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## **Recommendation #1: Commit to Calls for Justice put forward by the National Inquiry into Missing and Murdered Indigenous Women and Girls that are relevant to federal jurisdiction.**

- While an exact number of missing and murdered Indigenous women and girls (MMIWG) is not available due to a variety of barriers in reporting and police investigation, it is known that the rate of homicide of Indigenous women are 12 times more likely to be murdered or missing than any other women in Canada, and 16 times more likely than Caucasian women (1).
- A 2016 C.D. Howe Institute study has found that only 4 in 10 young adults living on reserves across the country have completed high school (2).
- More Indigenous children are being apprehended from their homes and placed in government care programs than at the height of residential schools in Canada. The primary reason for child apprehension is poverty (3).
- “The rapid expansion of development projects on Indigenous lands without their consent is driving a drastic increase in violence and legal harassment against Indigenous peoples. These attacks—whether physical or legal—are an attempt to silence Indigenous peoples voicing their opposition to projects that threaten their livelihoods and cultures” (4).
- A survey by Statistics Canada shows that 12,036 girls and women under the age of 24 reported being the victims of violent crime across Northern Canada in 2017 alone (5).
- The Final Report of the MMIWG National Inquiry, community members, and governments have stated that the MMIWG crisis in Canada is an act of ongoing genocide

Indigenous women are 12x more likely to be missing or murdered than any other woman in Canada

## **BACKGROUND**

Since the time of contact and throughout the ongoing process of colonization and settlement, the strength and resilience of Indigenous women, girls, and 2SLGBTQQIA peoples has been a driving force in the continuation of cultures across what is now known as Canada. However, it should not have to be their resilience that ensures their survival. Following the Missing and Murdered Indigenous Women and Girls Inquiry Final Report, governments, police and security agencies, organizations, and citizens have the opportunity to make changes that will affect the foundation of Canada (literally, given the need to acknowledge the rights and title of Indigenous peoples) in ways that are true to the Inquiry's recommendations, justice, and the future of right relations with Indigenous communities.

For decades, numerous reports and experts have linked the conditions of systemic impoverishment and rates of violence placed on Indigenous women, girls, and 2SLGBTQQIA peoples to ongoing colonialism that deliberately targets Indigenous peoples removal from lands, forced family separation, and discriminatory state policies and societal practices. The poverty rate for Indigenous women is 36 percent, which is more than double the percentage of non-Indigenous women (6). Similarly, the average child poverty rate among status First Nations children is 51 percent and up to 60 percent on reserves, while the average child poverty rate for all children in Canada is 18 percent (7).

These conditions are compounded and perpetuated by barriers in accessing all levels of education and discrimination in gaining and retaining employment. Statistics show that only 39.9% of persons aged 18 years of age and older residing in First Nations have graduated from high school and only 4.9% of individuals had obtained a post secondary education (8).

Furthermore, Indigenous children attending K-12 through on-reserve schools have been shown to be drastically under-funded compared to non-Indigenous children. As a result, this creates foundations of discrimination and inequality that will continue throughout their lives. Despite recent funding adjustments, advocate Cindy Blackstock states that the government's current fiscal plan will continue to fail Indigenous children, as the bill fails to include statutory funding — legally required funding — for Indigenous child welfare (9).

This kind of systemic poverty puts Indigenous women, gender minorities, and two-spirit peoples at greater risk of violence including staying in abusive homes and relationships, sexualized violence and harassment in the workplace, and the dissolution of families (10). Poverty is also the primary contributor to the ongoing disruption of families through removal of children from homes (11). Additionally, once in government care, reports indicate that Indigenous women and girls in foster care and in the child welfare system are particularly vulnerable to sex trafficking, as well as injury and death. In British Columbia alone, an eight month study found 669 critical injuries and 98 deaths of children and youth who were within the government care (12).

Another primary intersection of violence is that of consent regarding physical bodies and the land, particularly around natural resource extraction. Many studies show a direct correlation between increased violence and remote industry camps, which produce an influx of temporary workers – a "shadow population" of mostly young men whose presence contributes to the vulnerability of Indigenous women and strains social services (13). Given the high rates of individuals experiencing increased rates of drug- and alcohol-related offences, sexual offences, domestic violence, and gang violence, as well as sex-industry activities, this needs to be addressed through investigation, standards, and accountability of resource companies and projects (14). In response to the existing and impending impacts on Indigenous women, girls, and 2SLGBTQQIA peoples through construction of the nationally owned Transmountain Pipeline, the federal government must take immediate action on eliminating physical, emotional, and structural violence as a result of remote labour camps.

Furthermore, the federal government has a history of employing RCMP forces against Indigenous peoples and communities enacting traditional consent protocols for access to their territories or in the peaceful occupation of their lands. This includes the enforcement of a court injunction between the Unist'ot'en Camp and Coastal GasLink in the winter of 2018-19, which led to the arrest of 14 people, including Elders. By using [the] RCMP force[s], the federal government continues to assert the supremacy of Canadian law over hereditary Indigenous laws that pre-exist Canadian law by thousands of years. This a direct violation of reconciliation and right relations. Though industry is required to give the public adequate notice of action, provide access to information, funding, and opportunities for written input, and hold public hearings, there is no standard of meaningful consultation or consent with Indigenous communities across natural resource extraction industries. Lack of proper, ongoing consent on natural resource extraction projects mirrors the physical, emotional, spiritual, and economic violence experienced by Indigenous women.

There is also extensive documentation of misconduct between RCMP and survivors of sexualized violence, such as the recent case of a Kelowna RCMP officer who engaged in re-traumatizing and minimizing interview practices with an Indigenous teen for more than two hours after she reported a sexual assault while in care of the B.C. child welfare system (15). Advocates state that, given that the RCMP was created to "control Indigenous peoples," it is no surprise that "the RCMP must still enforce present-day discriminatory and oppressive legislation and policies" (16).

## SFCC'S RECOMMENDATIONS

Among the many ways the government of Canada should work to address violence and inequality faced by Indigenous women and families, SFCC is calling on the Federal government to:

1. Acknowledge and implement all Calls to Justice put forward in the Final Report on the National Inquiry into Missing and Murdered Indigenous Women and Girls, with particular interest to:
  - a. The creation of a national, cross-Ministry action plan to address all forms of intersectional and systemic violence faced by Indigenous women and communities.
  - b. Securing specific, reliable, and long-term funding available to Indigenous communities and organizations, to create, deliver, and disseminate prevention programs, education, and awareness campaigns designed for Indigenous communities and families related to violence prevention and combating lateral violence.
  - c. Establish a National Indigenous and Human Rights Ombudsperson, with authority in all jurisdictions, and to establish a National Indigenous and Human Rights Tribunal to ensure accountability of relationships, agreements, and promises.

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2.Create legislated standards that ensure free, prior, and informed consent and mechanisms for ongoing consent between natural resource extraction industries and all Indigenous governance structures. This includes having requirements in place to eliminate physical and structural violence faced by Indigenous women surrounding industry labour camps.

3.Stop the use of RCMP force against Indigenous land protectors asserting their rights to traditional territories and consent practices. Investigate all structures and practices of the RCMP that contribute to sexualized violence experienced by Indigenous women, girls, and 2SLGBTQQIA peoples that result in an accountable action plan made in collaboration with Indigenous women and 2SLGBTQQIA peoples.

## CONCLUSION

Numerous federal commissions and inquiries have examined inequalities faced by Indigenous communities, with little government accountability or action to the recommendations that have come forward. The issues faced by Indigenous communities, particularly women and girls, are deeply intersectional and systemic. Making meaningful change for Indigenous women, girls, and 2SLGBTQQIA peoples will require more than reforms. The government must commit to a decolonizing approach to policy reviews and matters of poverty, violence, natural resource extraction, health and well-being, and education. As stated by the Final Report, “the steps to end and redress this[cultura] genocide must be no less monumental than the combination of systems and actions that has worked to maintain [the ongoing] colonial violence for generations.”

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## **Recommendation #2: Create and implement an independent oversight body for students and student survivors to hold their institutions accountable for being in violation of their sexual violence policies and procedures.**

- While a culture shift has happened in the last few years and most post-secondary institutions now accept that there is a need for sexual violence policies for their schools, there is still no accountability for post-secondary institutions who do not follow their policies.
- Human Rights complaints in Ontario (1), BC (2), and Quebec (3) have shown that post-secondary students who use the sexual violence policy and procedure currently in place allegedly have their rights violated.
- Of the five provincial pieces of legislation across Canada that address campus sexual violence (Bill 23 in British Columbia, Bill 15 in Manitoba, Bill 132 in Ontario, Bill 151 in Quebec, and Bill 41 in PEI), none include adequate oversight or accountability mechanisms for post-secondary institutions.

The human rights of student survivors continue to be violated due to lack over institutional oversight

## **BACKGROUND**

Although provincial governments were well-intentioned in the creation of legislation mandating campus sexual violence policies, they did not sufficiently understand the nuances of gender-based violence and supporting survivors within institutions. This has led to not only ineffective legislations, but also a piecemeal approach to foundational definitions and meaningful clauses that would provide minimum standards for these policies. Furthermore, the lack of oversight mechanisms continues to fail student survivors, often leaving them unsupported against post-secondary institutions protecting their reputations.

Provincial governments continuously place too much faith in institutions and administrators doing the right thing and going above and beyond what is explicitly written in legislation. Moreover, current provincial legislation fails to provide adequate mechanisms for governments to document and hold institutions accountable for violating the rights of survivors who use institutional processes. This has resulted in students filing human rights complaints about how their cases were handled by their post-secondary institutions.

Although we have experienced a culture shift in academia around the recognition of the importance of the creation of these policies, we at SFCC, along with our allies and advocates from student survivor groups across the country, are still hearing of cases every day where post secondary institutions violate their own sexual violence policy and procedure, leaving student survivors with no recourse to hold them accountable (4). That is why some students have filed Human Rights Complaints in BC, Ontario, and Quebec in order to hold their institutions accountable for violating their policy.

It is clear that we need an independent oversight body either at the provincial or federal level to hear complaints from individuals at post secondary institutions who believe their safety has been compromised and/ or that their rights have been violated by their institution. There must be an accessible process for individual students and survivors of campus sexual violence to file a complaint against their institution to inform the Minister or Ministerial Office that their rights under provincial legislation are being violated. Otherwise, situations like the one we saw in Québec may occur, where institutions are in violation of the legislation, however, there is no clear way for the province to be able to enforce the legislation (5). The lack of meaningful and accessible oversight mechanisms

creates a situation whereby institutions, regardless of intention, may violate the rights and/or compromise the safety of survivors with no sanctions from the province, or recourse available to the survivor. There must be a process in place that is referenced in each campus sexual violence policy for someone to file a complaint if their school violates their policy. Betrayal Trauma Theory shows us that the existence of poor policy and unsupportive procedures ends up causing more emotional harm to survivors. Many survivors say that having to navigate procedures and policies with little support caused them more psychological damage than the assault itself (6).

The federal government is well-positioned to either create an independent oversight body at the federal level or to bring the provincial ministers of education together to discuss the creation of independent oversight bodies at the provincial level.

## SFCC'S RECOMMENDATIONS

1. That the Federal Department for Women and Gender Equality (WAGE) bring Provincial Ministers of Advanced Education together to discuss what accountability and oversight for PSIs implementation of their policies and procedures can look like OR that the federal government create a national independent oversight body to hear complaints;
2. That the federal government provide funding opportunities to grassroots student-survivor led groups on campuses who are at the forefront of this issue in order to invest in the sustainability of the incredibly important work they do;
3. That the work that WAGE is currently undertaking around campus anti-sexual violence and gender-based violence continues to be supported, and
4. That these WAGE initiatives focus more on the tangible creation of accountability and oversight mechanisms that will protect student survivors.

## CONCLUSION

The current federal government has taken a clear stance on gender-based violence and has provided funding to support this. It would be a mistake to ignore students as a demographic that experiences gender-based violence. Although education is within the jurisdiction of the provinces, the federal government is in a position to make meaningful changes that will directly impact the lives of student-survivors who chose to report to their post-secondary institutions. The government must commit to tangible action to ensure that sexual violence policies on campuses are treated as more than just checkboxes and that these policies are as robust and effective as possible.

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## **Recommendation #3: Commit to mandating that federally-appointed judges complete sexualized violence, social context and sensitivity training.**

- Survivors of violence experience many barriers to reporting, resulting in sexual assault remaining an under-reported, investigated and prosecuted crime in Canada. Only five per cent of victims report sexual assault to police, according to 2014 data (1).
- Even though the rates of violent crime are falling, the number of reported sexual assaults remains steady (2).
- Despite the high numbers of sexualized violence and harassment against women and girls within the legal system, judges are not mandated to receive social context training or sexualized violence education and sensitivity training.
- Currently, the non-mandatory sexualized violence training offered to judges by the National Judicial Institute is not developed by or in consultation with survivors of sexualized violence or those who work in the field of sexualized violence and remains optional for judges.

Two-thirds of women who identify as survivors of violence do not have confidence in the Canadian justice system.

## **BACKGROUND**

One of the most significant barriers to reporting sexualized violence is the problematic treatment of survivors by actors within the criminal justice system. This treatment takes many forms, including failure to communicate clearly and consistently with complainants; insensitive remarks; and the perpetuation of myths and stereotypes about sexual assault (3). In particular, survivors' mistreatment by judges continues to be an issue in both Federal and Provincial courts. Discrimination within the courtroom has historically created barriers to reporting as well as feelings of re-traumatization, particularly for Indigenous women, transgender, and queer individuals, women of colour, Black women, immigrant women, and women with disabilities. To further compound this, economic discrimination and inequality often affect access to justice for these individuals. When criminal justice system actors apply racist or ethnocentric filters to their interactions with sexual assault complainants, significant unfairness can result, with court regulations and procedures lacking culturally safe or meaningful mechanisms for complainants to access.

Although they are required to be impartial, judges are not immune from such problematic reasoning or from legal errors based on sexual assault myths. A wide range of stereotypical expectations about how the 'ideal victim' should act before, during, and after assault persist in courts. Claire L'Heureux-Dubé, former justice of the Supreme Court of Canada, has identified a list of rape myths and stereotypes that skew the legal treatment of sexual assault claimants and therefore conviction rates. Some of those myths include: rapists are strangers, women are less credible witnesses if they have had prior sexual relationships, women who are sexually assaulted will struggle against their attacker, women mean "yes" even when they say "no"; women who are raped deserve it "because of their conduct, dress, and demeanor" (4).

This particularly affects women of colour. As a recent example of this is the egregious conduct of former judge Robin Camp, who asked an Indigenous survivor of violence why she couldn't "just keep [her] knees together," implying that she should have been able to prevent the attack, and stated, "She knew she was drunk [...] Is not an onus on her to be more careful," among many other deeply problematic remarks demonstrate the necessity of this training (5). As judges are vested with tremendous authority in the legal system and in society, their reliance on such myths about sexual assault can reinforce and normalize discriminatory attitudes that are already culturally prevalent.

There at least 10 cases winding their way through Canada's court systems in 2019 that demonstrate how some judges continue to rely on stereotypes and rape myths when informing their decisions, or make significant mistakes on issues of consent. As a result, cases can drag on for years to be heard at Court of Appeal or even at the Supreme Court (6). Over the last 30 years, there have been some significant changes made to Canada's judicial response to sexual assault; however, sexualized violence remains a structural crime against women because discriminatory attitudes persist, and the implication for women is that "criminal justice processing of these cases continue to minimize women's experiences, exonerate violent men, and distort public understanding of this crime" (7).

In the face of this, Rona Ambrose, as interim Conservative Party leader, put forward a private member's bill in 2017 that would have made it mandatory for federally-appointed judges to receive specific training on sexual assault law. Despite having gained all-party support, the bill died in June 2019 after being stalled in the Senate for more than two years. The legislation would require the Canadian Judicial Council to develop mandatory courses in consultation with sexual assault survivors and supporting organizations, and increase transparency through annual reporting on what training was offered, the number of judges who attended, and the number of sexual assault cases heard by judges who've never received training in that area of law.

This has received pushback from some, including Supreme Court Chief Justice Richard Wagner, the highest ranking judge in Canada, who stated that while he thinks Ambrose's bill was designed to help judges avoid taking "an inappropriate course" in court, they don't need mandatory training in sexual assault law. Others state that it threatens their independence as judges (8). However, as students, we understand the importance of ongoing learning and critical examinations of social constructs and do not see this as an impediment to justice. Rather, it is an invitation for members of the legal system to subvert ingrained ideologies that result in biased decisions, making room for informed, empathetic decisions on matters that deeply impact the lives of survivors and create pathways to justice. Decisions that do not challenge the status quo are decisions to uphold the status quo.

## SFCC'S RECOMMENDATIONS

In order to increase access to justice for survivors of sexualized violence by giving them access to fair and impartial interactions with the criminal justice system, SFCC is calling on the Federal government to:

1. Work with local experts in sexualized violence to develop a training curriculum for judges on social context, sexualized violence, and sensitivity training that includes culturally- responsive and non-heteronormative understandings of violence; and
2. Mandate all federally-appointed judges receive this training prior to serving, as well as provide ongoing opportunities for increased understanding of consent, anti-racism, and anti-violence work.

## CONCLUSION

The Canadian legal system has long upheld colonial and patriarchal ideologies of law and consent that have marginalized and re-traumatized survivors of violence. Implications of mandatory training for judges would be far-reaching within the legal system and the lives of survivors. This type of shift, if undertaken meaningfully, would be a step in redefining justice for survivors.

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**Recommendation #4 Uphold and protect reproductive justice across Canada by funding organizations that provide abortion services, supporting comprehensive sexual health education in schools, and launching an investigation into the forced sterilization of Indigenous women in Canada**

- Reproductive health care services in Canada (including abortion) continue to be inconsistent in terms of accessibility and cost across Canada (1).
- Individuals seeking abortion services often have to pay out of pocket to travel to neighbouring provinces or cities to access services (2). Organizations such as Amnesty International, the United Nations Human Rights Committee, and conventions such as the Universal Declaration on Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women have declared that access to abortion and reproductive health care is a human right and a healthcare right (3).
- Indigenous women continue to be sterilized without their knowledge or free and informed consent in Canada (4).
- Many provinces still have outdated sexual health curriculums in terms of information about sexual health for queer identifying individuals, consent, information on birth control options and reproductive health care (5)

more than 100 Indigenous women have come forward to say they were coerced or forced into a sterilization procedure as recently as 2018

## BACKGROUND

Recently there has been a surge of attention given to reproductive rights and a person's right to have control over decisions around reproduction, largely due to a number of states in the US passing severely restrictive anti-abortion legislation. Here in Canada, our practice around access to abortion and reproductive justice has been far from spotless. Firstly, the quality of sexual health education varies drastically across the country, with some teens not having access to information around consent, safe sex, sexual health, and 2SLGBTQIA+ content until the reach post-secondary, even though statistically most of them will be sexually active by then (6)

Secondly, there are large inconsistencies in the availability and accessibility of reproductive healthcare across the country, with some provinces only having one or two clinics (7), which often results in long waits, having to pay out of pocket, and inaccessibility for people in rural areas (8). With the conversation openly politically around abortion, often the fact that access to abortion is a protected right as outlined by internationally recognized standards to reproductive health care and justice is forgotten or dismissed.

Access to abortion is often framed as 'an American problem', but in reality, people in Canada with internal reproductive organs often face similar access problems to their American counterparts. Due to the lack of federal law, or even federal enforcement of the Canada Health Act in this area, access to abortion is left to the provincial governments to handle, which results in huge inconsistencies across the country.

Within the last few years, there has been a tremendous effort in PEI to fight stigma and ensure there is access to abortion for people with internal reproductive organs on the island (9). In BC, Victoria News recently did a series on how women-only clinics create barriers for trans folks accessing sexual health care (10). In Ontario, due to lack of amendments to the Independent Health Facilities Act, there is a crisis of funding, causing some hospitals to merge with Catholic hospitals, forcing them to end their abortion services (11). In New Brunswick and Ontario, there are cases of violating the Canada Health Act by forcing patients to pay for their abortion (12).

Across the country, women with disabilities are not receiving sexual and reproductive health care as they are assumed to be sexually inactive (13). Furthermore, Indigenous women are being sterilized without their free and informed consent or even knowledge of the procedure (14). These are just a few examples that show the severe inconsistencies that exist around access to safe, and accessible sexual and reproductive health care across the country.

## SFCC'S RECOMMENDATIONS

In order for a candidate to support our demand to uphold and protect reproductive justice in Canada, we would ask that they:

1. Commit to upholding a person's right to choose and to access safe abortion services.
2. Commit more federal funding to organizations who educate & provide information to Canadians about sexual health and reproductive health.
3. Commit more federal funding to organizations who provide sexual and reproductive health care, especially in remote or rural areas.
4. Require provinces to make medical and surgical abortion available in provinces, and remove barriers to all forms of access (including trans-inclusive services), in order to receive federal health funding.
5. Support comprehensive consent-based sexual health education in primary and secondary schools in Canada. Ensure that no funding goes towards crisis pregnancy centres through public funds.
6. Launch an investigation into the forced sterilization of Indigenous women with the goal of stopping this practice and providing pathways to justice for women whose rights have been violated.

## CONCLUSION

There is a lot of work to be done across the country before we are able to achieve reproductive justice for everyone. However, the federal government is in a position to be able to make a very significant difference in the current state of access to safe and accessible sexual health care that centres free and informed consent across the country. Inaccess to sexual and reproductive health care is seen as a result of poverty, when in fact it is the other way around (15). Implementing these recommendations and supporting reproductive justice work across the country would be supporting poverty reduction across the country.

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