to separate identity from physical appearance. In highlighting Naomi's experiences throughout her life as a Japanese Canadian, I will be exploring the reasons why the identity crisis occurs within Asian cultures in Canada.

Naomi's struggle with her identity presents itself as a hybridity, which means that she must strike a balance between her Japanese and Canadian backgrounds. Maintaining this balance becomes complicated when Naomi begins to feel that the country she was born and raised in has betrayed her, solely due to her Japanese heritage. This betrayal eventually leads to Naomi's harbouring resentment towards her Japanese culture, seen in the way she describes wanting to "[...] break loose from the heavy identity, the evidence of rejection".<sup>1</sup> A sign of Naomi's hybridity is illustrated in her wish to be accepted as a Canadian citizen, combined with her respect for her rich Japanese heritage. This is portrayed in the way that she corrects her students when they mispronounce her name. In doing so, Naomi is reinforcing that although she may resent the burden of looking different than her white Canadian peers, she still values her culture.

Since physical characteristics can at times define the ancestry of an individual, hybridity and subsequent identity confusion becomes significant in the context of Asian cultures in Canada. In this text, Naomi is told by her brother Stephen that she will be sent away because she is a "Jap," according to a girl at his school. As a child who only sees herself as Canadian, Naomi reflects on what her brother tells her: "We are both the enemy and not the enemy".<sup>2</sup> Naomi starts to realize that, due to her Japanese appearance, she will always be viewed as unique in the predominantly white landscape of Canada, rather than just a Canadian like the rest of her classmates. Herein begins Naomi's struggle with the duality of her identity. Along with the abandonment she feels as a result of her mother leaving her, Naomi now also feels indignation towards her Japanese culture for making her different and hurt by her rejection from the Canadian community. Throughout *Obasan*, Naomi consistently seeks to reconnect with the identities she has lost; this is portrayed in the way that Naomi wishes to identify with both her Japanese and Canadian backgrounds. Although her hybridity is an important aspect of her existence, she will always struggle to balance them, since her physical appearance identifies with only one of her identities.

Displacement and a loss of belonging to a particular culture creates many challenges for impacted communities, resulting in significant damage to the well-being of individuals, the erosion of cultural practices and, ultimately, economic impacts. Canadian history demonstrates a gap in the understanding of hybrid identities, which is evident through the colonizers' impact on Indigenous peoples. In order to effect social change with respect to the current landscape of discrimination and bias, it is important to understand that being perceived solely based on physical traits is significant to the effective social acceptance of Asians in Canada. *Obasan* is a



novel filled with multifaceted themes of what it means to be an Asian person in Canada; however, the identity crisis is a fundamental personal challenge faced by the main character, depicting the experience of thousands of Japanese Canadians impacted by the government's actions. Canada is a culturally diverse country and can only benefit from a deeper understanding of the hybridity of Asian Canadians.

### Notes

<sup>1</sup> Kogawa, *Obasan*, 218.

<sup>2</sup> Kogawa, p. 84.

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*Prison Industrial Complex and Revisioning Justice*

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*"Sleeping with an elephant": A Contextualization of Prime Minister Pierre Trudeau's speech Washington and the U.S.-Canada trade relationship*  
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*"Cis and Trans Black Women in Sex Work: The Intersection of Blackness, Transness, and the State"*

Noah G. R. Foster

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*Spatial Eruptions and The Natural Hair of Black Canadian Women*  
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*Canadian Nationalisms: Pierre Trudeau and the Canadian Charter of Rights and Freedoms*  
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*From Banff to Thaidene Nēné: Decolonizing Forest Conservation Through Indigenous-led Conservation*

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Vurjeet Madan

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*A Call for More Indigenous Representation in Hockey: Fred Sasakamoose and His Contributions to Canadian Identity and Hockey*

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*Compromise, Rule of Law, Equality: Beverly McLachlin, the Supreme Court and Canadian Identity*

Katherine Shackleton

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*Shifting from the Patriarchy in Late Nights on Air*

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*Finding an Identity in Obasan*

Sonia Uppal

Kogawa, Joy. *Obasan*. New York, NY: Doubleday, 1981.

## CONTRIBUTORS:

**Nasma Ashraf** is currently double majoring in Health Studies and Sociology, with a special focus and interest in health inequities within the Canadian healthcare delivery field. This passion of hers is illustrated in the article she is publishing, focusing on an intersection of racial inequities within the Canadian childbirth sector.

**Tiara Beaton** is a third-year student majoring in political science, women's and gender studies, and minoring in French. Tiara is interested in how structural inequities, neoliberal structures, and intersectional identities intertwine to oppress individuals within the justice system. Tiara looks forward to continuing her research in restorative justice alternatives and the political economy. Tiara also looks forward to continuing her studies exploring French language and culture.

**Britney Best** is pursuing a double major in political science and Canadian studies. She is a researcher interested in Canadian foreign and domestic policy in the Arctic and is inspired by human rights and environmental advocacy.

**Willow Chadwick** is in her fourth year of her undergraduate degree studying political science with a minor in American studies and history. Her area of focus is comparative politics, specifically studying the unique relationship between the United States and Canada. Following her undergraduate degree, Willow hopes to continue her studies by pursuing a career in law or education.

**Noah Foster** is a third-year student at the University of Toronto majoring in women & gender studies and environmental studies with a minor in Indigenous studies. As a trans/nonbinary person, their interests are geared toward the intersections of queerness, the environment, and race. In their paper, they explore how these identities take shape in the lives of sex workers in Canada.

**Isabella Rose Fusco** is a fourth-year undergraduate student currently completing her degree in political science and drama, theatre and performance studies. Isabella is passionate about Canadian politics and works actively with her local MP to create change within her community.

**A'aishah Abdul Hameed** is an undergraduate student in her fourth year of study at the University of Toronto Mississauga, working towards completing her Honours Bachelor of Arts degree with a major in criminology, law and society and a double minor in sociology and education. She researches and writes about socio-legal issues with particular interests in criminal justice, penal reform, human rights and legal policy, and forensic psychology.

**Kerry-Ann James** is a cinema studies specialist and a TV/film actress who's interested in how spacetime in contemporary Black cinema might address Black exclusion from the category of the human being. James will continue film studies in graduate school this fall.

**Omar Kassam** is a second-year student at Victoria College majoring in ethics, society and law and peace, conflict and justice, with a minor in political science. He also has a keen interest in Canadian studies, centred on Canada's Constitution and monarchy.

**Madison Lau** is an undergraduate student at the University of Toronto double majoring in criminology and sociology. After taking a Canadian studies class on Asian cultures in Canada as an elective, she found herself resonating with much of the subject material. She is interested in understanding the ways in which multiple cultural identities can reside in individuals, as well as their ability to reconcile with one another.

**Erica Liu** is in her fourth year studying environmental geography, human geography, and political science. Her research interests focus on storytelling as pedagogy, decolonization, and imaginative geographies.

**Vurjeet Madan** is a second-year political science student at the University of Toronto St. George campus. With a keen interest in politics, film, and writing, she is always eager to learn more about the intersections in this world. Vurjeet hopes to become a journalist and pursue law in the future, but in the meantime, she is settling with exciting (albeit slightly cumbersome) student life.

**Claire Posno** is a third-year student double majoring in criminology and sociology, and her areas of interest include socio-legal analysis of the law and disparities within Indigenous communities. Claire loves being creative and spending time in nature, especially at the lake with her friends.

**Dellannia Segreti** is an undergraduate student at UTM, majoring in psychology with a double minor in sociology and Italian. Her written work acknowledges the injustices women face within the criminal justice system when in contact with the police.

**Katherine Shackleton** (2T3) is pursuing her BA in Canadian studies, classics, and history here at U of T. She hopes to attend law school in the future and she enjoys integrating legal topics with her coursework whenever she can. After spending second year attending university from her bedroom in Scarborough, she looks forward to continuing her academic journey in person next year.

**Krizia Tarantino** is a fourth-year student majoring in English and minoring in Canadian studies and writing and rhetoric. Krizia is interested in Canadian literature, specifically in its constructions of the Canadian North and the wilderness.

**Sonia Uppal** is a fourth-year undergraduate student with a major in equity studies and minors in anthropology, Buddhism, psychology, and mental health. Her written work is done through the lens of an anti-racist, feminist, and anti-classist framework. In any career that she pursues, Sonia will work towards dismantling barriers of access for marginalized communities in the social services sector.

## EDITORS

**Dellannia Segreti** is an undergraduate student at UTM, majoring in psychology with a double minor in sociology and Italian. She hopes to continue her studies and develop her passions in the coming years.

**Jessica Attalla** is a third-year pharmacy student at the Leslie Dan Faculty of Pharmacy at the University of Toronto. Jessica did her undergraduate education in the Arts and Science Program at McMaster University, wherein her passion for editing and research developed.

**Hannah Koschanow** is a third-year undergraduate student pursuing a double major in English literature and Canadian studies with a minor in political science. Beyond editing for *imagiNATIONS* for two consecutive years, Hannah is the vice president (academic) of the Canadian Studies Students' Union and works for U of T's Division of University Advancement as a student engagement officer. She has a distinct passion for Canadian literature and politics.