

**STORIES FROM THE FRONT:
REALITIES OF THE OVER-INCARCERATION OF ABORIGINAL WOMEN IN
CANADA**

by

Jennifer Dyck

B.A., Simon Fraser University, 2005
L.L.B., The University of Ottawa, 2008

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF
MASTER OF LAWS

in

The Faculty of Graduate and Postdoctoral Studies

(Law)

THE UNIVERSITY OF BRITISH COLUMBIA

(Vancouver)

October 2013

© Jennifer Dyck, 2013

Abstract

Aboriginal women are dramatically over-represented within Canada's prison population, accounting for 41% of the women in sentenced custody, while constituting but 4% of the country's female population. Moreover, their rates of over-incarceration have risen dramatically over the course of the last decade, and show no signs of slowing down. Nevertheless, the over-incarceration of Indigenous women in Canada (as distinct from Aboriginal over-incarceration more generally) has been understudied.

This has left a significant gap in the academic understanding of how and why Aboriginal women experience such disproportionate rates of incarceration. There is equally a dearth of research on the subject of what criminalized Indigenous women themselves have to say about their experiences within the criminal justice system and the factors underlying their criminalization.

Based on a qualitative research study undertaken with ten previously-incarcerated Aboriginal women, this thesis tells the stories of how Indigenous Canadian women can be brought into conflict with the criminal justice system, and of how the system in turn responds to the factors underlying their criminalization.

After surveying the existing studies and analyses that have been undertaken on the subject of Indigenous women's over-incarceration in Canada, this author relays the stories of the ten women who participated in her research project, focussing on the factors that brought them into conflict with the law and their experiences of incarceration.

This author then analyses the lived experiences of the research participants, identifying themes and patterns in their narratives. Drawing connections to existing research and identifying gaps in the literature, this author explores the participants' experiences within various facets of the Canadian criminal justice system, including in penitentiaries, provincial prisons, remand centres, healing lodges, parole offices, and in their relationships with their own lawyers. This thesis argues that the participants' experiences illustrate the inadequacy of many of the criminal justice interventions that have been developed with the aim of reducing Aboriginal over-incarceration in Canada.

This thesis concludes with a summary of the research project's findings and its limitations, followed by a discussion of the impact that recent criminal justice reforms are likely to have on the rate of over-incarceration experienced by Aboriginal people in Canada.

Preface

This thesis is an original intellectual product of the author, J. Dyck. The fieldwork reported herein was covered by UBC Behavioural Research Ethics Board Certificate number H12-00687.

Table of Contents

Abstract	ii
Preface	iii
Table of Contents	iv
List of Tables	vii
Acknowledgements	viii
Dedication	ix
1 Introduction	1
1.1 Introduction	1
1.2 Locating Aboriginal Women within the Discussion of Aboriginal Over-Incarceration	2
1.3 Methodology.....	5
1.3.1 Locating Myself within the Research Project	6
1.3.2 Locating Participants for the Research Project.....	8
1.3.3 The Interviews	10
1.3.4 Data Analysis.....	14
1.3.5 Ethical Issues	15
1.4 Thesis Outline	16
2 Literature Review	19
2.1 Introduction.....	19
2.2 Documenting Difference: Recognizing the Unique Nature of Aboriginal Women’s Over-Incarceration	20
2.3 The Federal Government Responds: Indigenization Efforts and Sentencing Reform.	26
2.3.1 Indigenization of the Penal System.....	27
2.3.1.1 Aboriginal-centric Prison Programming.....	28
2.3.1.2 The Creation of Pathways Living Units and the Okimaw Ohci Healing Lodge.....	30
2.3.2 Recognition of Aboriginal “Circumstances” at Sentencing.....	33
2.3.2.1 The Story of Jamie Tanis Gladue	34
2.3.2.2 The Supreme Court of Canada Creates the <i>Gladue</i> Methodology	35
2.3.2.3 Different Method, Same Result: The Effect of <i>R. v. Gladue</i>	37

	2.3.2.4 The Missing Women of <i>R. v. Gladue</i>	39
	2.4 Seen but not Heard: The Missing Voices of Criminalized Aboriginal Women	44
	2.5 Conclusion	48
3	Stories from the Front	50
	3.1 Introduction.....	50
	3.2 Jessica	51
	3.3 Donna.....	59
	3.4 Linda	67
	3.5 Kimberly	77
	3.6 Nicole.....	87
	3.7 Tammy	93
	3.8 Lori.....	100
	3.9 Stephanie.....	103
	3.10 Ashley	108
	3.11 Lisa.....	112
	3.12 Conclusion	116
4	Reflections on the Participants' Experiences	118
	4.1 Introduction.....	118
	4.2 Patterns in the Participants' Demographic Characteristics and Pre-carceral Lives ...	119
	4.3 Understanding the Participants' Experiences of the Criminal Justice System	123
	4.3.1 The Participants' Experiences in Federal Prisons.....	124
	4.3.1.1 Reflections on Corrective Prison Programming	124
	4.3.1.2 Reflections on Aboriginal Cultural Prison Programming.....	127
	4.3.1.3 Reflections on Pathways Living Units at FVI	129
	4.3.2 The Participants' Experiences in Other Facets of the Criminal Justice System.....	131
	4.3.2.1 Reflections on Provincial Jail and Pre-trial Detention.....	132
	4.3.2.2 Reflections on Healing Lodge Facilities.....	134
	4.3.2.3 Reflections on Representation by and Relationships with Defence Counsel	140
	4.3.2.4 Reflections on the Impact of the <i>Gladue</i> Methodology.....	143

4.3.2.5 Reflections on Release and Parole Revocation.....	148
4.4 Conclusion	151
5 Concluding Chapter.....	154
5.1 Introduction.....	154
5.2 Summary of the Research Findings	155
5.3 Limitations of the Research Findings	158
5.4 Suggested Avenues for Further Research.....	160
5.4.1 The Understudied Experiences of Aboriginal Women in Provincial Institutions.....	160
5.4.2 The Use of <i>Gladue</i> Reports and the Recognition of Aboriginality at Sentencing.....	163
5.4.3 The Decision to Plead Guilty.....	164
5.4.4 Aboriginal Women’s Experiences of Release from Imprisonment	164
5.5 Aboriginal Over-Incarceration: A Deepening Crisis?	165
5.6 Conclusion	171
Bibliography	175
Appendices.....	187
Appendix A: Sample Letter	187
Appendix B: Recruitment Flyer.....	190
Appendix C: Consent Form	191
Appendix D: Schedule of Interview Questions	195

List of Tables

Table 4.1: Reported Adverse Factors in the Pre-Carceral Lives of Participants.....**120**

Acknowledgements

First and foremost, I would like to thank the ten women who so graciously shared their life stories with me over the course of my research. I am astonished by the generosity and patience that they accorded to me, as well as by their courage, wisdom, perseverance and good humour. They taught me more about our criminal justice system than has any book I have ever read or course I have ever taken.

Secondly, I would like to express my deep gratitude to Dr Emma Cunliffe, without doubt the world's best thesis supervisor. Emma's patience, knowledge, guidance and encouraging smiles have known no bounds over these last couple of years, and without her support I never would have had the guts to undertake the project that I did, let alone have known where to begin. Words cannot express how lucky I feel that you agreed to supervise this research; it is infinitely better for your insights.

Additionally, I would like to thank Isabel Grant, whose thoughtful questions and commentary helped immeasurably throughout my writing and re-writing process. I am so grateful for your time, commitment and rigorous review of my seemingly unending drafts, and for your constant encouragement.

I owe a massive debt of gratitude to my parents, all four of them, without whose borderline-psychotic love and support I doubt I would be able to put one foot in front of the other. No one has ever had better parents, in the whole wide history of the world, and I owe you everything. I must also thank my sister Katie, who has taught me more than she will ever know about the importance of standing up for the things that you believe in. As different as our opinions may be on the need for "luxuries" like central heating and indoor plumbing, we are alike in many, and much more important, ways. I love you, Kitty Katty.

I would like to thank the scores of dear, dear friends who have supported me throughout this endeavour, and quite frankly, throughout my whole life. Special thanks are owed to Caroline, Cristina, Domenico, Erica, Laura, Melissa, Neal, Tricia and Vukica. Each of you played an instrumental role in either getting me to grad school, or keeping me here. Thank you for all the beers and all the laughter; your love, support and faith have kept me afloat on more occasions than I can count. I must also thank Andrés, whose gentle encouragement to "be productive" and consistent (if ill-informed) belief that I would be so helped me to actually, and finally, finish writing my thesis.

Finally, I would like to acknowledge the enormous contributions of the Atira Women's Resource Society, the Elizabeth Fry Society of Greater Vancouver and the Watari Research Association. The work that these organizations do for and on behalf of marginalized women in our community is nothing short of heroic. I am deeply grateful for your guidance and support throughout my research.

For Ian

CHAPTER ONE: INTRODUCTION

1.1 Introduction

This thesis is the story of ten women, whom I met during the summer of 2012. Or more precisely, it is the stories of both how and why these ten women ended up in conflict with the Canadian criminal justice system, and of how the system responded to them. Theirs are frequently stories of loss: lost childhoods, children, parents and lost chances. These are stories steeped in history, in that they reflect the inter-generational consequences of colonialism experienced by Canada's original peoples. They are stories of abuse and addiction, of poverty and marginalization, of cultural and personal conflict, of ill-conceived policy and of the impact that these factors can have on an Indigenous woman's life trajectory. These are also, at times, stories of overcoming seemingly insurmountable odds. Ultimately though, they are stories about living life at the intersection of Aboriginality and womanhood in contemporary Canada. Each of these ten women has different stories to tell; they have all taken different paths in life and have ended up in different places. But their narratives are bound together in certain key respects, including by the fact that they have each, at one time or another, spent time in prison.

The most recent statistics indicate that Aboriginal women represent 41% of the women in sentenced custody across Canada, while accounting for only 4% of the country's female population.¹ The purpose of this thesis is to tell some of the human stories behind these statistics, in the hopes that they will aid in the development of a more nuanced understanding of the causes and consequences of the over-incarceration experienced by Canadian Aboriginal women. It is premised upon the notion that in the search to understand this phenomenon, the voices of the

¹ Statistics Canada: Canadian Centre for Justice Statistics, *Adult Correctional Statistics in Canada, 2010/2011* by M. Dauvergne (Ottawa: Minister of Industry, 2012), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11715-eng.htm#a7> [Statistics Canada, Dauvergne].

women who have personally been on the front lines of the crisis must be heard. By ensuring a space for their experiences within the dialogue surrounding the over-incarceration of Indigenous peoples, we can develop a broader and more practical understanding of the problem. In turn, this knowledge can aid in the development of law and policy reforms that are responsive to and reflective of the actual needs and realities of Aboriginal women in conflict with the law in Canada.

1.2 Locating Aboriginal Women within the Discussion of Indigenous Over-Incarceration

The over-incarceration of Aboriginal women in Canada does not exist in a vacuum. Rather, it is a component of the broader crisis of Indigenous over-incarceration that has plagued the Canadian criminal justice system since the mid-twentieth century.² While the disproportionate rate at which Indigenous Canadians come into conflict with the criminal justice system was noted as early as the 1960's, it was not until the late 1980's and early 1990's that the severity of the problem was recognized.³ Since then, this phenomenon has been very well documented, and has become the subject of countless pieces of academic research and governmental inquiry.⁴ Such has particularly been the case since the late 1990's, when the

² In 2010/2011, the incarceration rate for Indigenous adults in Canada was estimated to be ten times higher than that of their non-Aboriginal counterparts: see Office of the Correctional Investigator, "Backgrounder - Aboriginal Offenders: A Critical Situation," online: Office of the Correctional Investigator <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>.

³ For examples of early recognition of the over-incarceration of Aboriginal Canadians see Canadian Corrections Association, *Indians and the Law* (Ottawa: Canadian Corrections Association, 1967); Schmeiser, DA et al, *The Native Offender and the Law* (Ottawa: Law Reform Commission of Canada, 1974). See also, Michael Jackson, "Locking Up Natives in Canada" (1989) 23 UBC L Rev 215; Aboriginal Justice Inquiry of Manitoba, *Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People*, vol 1 (Winnipeg: Queen's Printer, 1991); and Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Canada Communication Group Publishing, 1996).

⁴ See e.g. Carol LaPrairie, *Examining Aboriginal Corrections in Canada* (Ottawa: Ministry of the Solicitor General, 1996), online: Public Safety Canada <http://www.publicsafety.gc.ca/res/cor/apc/apc-14-eng.aspx> [LaPrairie, Examining Aboriginal Corrections]; Carol LaPrairie, "Native Women and Crime: A Theoretical Model" (1987) 7 Canadian Journal of Native Studies 121 [LaPrairie, Native Women and Crime]; Julian V. Roberts & Ronald Melchers, "The Incarceration of Aboriginal Offenders: Trends from 1978 to 2001" (2001) 45 Canadian Journal of Criminology and Criminal Justice 211 and Statistics Canada, *The Incarceration of Aboriginal People in Adult Correctional Services*

government of Canada adopted s. 718.2(e) of the *Criminal Code*, which provides that special attention must be given to the circumstances of Aboriginal offenders at sentencing, and which was the subject of the Supreme Court of Canada's landmark decision of *R. v. Gladue*.⁵ In the wake of *Gladue*, an abundance of legal and academic commentary on the subject of Aboriginal over-incarceration emerged, largely centred upon the question of whether or not the adoption of s. 718.2(e) and the *Gladue* paradigm would succeed in reducing the disproportionate rates at which Indigenous Canadians were imprisoned.⁶ Over this same period, there has also been a significant increase in the availability of statistical evidence documenting the rates of incarceration experienced by Aboriginal Canadians, which has permitted the development of a greater understanding of the gravity of the problem and its regional variance.⁷

However, the vast majority of the research and commentary that has been developed around the issue of Aboriginal over-incarceration in Canada has been essentially gender-neutral. This is highly problematic, especially in light of the fact that neither criminality nor the experience of criminalization are themselves gender-neutral.⁸ That is to say, as is commonly and broadly accepted within legal and academic circles, women commit crime differently than do

by S. Perreault (Ottawa: Minister of Industry, 2009), online: Statistics Canada <http://www76.statcan.gc.ca/stcsr/query.html?style=emp&qt=perreault&charset=iso-8859-1&qm=1&oq=&rq=1&la=en> [Statistics Canada, Perreault].

⁵ *Criminal Code of Canada*, RSC 1985, c C-46 s 718.2(e); *R v Gladue* [1999] 1 S.C.R. 688 [*Gladue*].

⁶ See e.g. Kent Roach & Jonathan Rudin, "*R. v. Gladue*: The Judicial and Political Reception of a Promising Decision" (2000) 42 Can J Crim 355 [Roach & Rudin, Promising Decision]; Philip Stenning & Julian V. Roberts, "Empty Promises: Parliament, the Supreme Court, and the Sentencing of Aboriginal Offenders" (2001) 64 Sask L Rev 137 [Stenning & Roberts, Empty Promises]; Kent Roach & Jonathan Rudin, "Broken Promises: A Response to Stenning and Roberts" Empty Promises" (2002) 65 Sask L Rev 3 [Roach & Rudin, Broken Promises]; Philip Stenning & Julian V. Roberts, "The Sentencing of Aboriginal Offenders in Canada: A Rejoinder" (2002) 65 Sask L Rev 75 [Stenning & Roberts, Rejoinder]; Christopher Nowlin, "Taking Aboriginal Justice Beyond Gladue: Canadian Criminal Law in Conflict with Human Rights" (2004) 67 Sask L Rev 59 and M.E. Turpel-Lafond, "Sentencing within a Restorative Justice Paradigm: The Procedural Implications of *R. v. Gladue*" (1999) 43 CLQ 34.

⁷ See e.g. Statistics Canada, Dauvegne *supra* note 1 and Statistics Canada, Perreault *supra* note 4.

⁸ See Statistics Canada, Perreault, *ibid* at 9.

men, and experience different consequences as a result.⁹ For example, women account for only one-tenth of the adult Canadians in sentenced custody.¹⁰ On a practical level, the relatively small number of female inmates has serious implications for women's corrections in Canada. Indeed, until 1995, there was only one women's federal penitentiary in the whole of the country. Even today, the Correctional Service of Canada ("CSC") operates only six women's penitentiaries, as compared to forty-seven for men.¹¹ As a result, federally sentenced women do not have the same opportunities as men to be sent to minimum security institutions, nor even to serve their sentences in their home provinces.¹²

This male-female divide exists amongst Indigenous offenders, much as it does within the general offender population. Indeed, a far greater number of Aboriginal men experience incarceration than do Aboriginal women. However, Indigenous women account for a much higher percentage of the female inmate population than Aboriginal men do in the corresponding male population: in 2010/11 Aboriginal women comprised 41% of the women in sentenced custody, while that same figure for Indigenous men was 25%.¹³ Nevertheless, this differential rate is rarely treated as more than a footnote in the academic and statistical analyses that have

⁹ See e.g. Meda Chesney-Lind & Lisa Pasko, eds. *The Female Offender: Girls, Women and Crime*, 3d ed, (London: Sage Publications, 2012); Helen Boritch, *Fallen Women: Female Crime and Criminal Justice in Canada* (Toronto: Nelson, 1997); Dawn Moore, "Feminist Criminology: Gain, Loss and Backlash" (2008) 2 *Sociology Compass* 48; Ellen Adelberg & Claudia Currie, eds, *In Conflict with the Law: Women and the Canadian Criminal Justice System* (Vancouver: Press Gang Publishers, 1993); Karlene Faith, *Unruly Women: The Politics of Confinement and Resistance* (Vancouver: Press Gang Publishers, 1993) and Gillian Balfour & Elizabeth Comack, eds, *Criminalizing Women* (Winnipeg, Fernwood Publishing, 2006).

¹⁰ Statistics Canada, *Women in Canada: A Gender-Based Statistical Report: Women and the Criminal Justice System* by T. Hotton Mahony (Ottawa: Minister of Industry, 2011), online: Statistics Canada <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11416-eng.htm> at 19 [Statistics Canada, Mahony]; and Statistics Canada, Dauvergne *supra* note 1 at 11.

¹¹ Correctional Service of Canada, "Institutional Profiles," online: Correctional Service of Canada <http://www.csc-scc.gc.ca/institutions/index-eng.shtml>.

¹² For a discussion of the impact that serving time far from home has on American female prisoners, see Kelly Bedard & Eric Helland, "The Location of Women's Prisons and the Deterrence Effect of "Harder" Time" (2004) 24 *International Review of Law and Economics* 147.

¹³ Statistics Canada, Dauvergne *supra* note 1 at 11.

been undertaken on the subject of Indigenous over-incarceration. Consequently, very little is known about why this gap exists, and what it may mean on a practical level for Aboriginal women in conflict with the law. Furthermore, as shall be discussed in detail in Chapter 2, very little qualitative research has been undertaken with criminalized Indigenous women regarding both the reasons underlying their criminalization and their experiences within the Canadian criminal justice system. As a result, there is dearth of knowledge as to what causes Aboriginal women to be incarcerated at such dramatic rates, and how effectively the criminal justice system responds to and addresses these underlying factors.

1.3 Methodology

This thesis is based on a qualitative research study that I undertook in and around the city of Vancouver during the summer of 2012. The study consisted of one-on-one semi-structured interviews that I conducted with ten self-identified Aboriginal women who have been incarcerated in Canada. My decision to undertake qualitative research was based on the fact that, as noted above and discussed in detail in Chapter 2, very little space has been reserved for the voices of criminalized Aboriginal women within the academic discourse surrounding Indigenous over-incarceration. Indeed, their personal experiences and opinions as to the causes of their criminalization and the adequacy of related criminal justice interventions have been drastically understudied. The purpose of this research is to partially fill these gaps, and to do so in a way that is non-exploitive and does no harm to the participants.

1.3.1 Locating Myself in the Research Project

During the fall of 2011, as I contemplated undertaking this qualitative research, I struggled greatly with my status as an outsider to the issue of Indigenous over-incarceration.¹⁴ Aware of the frequency with which Aboriginal individuals and communities have been exploited and misrepresented in the name of non-Indigenous research projects,¹⁵ as well as of the arguments made by standpoint theorists that research should be conducted by community “insiders,”¹⁶ I struggled with the question of whether it would be appropriate for me, as a non-Aboriginal lawyer who has never been criminalized, to undertake a qualitative study of the experiences of Indigenous women in conflict with the law. I worried that I would be insensitive, that I would misinterpret what they had to say, and that I would simply not understand where they were coming from. While I did ultimately come to believe that it would be possible for me to design and implement a research methodology that would sufficiently address these concerns, I only came to this conclusion after significant analysis of my place in and connection to this issue. This meant engaging in the process of reflexive analysis, a cornerstone of feminist qualitative research methods, where the researcher makes herself an object of study and scrutiny, with the

¹⁴ See Nancy A. Naples, “The Outsider Phenomenon,” in Sharlene Nagy Hesse-Biber & Michelle L. Yaiser, eds, *Feminist Perspectives on Social Research* (New York: Oxford University Press, 2004) and S. Acker, “In/out/side: Positioning the Researcher in Feminist Qualitative Research” (2000) 28 *Resources for Feminist Research* 153.

¹⁵ For discussions of both the perils of non-Indigenous researchers undertaking research within Aboriginal people and suggestions as to best practices for this type of research, see Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books Ltd., 1999); Linda Tuhiwai Smith, “On Tricky Ground: Researching the Native in the Age of Uncertainty,” in Norman K. Denzin and Yvonna S. Lincoln, eds., *The Sage Handbook of Qualitative Research*, 3d ed., (London: Sage Publications, 2005); Lester-Irabinna Rigney, “Internationalization of an Indigenous Anticolonial Cultural Critique of Research Methodologies (1999) 14 *Wicazo Sa Review* 109; Charlotte Lopie, “Learning from the Grandmothers: Incorporating Indigenous Principles into Qualitative Research” (2007) 17 *Qualitative Health Research* 276 and Carolyn Kenny et al. *A Holistic Framework for Aboriginal Policy Research* (Ottawa: Status of Women Canada, 2004), online: Government of Canada <http://publications.gc.ca/collections/Collection/SW21-114-2004E.pdf>.

¹⁶ See Rosalind Edwards, “Connecting Method and Epistemology: A White Woman Interviewing Black Women” (1990) 13 *Women’s Studies Int. Forum* 477.

aim of critically analysing her role in the process of constructing the knowledge that she has sought to generate through her research.¹⁷

I can personally trace my concerns over the circumstances of Canada's Indigenous peoples back to my childhood. My parents, whose families came from Northwestern Europe to settle and farm in Saskatchewan, taught my sister and me from a young age about the impact that colonialism has had upon our country's original peoples. They told us about the creation of reserves, about racism and about the cultural genocide perpetuated through the residential school system, as well as the ongoing impact of these factors on Aboriginal individuals and communities. My parents' teachings, for which I will always be grateful, helped to grow in me a real interest in the histories and contemporary realities of Indigenous Canadians, one that I explored through my research and writing as I undertook both my undergraduate degree in Political Science and my initial law degree. When I made the decision to pursue an LL.M. degree at the University of British Columbia, I knew without doubt that I wanted to undertake research based on the experiences of Aboriginal women within the Canadian criminal justice system, as it was an issue for which I felt a great passion. Nevertheless, the fact remained that I am not an Aboriginal woman, and have had no personal experience of criminalization. I thus knew that I would have to tread very carefully, and to seek the advice of many others to ensure that the conduct of my research was both culturally and personally sensitive, and that it was undertaken in such a way that it both empowered the participants and honoured their voices and expertise. It was with these concerns in mind that, throughout the fall of 2011 and spring of

¹⁷ See Sharlene Nagy Hesse-Biber & Michelle L. Yaiser, "Difference Matters: Studying Across Race, Class, Gender, and Sexuality," in Sharlene Nagy Hesse-Biber and Michelle L. Yaiser, eds, *Feminist Perspectives on Social Research* (New York: Oxford University Press, 2004) and Brooke Ackerly & Jacqui True, *Doing Feminist Research in Political and Social Science* (London: Palgrave Macmillan, 2010).

2012, I worked on the development of my research methodology. In April 2012, I secured ethical approval from the University of British Columbia Behavioural Research Ethics Board to conduct one-on-one interviews with criminalized Aboriginal women in the Vancouver area.¹⁸ I subsequently began the process of recruiting and interviewing the participants to this research project.

1.3.2 Locating Participants for the Research Project

The process of locating criminalized Indigenous women to participate in my research project began in May 2012, when I wrote to twenty-eight organizations across the Greater Vancouver area that work with Aboriginal women, including advocacy groups, housing facilities, healing lodges, Aboriginal friendship centres,¹⁹ and criminal justice support services.¹⁹ In these letters, I explained the nature of my research project and that I was seeking to conduct interviews with women who self-identify as Aboriginal and who have experienced incarceration in Canada. I also inquired from twenty-three of these organizations whether they might have employees or volunteers who would like to be interviewed for my project as key informants, speaking on a more macro level about the criminalization of Aboriginal women in Canada. I enclosed with my letters a copy of the poster that I had created to advertise my study.²⁰

The first organization to respond to my request was the Atira Women's Resource Society,²¹ a non-profit organization that provides direct services, including housing, to women across the Greater Vancouver area. I provided Atira with an electronic copy of my poster, which they kindly distributed across their network and put up on display in many of their various housing facilities across the Lower Mainland. Almost immediately, I began receiving phone calls

¹⁸ UBC BREB Ethics Approval Certificate H12-00687.

¹⁹ A copy of the letter that I sent to these organizations is attached at Appendix A.

²⁰ A copy of this poster is attached at Appendix B.

²¹ Atira Women's Resource Society : <http://www.atira.bc.ca/>.

from criminalized Aboriginal women who were interested in participating in my study; ultimately all but three of my interview participants learned of my research project through their connections to Atira. I also had the opportunity to interview Amber Prince, a legal advocate employed by Atira, about what she views to be the causes and consequences of the criminalization of Indigenous women in Canada.

The Elizabeth Fry Society of Greater Vancouver²² also responded to my written request, and put me in contact with two women living in one of its housing facilities, both of whom ultimately became participants in my study. Additionally, following an exchange of correspondence, I met with a group of support workers and counsellors at the Watari Research Association,²³ which, in addition to providing me with guidance on how to conduct the interviews in such a way so as to prevent causing undue emotional harm to my research participants, helped to connect me with one participant. In total, I conducted interviews with twelve women who responded to my call for research participants. However, over the course of two of the interviews, I realized that the women I was interviewing did not in fact meet the requirements for my study, namely, they had not experienced incarceration. In both of these cases I conducted an abridged version of the interview, focussing on inquiring as to what that participant's views were on the engagement of Aboriginal women in the criminal justice system. Each of these participants was also provided with a \$50 honourarium, but neither of their interviews has been transcribed or analysed for my research project.

Unfortunately, my attempts to recruit individuals working with or on behalf of criminalized Indigenous women to participate in my research as key informants were much less

²² Elizabeth Fry Society of Greater Vancouver: <http://www.elizabethfry.com/>,

²³ Watari Research Association: <http://www.watari.ca/>.

fruitful. In fact, the only key informant interview that I was able to conduct was that with Atira's legal advocate, Amber Prince. I spoke with house managers employed by Elizabeth Fry and Atira, respectively, about the possibility of conducting interviews with them in a key informant capacity, but they all ultimately declined to participate. Similarly, my attempts to schedule interviews with healing lodge staff and with representatives of the Native Courtworker and Counselling Association of BC²⁴ were unsuccessful. In light of these difficulties, I made the decision to not incorporate key informant interviews in to my final research project.

1.3.3 The Interviews

The interviews that form the basis of my research were conducted in June and July 2012 at various locations throughout the Greater Vancouver area. They were held at the place of choosing of each participant, to ensure that she felt as comfortable as possible in the interview's setting. Ultimately, the participants chose a wide array of venues, ranging from their own homes to spaces made available in women's organizations' offices, and included even a bench in a public park. The participants are a very diverse group: they varied in age from twenty-two to forty-nine, and have been convicted of offences that run the gamut from mischief to murder. As a result of the wide-ranging experiences and personalities of the participants, each interview was unique. Many were preceded and/or followed by more casual conversations between myself and the participant, covering topics ranging from politics to our own personal lives. The shortest interview lasted approximately forty minutes, while the longest lasted over two hours. They were all digitally recorded so as to permit the production of verbatim transcripts. All but two of the interviews were conducted with only myself and the interview

²⁴ Native Courtworker and Counselling Association of BC : <http://www.nccabc.ca/>.

participant present; one was conducted in the company of a participant's support worker, and one in the presence of the participant's infant son.

Before each interview began, I orally described my research project to the participant, and reviewed the contents of the consent form, a copy of which she was given for her own records.²⁵ I reminded the participant of her right to stop the interview at any time and to decline to answer any of my questions, without justification. I inquired whether the participant would like to receive a copy of the transcript that would ultimately be produced of her interview, as well as whether she would like to receive a copy of my thesis once it was completed. Seven of the participants asked to receive copies of their transcript, and nine asked to receive copies of the final thesis. I also asked if the participant would like to select the pseudonym that would be applied to her in the thesis, but none of them elected to do so. The interviews themselves were semi-structured; I used a schedule of questions as a loose guide, rather than as a firm structure for the interview.²⁶ I tried to explore issues as they were raised by the participants, and regularly sought their permission to move between topics, especially when the topic in question was one that I expected to be a sensitive one, such as experiences of abuse. Furthermore, I avoided asking follow-up questions when a participant discussed particularly painful experiences, as I wanted her to share only as much as she wished.

It was very important to me that I make the participants feel as comfortable as possible in my presence, and so I approached the interviews in a conversational way. I often brought fruit or a snack to share with the participants during the interview. Where it felt appropriate during the interviews, I volunteered information about myself and my own personal life, such as where I

²⁵ A copy of the consent form is attached at Appendix C.

²⁶ A copy of the schedule of interview questions is attached at Appendix D.

grew up, where my family originates from and where I live now. I engaged in active listening, nodding and otherwise affirming the participants' responses. I tried to speak in a casual and informal manner, which I hoped would make the participants feel at ease. The subject matter covered in the interviews was often very sensitive, and many of the interviews became quite emotional for both the participant and me. In fact, approximately half of the interview participants started to cry at one or more points during the interview. Inevitably, if the participant started to cry, so did I. During one interview, the participant began to cry quite hard, and requested that I stop recording, which I immediately did. I too was crying, and she turned to me and asked "Why are you crying?," to which I could only respond that I was very moved by her story. After taking a break, we completed the interview. When I left her home, she hugged me and thanked me for my empathy.

While I feel as though I ultimately developed a good rapport with each of the participants, I was also regularly reminded of my status as an outsider looking in on lives that have been very different from my own. Many of my interview participants remain active in addiction and in the activities to which women regularly turn in order to support addiction. For example, one of my interviews had to be cut short because the participant was feeling sick; she had not had her methadone the day before. Another participant told me of having lost 100 pounds in the year since she was released from a federal women's prison, something she attributed to her "Jenny Crack diet." Many of the participants opened up to me about problems they were having in their lives, including struggles to find and maintain adequate housing or to engage in meaningful intimate relationships. These topics were at times covered during the interviews, but also formed the basis of conversations had before and after the formal interviews. While I was honoured that the participants felt comfortable enough with me to discuss these

personal problems, I was also made acutely aware of both the gulfs between us and the great scope of the challenges facing them as they navigate their lives outside of prison.

I know that there were times when my lack of personal experience with the topics discussed, including incarceration, but also violence and abuse, drug addiction, motherhood, poverty and sex work, must have been frustratingly apparent to the women I interviewed. The most marked example came as a participant recounted time spent in a young offender's prison in the United States. She told me that she got herself in to trouble while she was there by mouthing off and standing up for herself as against the other prisoners, who were primarily African American. As she explained, "... that doesn't really go very well. When you're Canadian and you're Native in that prison." I responded, as part of my attempt to engage in active listening, "Yeah. I can imagine," to which she replied "I don't think you could." I was immediately struck by the ridiculousness of my comment – of course I could not understand in the least what that experience had been like for her. Thankfully, she just laughed and continued to share her stories with me.

At the completion of each interview, I gave the participant a hand written card, thanking her for her time and for sharing her experiences and wisdom with me. I enclosed within each envelope a \$50 honourarium, which was meant to act as a token of thanks and appreciation, as well as in compensation for any costs incurred by virtue of participating in my research. I also provided each participant with a list of organizations operating in the Greater Vancouver area, which offer counselling and other support services (on both scheduled and emergency bases). Included in my list was the Watari Research Association, which had generously given me permission to provide the direct contact information of an Aboriginal counsellor who could assist the participants in accessing other resources in the community. Only three of the participants

seemed pleased to have received the resource list; the remainder either expressly stated or implied that it would not be of use to them.

1.3.4 Data Analysis

The data analysis process began with me producing verbatim transcripts of the digital recordings that I had made during the interviews. Once all of the transcripts were complete, I read them one by one. I then returned to the transcripts, and began an open coding process as I re-read them, over the course of which I identified themes and topics of interest in each transcript. I created individual files for these themes, which included childhood experiences, substance abuse, personal assessments of criminogenic factors, sexual violence, motherhood, experiences with defence counsel, interactions with police, views on corrective prison programming and participation in Aboriginal-centric prison programming, among many others. I slotted excerpts from the interview transcripts into the relevant files, and created tables to organize the excerpts by theme.

However, upon compiling the tables of data I noticed that many of the most compelling stories shared with me over the course of my interviews evaded categorization. The reason that the participants' experiences could not be readily slotted into categories and sub-categories is because I had conducted interviews with ten unique women, each of whom have experienced criminalization and incarceration differently and at times even divergently. They do not all share the same beliefs in the efficacy of the criminal justice-based responses to Indigenous over-incarceration, nor have they had parallel experiences of incarceration, even when they were imprisoned in the same penitentiary at the same time. Similarly, the reasons for their criminalization, while often similar, remain specific to them as individual Aboriginal women. Confronted with these realizations, I soon came to believe that the only way I could truly

preserve the participants' voices and fairly relay their experiences was if I shared their stories individually, rather than thematically. Consequently, I changed my data analysis process to reflect the manner in which I believed the participants' stories needed to be conveyed.

Proceeding one participant at a time, I read each transcript and attempted to identify the central features of each participant's pathway to prison and of her experiences of being in conflict with the law. I still used the themes that I had previously identified as a guide, but allowed the focus of my analysis to be on the experiences of each individual woman, rather than upon how her life fit within categories of lived experience. Wherever possible, I have relied on quotations from the transcripts, rather than on my own synopses of what the participants had to say. However, for reasons of confidentiality, I replaced all personal names with pseudonyms. I also redacted information that might identify the participant, including the names of specific cities or locations and other personal details.

1.3.5 Ethical Issues

The most important ethical issue that I faced over the course of my research was ensuring that participation in the research by my participants was, and at all times remained, wholly voluntary.²⁷ I tried to preserve this voluntariness by reminding the participants from the outset of their right to refuse to answer any question, something that many of them did over the course of their interviews. In a similar vein, I tried to avoid causing undue emotional strain to the participants by using cool down questions to bookend more sensitive topics of discussion, and also by not pressing on with lines of questioning that I could tell were upsetting to them. Furthermore, I frequently sought permission to move between subject areas, especially where the proposed topic was a sensitive or particularly personal one. I provided each participant with a

²⁷ See Gesa E. Kirsch, *Ethical Dilemmas in Feminist Research: The Politics of Location, Interpretation and Publication* (Albany: State University of New York Press, 1999).

current list of available counselling resources in her area, so that she might know where to turn should she feel distraught or in need of support after the interview. I did not have the impression that any of the participants left the interview in a distressed state, and none of them indicated to me an intention of seeking assistance from any of the resources listed.

In an attempt to ensure the ongoing voluntariness of the participants' involvement in my research, I mailed each participant who had so requested a copy of her verbatim transcript. I also enclosed a letter to each participant, inviting her to contact me by telephone or email if she would like to discuss the transcript or make any corrections or deletions. One participant called me and requested that I come out to her home to go over the transcript with her. I went to see her one afternoon and read the transcript aloud to her. She made a few corrections and several deletions, which I then made to the final version of her transcript. I was telephoned by another participant who told me that she had no problem with the contents of her transcript. Unfortunately, two of the transcripts were returned to me by mail because the participants had since moved; I have been unable to locate new addresses for them. Copies of the final thesis will also be mailed to the participants, as well as to the various organizations that have supported this research, in the hopes that the sharing of information will serve to establish reciprocity between myself as a researcher and the participants.

1.4 Thesis Outline

The centrepiece of this thesis is the life stories that the participants shared with me. Their stories put a personal face on the crisis of Aboriginal women's over-incarceration in Canada, and serve to unpack some of its many causes and consequences, as well as to illustrate the inadequacy of the related remedial criminal justice interventions that have been enacted over the course of the last twenty years. However, it is not with their experiences that I begin this thesis.

Rather, in Chapter 2, I undertake a review of the current academic understanding of Aboriginal women's over-incarceration in Canada. I begin by tracing the governmental and academic recognition of the differential rate at which Indigenous women experience incarceration, and review some of the factors that have been identified as contributing to this phenomenon. I then address the steps that the Canadian government has taken to reduce the rates of Aboriginal over-incarceration in Canada, particularly the Indigenization of the penal system and the adoption of a particularized sentencing methodology for Aboriginal offenders, including the extent to which these measures have reflected and responded to the lived experiences of Aboriginal women offenders. Finally, I review the qualitative research that has been undertaken with criminalized Indigenous women as to their experiences within the criminal justice system, and identify gaps in the existing academic literature.

In Chapter 3, I tell the stories of the women who participated in my research, as they were relayed to me and as I understand them. The women's stories are told one by one, without the explicit insertion of analysis or connection to the relevant academic literature. The stories vary in length and in focus, and serve to highlight different problems and issues. Overall, I aim to tell the stories of how each participant ended up becoming criminalized, what happened to her over the course of her interaction with various facets of the criminal justice system, and how she has dealt with the process of being released back into the community. The participants' narratives reveal the deep connection between traumatic life experiences (including abuse, poverty and addiction), and subsequent criminalization. They also demonstrate the extent to which criminal justice interventions, including prison programming and the *Gladue* sentencing methodology, are failing to adequately address the underlying criminogenic factors that often bring Indigenous Canadian women into contact with the criminal justice system.

In Chapter 4, I identify and analyse the themes that emerged from the participants' narratives, and draw connections between their stories and the relevant academic literature, while also noting how their experiences indicate the existence of gaps in this literature. I begin by analysing the participants' pre-carceral life experiences, demonstrating the existence of certain common features that may serve as factors contributing to their criminalization. I then analyse the participants' experiences within federal penal institutions, with a particular focus on their participation in both corrective and Aboriginal-centric prison programming, with a view to assessing the extent to which this programming serves to adequately address their needs. I then review the participants' experiences in other facets of the criminal justice system, including provincial prisons, healing lodges, courtrooms, in their relationships with their own counsel and eventually upon release from prison. Here again, I draw connections between the participants' narratives and the knowledge that has been created through other research, and demonstrate where and why further research is still needed. Finally, in Chapter 5, I conclude by reviewing the findings that my research project has produced as well as their limitations, and make suggestions for areas of future research. Finally, I discuss the likely impact of recent "tough on crime" amendments to Canadian criminal justice legislation on the rate of Indigenous over-incarceration.

CHAPTER TWO: LITERATURE REVIEW

2.1 Introduction

The over-representation of Aboriginal people within Canada's prison population is a glaring reality of the contemporary Canadian criminal justice system, one that has been the subject of extensive research and analysis over the course of the last thirty years. Equally apparent is the fact that Aboriginal men and women do not experience over-incarceration in the same ways. Indigenous women make up a tremendous portion of the female prison population: in 2010/11 they constituted 41% of the women in sentenced custody in Canada, as compared to Aboriginal men's 25% share of the corresponding male population.²⁸ The pre-carceral experiences, criminogenic factors and offending patterns of Aboriginal women mirror neither those of non-Indigenous women, nor those of Aboriginal men. Indeed, Indigenous women experience incarceration and its consequences in ways that make them a distinct (yet heterogeneous) group within Canada's offender population. Nevertheless, as this chapter shall demonstrate, the context and consequences of Aboriginal women's over-incarceration are rarely the subject of significant study and analysis. Rather, they and their experiences tend to be subsumed (and rendered largely invisible) within academic work, government reports, policy initiatives and judicial decisions centred upon either the "female" experience or the "Aboriginal" experience of criminalization and incarceration.

As a result, comparatively little is known about what contributes to Aboriginal women's extremely heightened levels of over-incarceration, and what its consequences are. Nevertheless, this chapter will aim to review what information has been generated on the subjects of both why Indigenous Canadian women are so disproportionately incarcerated, and of how they tend to

²⁸ Statistics Canada, Dauvergne *supra* note 1 at 11.

experience their imprisonment. Firstly, this chapter will examine the contents of the governmental reports and academic analyses that first drew to light both the extent of Aboriginal women's over-representation within the prison system and their differential experience of incarceration. I will then review the governmental responses to Aboriginal over-incarceration, namely the Indigenization efforts adopted within the criminal justice system and the development of an Aboriginal sentencing methodology, before reviewing the critiques that have been made of these approaches. Finally, this chapter will summarize what is known, and more importantly, what remains unknown, about the realities of Aboriginal women's over-incarceration in Canada.

2.2 Documenting Difference: Recognizing the Unique Nature of Aboriginal Women's Over-Incarceration

By the 1980's, it had been repeatedly demonstrated that across Canada, Aboriginal women constituted a larger percentage of the female prison population than Aboriginal men represented within men's prisons.²⁹ Indeed, reporting on the findings of a study of admissions to Saskatchewan's correctional system in 1976-77, Michael Jackson's 1988 report *Locking Up Natives in Canada* noted that while male treaty Indians were twenty-five times more likely than non-Aboriginal men to be incarcerated, that figure was 131 times when treaty Indian women's chances of incarceration were compared with those of their non-Aboriginal counterparts.³⁰ Nevertheless, this fact (as well as its causes and consequences) was accorded only cursory attention in the majority of the governmental reports produced on the subject of Aboriginal over-incarceration.³¹ One exception was the Manitoba Justice Inquiry Report (1991), which, while

²⁹ See *e.g.* Indians and the Law *supra* note 3 and The Native Offender and the Law *supra* note 3.

³⁰ Jackson, *supra* note 3.

³¹ See *e.g.* Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Canada Communication Group Publishing, 1996) and Nova Scotia, *The Royal*

tending to focus on Aboriginal women's experiences as *victims* of crime, dedicated a short section to the distinct manner in which they were being over-incarcerated within the province.³² In so doing, the report recognized the tension between Aboriginal women's experiences as victims of violence, and their experiences as criminalized and incarcerated women.

Ultimately though, the particularities of Aboriginal women's over-incarceration were not the subject of any significant study until the 1990 release of *Creating Choices*, the report of the Task Force on Federally Sentenced Women.³³ The Task Force was charged with examining the state of federal women's corrections in Canada, and its recommendations would ultimately result in the closure of the Prison for Women ("P4W"), at the time the only women's penitentiary in the country. The Task Force differed significantly from other governmental bodies to have examined both women's corrections and Aboriginal over-incarceration, in that it adopted a "women centred" approach, included widespread involvement by non-governmental organizations (primarily women's groups such as the Elizabeth Fry Society), and actually engaged in a significant way with the particular experiences and perspectives of Indigenous women.³⁴ The result was a report that recognized the unique realities and needs of federally sentenced Aboriginal women, distinct from those of both non-Indigenous women and Aboriginal men. Indeed, the Task Force's recommendations were centred on the realization that "[j]ust as we cannot tack women onto a male-oriented system of corrections, so we cannot tack Aboriginal

Commission on the Donald Marshall Jr. Prosecution: Report (Halifax: Queen's Printer, 1989), online: Government of Nova Scotia http://www.gov.ns.ca/just/marshallinquiry/docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf

³² Aboriginal Justice Inquiry of Manitoba, *Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People*, vol 1 (Winnipeg: Queen's Printer, 1991) [Manitoba Justice Inquiry].

³³ The Task Force on Federally Sentenced Women, "Creating Choices: The Report of the Task Force on Federally Sentenced Women" (April 1990), online: Correctional Service of Canada <http://www.csc-scc.gc.ca/text/prgrm/fsw/choices/toce-eng.shtml> [Creating Choices].

³⁴ Margaret Shaw, "Reforming Federal Women's Imprisonment," in Adelberg & Currie, *In Conflict with the Law supra* note 9.

women onto any system be it for men or for women.”³⁵ In fact, it was the recognition of the distinctiveness of federally sentenced Aboriginal women’s needs and experiences that led the Task Force to recommend that a Healing Lodge prison for Aboriginal women be established in one of the Prairie provinces.

Creating Choices, far more than any other governmental report released before or since, paid significant attention to the actual lived experiences of criminalized Indigenous women.³⁶ Federally sentenced Aboriginal women were consulted both by the Task Force itself and again for a supplementary report, the “Survey of Federally Sentenced Aboriginal Women in the Community,” which was appended to *Creating Choices*.³⁷ This survey, undertaken on behalf of the Task Force by Lana Fox and Fran Sugar, themselves Aboriginal women who had previously served federal sentences, summarizes the contents of interviews conducted with thirty-nine federally sentenced Indigenous women concerning their lives before, during and after their federal incarceration. It provides the most thorough account produced to date of the unique pathways to and experiences in prison that Aboriginal women face. The survey revealed, through the words of the research participants, certain trends in the pre-carceral experiences of federally sentenced Indigenous women, including: extreme rates of childhood abuse, as well as of physical and sexual violence in adulthood; struggles with motherhood and high rates of lone parenthood; negative relationships with and lack of trust in white authority figures, including lawyers, judges,

³⁵ *Creating Choices*, *supra* note 33.

³⁶ For a critical analysis of *Creating Choices*, see Kelly Hannah-Moffat, “Creating Choices or Repeating History: Canadian Female Offenders and Correctional Reform” (1991) 18 *Social Justice* 184.

³⁷ Fran Sugar & Lana Fox, “Nistum Peyako Séht’wawin Iskwewak: Breaking Chains” (1989) 3 *CJWL* 465 [Fox and Sugar Report].

counselors and prison guards; racism and excessive security classification within prisons; high rates of suicide and self-harming behaviour and significant issues with substance abuse.³⁸

The authors of the survey also worked to explain in part why and how Aboriginal women's experiences of incarceration differ from those of non-Indigenous women, including by underlining the fact that those few "helping services" in prison tend to be both culturally inaccessible to Indigenous women and administered by white men. As Fox and Sugar ask: "how can we be healed by those who symbolize the worst experiences of our past?"³⁹ Still, the authors remained cautiously optimistic that the women's federal corrections system could be rendered more culturally relevant and healing for Aboriginal women, while nevertheless recognizing the inability of the prison system to remedy many of the personal problems that tend to bring Indigenous women into such heightened contact with the law:

No amount of tinkering with prisons can heal the before-prison lives of the Aboriginal women who live or have lived within their walls. Prison cannot remedy the problem of the poverty of reserves. It cannot deal with immediate or historical memories of the genocide that Europeans worked upon our people. It cannot remedy violence, alcohol abuse, sexual assault during childhood, rape, and other violence Aboriginal women experience at the hands of men. Prison cannot deal with the past abuse of foster homes, or the indifference and racism of Canada's justice system in its dealings with Aboriginal people. However, the treatment of Aboriginal women within prisons can begin to recognize that these things are the realities of the lives that Aboriginal women prisoners have led. By understanding this point, we can begin to make changes that will promote healing instead of rage.⁴⁰

To a certain extent, the authors' call for reform was heeded. Five years after the release of *Creating Choices*, the Okimaw Ohci Healing Lodge ("OOHL") prison for women was opened in Saskatchewan, making it the country's first penitentiary designed and largely administered in accordance with Aboriginal culture, values and notions of healing.

³⁸ *Ibid* at 475.

³⁹ *Ibid* at 477.

⁴⁰ *Ibid* at 469.

The release of *Creating Choices*, and the adoption of many of its recommendations, spurred increased interest across (primarily feminist) legal circles in the experiences of federally sentenced women in general, and to a lesser extent in the unique circumstances of Aboriginal female offenders.⁴¹ These early academic analyses of Aboriginal women's over-incarceration also looked to the pre-carceral experiences of Indigenous women as a possible explanation for their criminalization, while focussing primarily on the relationship between Indigenous women's disproportionate rates of violent victimization, and their heightened levels of incarceration. One of the earliest such works, predating even the release of *Creating Choices*, is Carol LaPrairie's "Native Women and Crime: A Theoretical Model," which argues that Aboriginal women's over-incarceration stems in part from social disorganization within Indigenous communities, which in turn results in extreme levels of violence against Indigenous women.⁴² Similarly, Margaret Jackson traced the over-incarceration of Aboriginal women to their experiences of violent victimization, which she linked to the social, economic and cultural breakdown brought on by colonialism:

[T]he assimilationist context leads to problems with the maintenance of social organization for Aboriginal peoples and combined with racism and poverty lead to the abuse of alcohol and violent behaviour towards women. In turn this can affect Aboriginal women's own adaptation to non-Aboriginal social norms which results in the increased likelihood of disproportionate involvement with the State justice system and the high probability of return to the cycle of violence and criminality.⁴³

⁴¹ See e.g. Faith *supra* note 9; Adelberg & Currie *supra* note 9; Patricia Monture-Angus, "The Lived Experience of Discrimination: Aboriginal Women Who Are Federally Sentenced" (2002), online: Elizabeth Fry Society <http://www.elizabethfry.ca/submissn/aborigin/1.htm> [Monture-Angus, Lived Experience] and Stephanie Hayman, *Imprisoning our Sisters: The New Federal Women's Prisons in Canada* (Montreal: McGill-Queen's University Press, 2006) [Hayman, Imprisoning our Sisters].

⁴² LaPrairie, Native Women and Crime *supra* note 4 at 134.

⁴³ Margaret A. Jackson, "Canadian Aboriginal Women and Their 'Criminality': The Cycle of Violence in the Context of Difference" (1999) 32 *Austl Crim & NZJ* 197 at 204.

Consequently, Jackson stressed the importance of looking to the “antecedent experience” of Aboriginal female offenders in order to increase understanding of their heightened levels of criminalization and incarceration.

The role that the pre-carceral lives of Aboriginal female offenders has played in contributing to their criminalization was again the subject of government scrutiny in Justice Louise Arbour’s 1996 *Report on Certain Events at the Prison for Women in Kingston*. Though the Arbour Report was primarily focussed upon analysing why and how particularly brutal security procedures were used on inmates at P4W, and thus devoted less time than *Creating Choices* to analysing the needs and realities of federally sentenced Aboriginal women, the report nevertheless recognized the distinctive nature of their experiences, before, during and after incarceration:

Aboriginal women are, in many ways, quite distinct culturally, linguistically, socially and in their personal histories from the broader population of federally sentenced women. While diversity also exists among Aboriginal women, those who are federally sentenced have much more in common by virtue of their background than other women prisoners. . . . Federally sentenced aboriginal women have significantly different personal and social histories in a number of ways. The social and economic marginalization of Aboriginal people, particularly status Indians living off reserve, is acute among Aboriginal women. The relationship of marginalization to the criminal justice system has been well-documented. As a group, Aboriginal women come to prison at a younger age than non-Aboriginal women. They generally have lower levels of education and employment. Alcohol and drug abuse is a greater problem for them and is reported to have played a greater role in their offending. They also have a greater incidence of past physical and sexual abuse. . . . The criminal justice histories of Aboriginal women also stand out as different in significant ways from those of other women prisoners. They tend to have more previous admissions and incarcerations than non-Aboriginal women in prison. While Aboriginal women tend to be serving shorter sentences, both provincially and federally they tend to be in prison for more violent offences.⁴⁴

⁴⁴ Commission of Inquiry into Certain Events at the Prison for Women in Kingston, *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (Commissioner: Arbour J.) (Ottawa: Public Works

In light of the foregoing, the Arbour Report recommended that the OOHL be open to all federally sentenced Indigenous women, regardless of their security classification.⁴⁵ This recommendation was never heeded. Indeed, despite the documented “difference” of Aboriginal women’s experiences both before and within prison, as compared to the experiences of both Indigenous men and non-Indigenous women, the particular needs and realities of the Aboriginal female offender population have been continued to be overlooked throughout the criminal justice system.

2.3 The Federal Government Responds: Indigenization Efforts and Sentencing Reform

Governmental responses to the Aboriginal over-incarceration crisis began in earnest in the 1980’s, and have since been dominated by two key components: the “Indigenization” of existing criminal justice programs and policies (such as through the development of Aboriginal cultural and corrective prison programming and specialized healing lodge prisons), and the adoption of a specific methodology to be applied during the sentencing of Aboriginal offenders. However, these initiatives have only to a certain extent been responsive to the particularities of Aboriginal female offenders’ lived experiences. While the Indigenization efforts, particularly those related to the development of culturally appropriate prisons and prison programming, have included specific measures aimed at addressing the unique needs and realities of criminalized Aboriginal women, the sentencing methodology adopted for Indigenous offenders was designed and has been implemented without any real attention to the ways in which Aboriginal women’s over-incarceration differs from that of Aboriginal men. As shall be demonstrated below, this

and Government Services Canada, 1996), online: Justice Behind the Walls http://www.justicebehindthewalls.net/resources/arbour_report/arbour_rpt.htm at 4.3.4 [Arbour Report].

⁴⁵ *Ibid* at 4.3.8.

silencing of the female Indigenous experience of criminalization and imprisonment has been the subject of significant criticism.

2.3.1 : *Indigenization of the Penal System*

The Indigenization of the Canadian prison system began in the 1970's, with the self-help initiatives of Aboriginal inmates who banded together to create the Native Brotherhood and Sisterhood networks, offering support and cultural programming to incarcerated Indigenous individuals.⁴⁶ By the 1980's, the CSC, in recognition of the unique circumstances and needs of Indigenous prisoners, had begun to adopt policies on Aboriginal spirituality in federal prison settings, and to establish corrective and cultural prison programs designed specifically for Indigenous offenders, including access to Elders and traditional ceremonies over the course of incarceration.⁴⁷ Many of these policies were in turn embodied in the provisions of the 1992 federal *Corrections and Conditional Release Act* ("CCRA"), of which a Part is dedicated to Aboriginal offenders.⁴⁸ The CCRA provides that the CSC will offer programs "designed particularly to address the needs of Aboriginal offenders," will guarantee Aboriginal spirituality and spiritual leaders / Elders the same status as other religions and religious leaders and may transfer Aboriginal offenders into the custody of Aboriginal communities with which the Minister of Justice has concluded an agreement for the provision of community-based supervision.⁴⁹ The implementation of these CCRA provisions is in turn supplemented by Commissioner's Directive 702 on Aboriginal Corrections, issued in 1995 and most recently

⁴⁶ LaPrairie, Examining Aboriginal Corrections *supra* note 4 at 78-79.

⁴⁷ *Ibid* at 79.

⁴⁸ *Corrections and Conditional Release Act*, RSC 1992, c 20 [CCRA].

⁴⁹ *Ibid* at ss. 80, 81 and 83.

updated in June 2012.⁵⁰ This Directive instructs the Institution Heads of all federal prisons to ensure that a number of services are provided for Aboriginal inmates, including: access to Elders and Aboriginal spiritual advisors; appropriately equipped facilities in which to conduct confidential spiritual services; access to regular traditional ceremonies, such as smudging and sweating; and the availability of “culturally competent” staff to work with Aboriginal inmates.⁵¹ As a result of the adoption of these policies, many Indigenous women incarcerated in federal institutions now have regular access to Elders and to Aboriginal spiritual ceremonies (such as sweating, smudging, drumming and potlatches), as do, to a more varied extent, provincially sentenced Indigenous women.

2.3.1.1 Aboriginal-centric Prison Programming

Also as a result of these policy and legislative reforms, the CSC has developed a range of culturally-based corrective prison programming, designed around what the CSC identifies to be the specific needs and circumstances of Aboriginal offenders. These corrective programs, while varying in their availability across institutions, have been implemented federally and to a lesser extent, provincially. For Aboriginal women, these include the *Spirit of a Warrior* program, the *Circles of Change* program, and the *Family Life Improvement* program.⁵² Each program, while differing in its central focus, includes components that are designed to increase the participants’ knowledge of and pride in Aboriginal history and culture, as well as women’s traditional place within Aboriginal societies. *Circles of Change* is intended to address the criminogenic needs of Aboriginal female offenders, and includes modules addressing: “the process of change;

⁵⁰ Correctional Service of Canada, *Commissioner’s Directive 702: Aboriginal Offenders* (Ottawa: Correctional Service of Canada, June 2012), online: Correctional Service of Canada <http://www.csc-scc.gc.ca/text/plcy/cdshtm/702-cde-eng.shtml> [Commissioner’s Directive 702].

⁵¹ *Ibid.*

⁵² Doris Fortin, *Program Strategy for Women Offenders* (Ottawa: Correctional Service of Canada, 2004), online: Correctional Service of Canada http://www.csc-scc.gc.ca/text/prgrm/fsw/fsw_18/fsw18_e.pdf at 21.

increasing the knowledge of Canadian Aboriginal culture; communication styles; self-esteem and self-care issues; problem solving skills; woman's role in her family of origin; healthy and unhealthy relationships; and social injustice."⁵³ Similarly, the *Spirit of a Warrior* program focusses on the lived experiences of its participants, aiming to "reduce the risk to re-offend with violence, reduce risk to relapse, improve family relations, improve ability to communicate with others, improve coping skills, and adapt Aboriginal culture and spirituality into all aspects of behaviour and everyday life."⁵⁴

The Aboriginal-centric corrective prison programming developed by the CSC has been subjected to a certain, but rather limited, amount of criticism, largely centred on its perceived tendency to enforce a hegemonic conception of what it means to be an Indigenous woman in Canada. As Joane Martel and Renée Brassard argue:

Aboriginal lobby groups have been significant players in the process of Aboriginalization of Canadian prisons. Indeed, Canadian criminal justice progressively Aboriginalized its apparatus as a result of a string of public inquiries, government reports, and pressures from Aboriginal lobbies with a goal of cultural re-possession following the massive cultural dispossession of Aboriginal peoples. In the midst, the Canadian government has espoused one traditional vision of what Aboriginal culture is – a vision that has been legally and discursively devised and disseminated to Aboriginals throughout prisons.

[...] Noteworthy is that this authoritative Aboriginality is based upon the identity criteria of the Canadian government – under the impetus of Aboriginal lobbies – and is a clear racialized construction of the otherness of Aboriginal peoples. When one enters prison (especially a federal prison), she is inevitably confronted to this institutionally imposed Aboriginality. Whether or not she will endorse this version of Aboriginality as her own is another matter.⁵⁵

In a similar vein, the CSC's Aboriginal prison programming has been criticised for its failure to reflect diversity amongst Aboriginal peoples, culturally, spiritually and linguistically. For

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Joane Martel and Renée Brassard, "Painting the Prison 'Red': Constructing and Experiencing Aboriginal Identities in Prison" (2008) 38 *British Journal of Social Work* 340 at 344 [Martel & Brassard, *Painting the Prison*].

example, Aboriginal prison programming tends to overlook the cultural background of Inuit women, to whom practices such as sweating and smudging are foreign.⁵⁶ Furthermore, access to Aboriginal prison programming has been reported to be quite limited for Indigenous women who serve their sentences at institutions other than the OOHL.⁵⁷ However, overall very little research and analysis has been conducted on the Aboriginal-centric prison programming on offer within women's institutions, and as such little is known about its availability, reception and efficacy, in terms of its ability to respond to the factors that tend to bring Indigenous women into conflict with the criminal justice system.

2.3.1.2. The Creation of Pathways Living Units and the Okimaw Ohci Healing Lodge

Another form of Indigenization pursued by the CSC has been the establishment of specialized living units and healing lodge prisons, which are designed to permit Indigenous offenders to serve their sentences in more culturally-appropriate environments. Pathways living units, which according to the CSC are designed to “provide a traditional environment within CSC institutions for Aboriginal offenders dedicated to following a traditional healing path,” have been implemented in a handful of federal penitentiaries, including the Fraser Valley Institute for Women (“FVI”), in Abbotsford, British Columbia.⁵⁸ The CSC has also opened a range of healing lodge prisons across the country, providing an opportunity for Aboriginal offenders to serve their sentences in prison environments that are largely designed and operated in an Aboriginal-centric manner.⁵⁹ The first healing lodge prison to open was the OOHL, the creation of which was

⁵⁶ *Ibid* at 344.

⁵⁷ Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* (Ottawa: Canadian Human Rights Commission, 2003) at 6.1.3.

⁵⁸ Correctional Service of Canada, *Strategic Plan for Aboriginal Corrections: Innovation, Learning and Adjustment 2006-07 – 2010-11*, online: Correctional Service of Canada http://www.csc-scc.gc.ca/text/prgrm/abinit/documents/spac06_e.pdf at 10 [CSC, Strategic Plan].

⁵⁹ Correctional Service of Canada, “Healing Lodges for Aboriginal Offenders,” online: Correctional Service of Canada <http://www.csc-scc.gc.ca/text/prgrm/abinit/challenge/11-eng.shtml>.

recommended by the Task Force on Federally Sentenced Women. Located on the Nekaneet reserve in Maple Creek, Saskatchewan, the OOHL has been housing minimum and medium security classified federally sentenced Aboriginal women, as well as a smaller number of non-Indigenous women, since 1995. The prisoners at the OOHL participate daily in a healing circle, have regular access to a sweat lodge on the prison grounds and to Elders drawn from both the local Neekaneet community and from further afield, as well as access to Aboriginal prison programming and to cultural activities such as dancing, drum-making and beading. The OOHL has had some measurable successes; for example, the CSC has discovered that Aboriginal offenders who serve their sentences at healing lodge prisons (including at the OOHL) are more likely to successfully complete their post-release supervision periods than are Indigenous offenders incarcerated in mainstream federal institutions.⁶⁰ In turn, the OOHL has been accorded rather favourable treatment by legal academics and commentators, many of whom view its establishment as, at the very least, a move in the right direction.⁶¹

Nevertheless, the institution, and particularly the manner in which its programming is implemented, has not gone uncriticized. Patricia Monture-Angus, noting that the majority of the programming offered at the OOHL remains CSC “core” programming (as opposed to specialized Aboriginal-centric programming), argued that the creation of the OOHL has not necessarily had a positive impact in terms of the quality of the programming made available to incarcerated

⁶⁰ CSC, Strategic Plan *supra* note 58 at 14.

⁶¹ Lee Anne Schiendein, “The Aboriginal Healing Lodge: A First Step” (1992), 56 Sask L Rev 427; Lori Sparling “A Suitable Place: Positive Change for Federally Sentenced Aboriginal Women in Canada (1999) 19 Canadian Woman Studies 116; Ellen Adelberg and the Native Women’s Association of Canada, “Aboriginal Women and Prison Reform,” in Adelberg & Currie, *In Conflict with the Law* *supra* note 9; Hayman, *Imprisoning our Sisters* *supra* note 41; Stephanie Hayman, “Prison Reform and Incorporation : Lessons from Britain and Canada,” in Hannah-Moffat, Kelly & Margaret Shaw, eds., *An Ideal Prison? Critical Essays on Women’s Imprisonment in Canada* (Halifax: Fernwood Publishing, 2000) and Norma Green, “Okimaw Ohci Healing Lodge: A Federally Sentenced Women's Initiative” (2000) 12 Forum on Corrections Research 48.

Aboriginal women.⁶² Anke Allspach has made similar observations, noting that former OOHL prisoners have reported great appreciation for the cultural programming available at the institution, but have also struggled with the contradiction inherent in “mandated healing,” as well as with the western-centric programming they were obliged to take in order to secure conditional release.⁶³ Similarly, Shoshana Pollack, reporting on the results of a qualitative study that she undertook with sixty-eight federally sentenced women across Canada, found that women imprisoned at the OOHL often feel that the ability of the prison to promote healing was hindered by the fact that it remained, at its core, a women’s federal penitentiary.⁶⁴ Indeed, the very fact that the OOHL is open only to federally sentenced women with minimum and medium security classifications limits its ability to promote healing amongst incarcerated Indigenous women, who experience their highest levels of over-representation within the maximum security classified and provincially sentenced female offender populations.⁶⁵ Furthermore, the institution’s location in rural southern Saskatchewan leaves federally sentenced Aboriginal women from other provinces in the unenviable position of having to choose between access to a more healing prison experience, and proximity to their families and support networks. Consequently, there are many reasons to believe that while the OOHL represents a more culturally-appropriate alternative to the other regional federal women’s prisons, its ability to promote improvement in the rate of incarceration experienced by Indigenous women in Canada remains limited. Nevertheless, the

⁶² Monture-Angus, Lived Experience *supra* note 41.

⁶³ Anke Allspach, “Landscapes of (neo)-Liberal Control: The Transcarceral Spaces of Federally Sentenced Women in Canada” (2010) 17 *Gender, Place and Culture* 705 at 715-716.

⁶⁴ Shoshana Pollack, “You Can’t Have it Both Ways: Punishment and Treatment of Imprisoned Women” (2009) 20 *Journal of Progressive Human Services* 112 at 120-121.

⁶⁵ Jena McGill, “An Institutional Suicide Machine: Discrimination Against Federally Sentenced Aboriginal Women in Canada” 2 *Race/Ethnicity: Multidisciplinary Global Contexts* 89 at 98; and Aboriginal Corrections Policy Unit, Public Safety Canada, *Marginalized: The Aboriginal Women’s Experience in Federal Corrections* by M. Wesley (Ottawa: Public Safety Canada, 2012), online: Public Safety Canada <http://www.publicsafety.gc.ca/res/cor/apc/apc-33-eng.aspx> at 24 [Public Safety Canada, *Marginalized*].

experiences of the women who have served their sentences at the OOHHL have only been subjected to limited amounts of qualitative research and analysis.

2.3.2 : Recognition of Aboriginal “Circumstances” at Sentencing

The second prong of the governmental response to the Aboriginal over-incarceration crisis has been the adoption of a specific sentencing methodology to be applied for Indigenous offenders, as mandated by s. 718.2(e) of the *Criminal Code*. Introduced in 1996 as part of a series of *Criminal Code* amendments that included the codification of the underlying principles and purposes of sentencing, s. 718.2(e) directs the judiciary that “all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, *with particular attention to the circumstances of aboriginal offenders.*” As then-Attorney General Allan Rock made clear during the debates surrounding the passage of these amendments, the specific mention of the “circumstances of Aboriginal offenders” was meant to have a remedial effect and to result in the reduction of rates of Indigenous over-incarceration:

[T]he reason we referred specifically there to Aboriginal persons is that they are sadly overrepresented in the prison populations of Canada ... [w]hat we’re trying to do, particularly having regard to the initiatives in Aboriginal communities to achieve community justice, is to encourage courts to look at alternatives where it’s consistent with the protection of the public – alternatives to jail – and not simply to resort to that easy answer in every case.⁶⁶

However, as evidenced by much of the early interpretation of s. 718.2(e), the judiciary was not necessarily convinced that the directive was remedial in nature.⁶⁷ Indeed, it was not until 1999, with the Supreme Court of Canada’s decision in *R. v. Gladue*, that the remedial nature of s.

⁶⁶ Canada, House of Commons Standing Committee on Justice and Legal Affairs: Minutes of Proceedings and Evidence, No. 62 (17 November 1994) at 15.

⁶⁷ See e.g. *R. v. McDonald* (1997), 113 C.C.C. (3d) 418 and *R. v. J.(C.)* (1997), 119 C.C.C. (3d) 444.

718.2(e) was clarified and a sentencing methodology to be applied to every Aboriginal offender's case was established.⁶⁸

2.3.2.1. *The Story of Jamie Tanis Gladue*

In September 1995, on the day of her nineteenth birthday, Jamie Tanis Gladue killed her twenty year old common law husband, Reuben Beaver. Jamie, who already had a young daughter, was five months pregnant with their second child at the time of his death. Born one of nine children to a Cree Mother and a Métis father, Jamie had been raised in a small Albertan community before moving to Nanaimo, British Columbia. Jamie and Reuben had a tumultuous relationship, one that would often turn abusive when they were drinking. Reuben had previously been convicted of assaulting Jamie, while she was pregnant with their first child. On the day of Jamie's birthday, she and Reuben were celebrating with family and friends, and had been drinking heavily all day. Jamie suspected that Reuben was having an affair with her sister, a fact that she mentioned to friends at the party. She said, "the next time he fools around on me, I'll kill him." Later in the evening, Reuben disappeared and Jamie went looking for him, ultimately finding him in her sister's townhome. Jamie and Reuben returned together to their unit, where they fought bitterly. Jamie was enraged and confronted Reuben about his infidelities. He taunted Jamie, calling her "fat, ugly, and not as good as the rest." A physical fight ensued between them. Bruising was later found on Jamie's arm and collarbone area, consistent with her having been in a physical altercation. Reuben ultimately ended up fleeing their unit and running down the hall towards Jamie's sister's home. Jamie pursued him with a large knife, telling Reuben that he had better run. She stabbed Reuben in the chest as he stood at the door to her sister's unit, piercing his heart and killing him. As Reuben lay collapsed on the floor, Jamie was observed dancing

⁶⁸ *Gladue supra* note 5. See also the decision of the British Columbia Court of Appeal, *R. v. Gladue* [1997] B.C.J. No. 2333.

around his body and speaking to Reuben, as though she did not realize she had killed him. Jamie was charged with second degree murder, but ultimately pleaded guilty to manslaughter.

2.3.2.2 *The Supreme Court of Canada Creates the Gladue Methodology*

At sentencing, only minimal attention was paid to Jamie's Aboriginal heritage. In fact, it was not raised in defence counsel's submissions on sentence, though the judge did inquire as to and was made aware of Jamie's Cree ancestry.⁶⁹ In the end, the judge held that the fact that Jamie lived off-reserve meant that consideration of her circumstances as an Aboriginal offender as directed by s. 718.2(e) of the *Criminal Code* was not required and he sentenced Jamie to three years' imprisonment for causing Reuben's death.⁷⁰ She appealed her sentence, arguing that the judge had erred by, among other things, failing to consider her Aboriginal heritage in accordance with s. 718.2(e).⁷¹ In dismissing her appeal, the majority of the British Columbia Court of Appeal found that on the facts of her case there was no reason to give special consideration to her status as an Aboriginal offender.⁷² Jamie then appealed her sentence to the Supreme Court of Canada, thus providing the highest court with its first opportunity to consider the scope, meaning and proper interpretation of the new Aboriginal sentencing provision. The issue on appeal was whether the Court of Appeal had erred in finding that the sentencing judge had correctly applied s. 718.2(e) in imposing a sentence of three years' incarceration.⁷³ The Supreme Court unanimously found that the sentencing judge had erred as follows: by limiting the application of s. 718.2(e) to Aboriginal offenders who live on reserve, by failing to consider the systemic or background factors that may have influenced Jamie's criminal behaviour and by ignoring the

⁶⁹ *Gladue supra* note 5 at para. 12.

⁷⁰ *Ibid* at paras. 13 and 18.

⁷¹ *Ibid* at para. 19.

⁷² *Ibid* at para. 20.

⁷³ *Ibid* at paras. 24 and 31.

distinct conception of sentencing held by Jamie, Reuben's family and their community.⁷⁴

Nevertheless, given the fact that by the time the judgment was rendered, Jamie had been released on full parole (after serving six months in prison and six months on day parole), a new sentencing hearing was not ordered.⁷⁵

In rendering its judgment, the Supreme Court explained that s. 718.2(e) has a remedial purpose, and was adopted with a view to ameliorating the over-representation of Aboriginal people in the Canadian penal system.⁷⁶ The court also made clear that the s. 718.2(e) directive imposes a significant duty upon judges as they pass sentence on Indigenous offenders: to carefully consider both the unique systemic or background factors that may have played a role in bringing this individual into contact with the criminal justice system, and the possibility of imposing a sanction other than imprisonment, particularly in light of the offender and his or her community's cultural conceptions of appropriate punishment and healing.⁷⁷ Furthermore, if no alternatives to incarceration exist in the circumstances, the sentencing judge is instructed to carefully consider a reduction in the length of the sentence imposed.⁷⁸

The starting point for the Supreme Court's analysis was an acknowledgement of the unique nature of the Aboriginal experience, and the relationship between that experience and engagement with the criminal justice system. The court identified a gender-neutral set of "background factors" that are often associated with the heightened levels of criminalization existing amongst Aboriginal Canadians.⁷⁹ These factors, namely low incomes, high unemployment, lack of opportunities and options, lack or irrelevance of education, substance

⁷⁴ *Ibid* at para. 94.

⁷⁵ *Ibid* at para. 98.

⁷⁶ *Ibid* at para. 33.

⁷⁷ *Ibid* at paras. 37 – 38 and 82 – 83.

⁷⁸ *Ibid* at para. 93.

⁷⁹ *Ibid* at para. 67.

abuse, loneliness, and community fragmentation, set the circumstances of Indigenous offenders apart from those of other offenders:

It is true that systemic and background factors explain in part the incidence of crime and recidivism for non-aboriginal offenders as well. However, it must be recognized that the circumstances of aboriginal offenders differ from those of the majority because many aboriginal people are victims of systemic and direct discrimination, many suffer from the legacy of dislocation, and many are substantially affected by poor social and economic conditions. Moreover, as has been emphasized repeatedly in studies and commission reports, aboriginal offenders are, as a result of these unique systemic and background factors, more adversely affected by incarceration and less likely to be “rehabilitated” thereby, because the internment milieu is often culturally inappropriate and regrettably discrimination towards them is so often rampant in penal institutions.⁸⁰

The court concluded that it is the distinctive nature of the experience of Aboriginal Canadians that warrants the adoption of a different approach to sentencing, one tailored to the circumstances and cultural perspectives of Indigenous offenders.⁸¹ However, the court did not undertake an analysis of how these background factors may manifest themselves differently in the lives of Indigenous women than for men, nor did it engage in any discussion of how the fact of being an Aboriginal woman may have affected Jamie Gladue and/or the commission of her offence.

2.3.2.3 *Different Method, Same Results: The Effect of R. v. Gladue*

The adoption of the *Gladue* sentencing paradigm ignited a maelstrom of commentary within both the popular media and the legal community. Reception of the decision was mixed: while some heralded the *Gladue* paradigm as a long overdue re-evaluation of how the criminal justice system ought to treat Indigenous Canadians, others criticized it as the implementation of a

⁸⁰ *Ibid* at para. 68.

⁸¹ *Ibid* at paras. 67 – 68.

“race-based” sentencing discount.⁸² What is certain though is the fact that in the fourteen years since its adoption, the *Gladue* methodology has not resulted in a reduction in the rate of over-incarceration experienced by Indigenous Canadians.⁸³ Indeed, while the non-Aboriginal federal prison population has increased by 2.4% over the last ten years, the Aboriginal inmate population has increased by 37.3%.⁸⁴ As a result, Aboriginal people now make up 27% of adults in provincial and territorial custody and 20% of those in federal custody, while representing only 3% of the Canadian adult population as a whole.⁸⁵

The Supreme Court of Canada recently revisited the interpretation of s.718.2(e) in the case of *R. v. Ipeelee*, in which the court was asked to determine whether and to what extent the *Gladue* methodology ought to be applied at sentencing for a breach of a long-term supervision order by an Aboriginal offender.⁸⁶ Concluding that the *Gladue* principles do apply in such circumstances, the court took the opportunity to clarify certain aspects of the *Gladue* methodology, such as its continued application in the context of violent offences. While repeatedly stressing that the sentencing methodology alone cannot solve the problem of Aboriginal over-incarceration, the Supreme Court nevertheless underlined that sentencing courts can play a role in its reduction, such as by recognizing that the residual effects of colonialism (*e.g.*, family breakdown, lack of education and high unemployment) are often linked to

⁸² Roach & Rudin, *Judicial and Political Reception supra* note 6; Stenning & Roberts, *Empty Promises supra* note 6; Roach & Rudin, *Broken Promises supra* note 6; Stenning & Roberts, *Rejoinder supra* note 6; Turpel-Lafond *supra* note 6; Nowlin *supra* note 6.

⁸³ For analyses of why the *Gladue* paradigm has failed to reduce rates of Aboriginal over-incarceration, see Kent Roach, “One Step Forward, Two Steps Back: *Gladue* at Ten and in the Courts of Appeal” (2009) 54 *Crim LQ* 470 and Jonathan Rudin, “Assessing Aboriginal Over-representation post-*Gladue*: A Realistic Assessment of How Social Change Occurs” (2009) 54 *Crim LQ* 447.

⁸⁴ Office of the Correction Investigator, *Annual Report of the Office of the Correctional Investigator 2011-2012* (Ottawa: Office of the Correctional Investigator, 2012), online: Office of the Correctional Investigator <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20112012-eng.aspx> at 35 [OCI, 2011-2012 Report].

⁸⁵ Statistics Canada, *Dauvergne supra* note 1 at 11.

⁸⁶ *R. v. Ipeelee* 2012 SCC 13 [*Ipeelee*].

criminalization and by ensuring that they are not used as justification for the imposition of carceral sentences on Indigenous offenders. The Supreme Court also took the opportunity to stress the remedial nature of s. 718.2(e), as well as to underline the fact that the provision demands a less formalistic approach to parity in the sentencing of Indigenous offenders.⁸⁷ Furthermore, the court made clear that a sentencing judge's failure to appropriately apply the *Gladue* sentencing methodology would be deemed an error justifying appellate intervention.⁸⁸ However, as in *Gladue*, the Supreme Court made no mention of the distinctive experiences of Indigenous women in the Canadian criminal justice system.

2.3.2.4 *The Missing Women of R. v. Gladue*

The failure of the *Gladue* sentencing methodology to reduce Aboriginal over-incarceration becomes significantly more glaring when the rates of Indigenous women's representation within the prison system are isolated. Over the last ten years, the number of Aboriginal women in custody has increased by 86.4%, as compared to 25.7% for Aboriginal men.⁸⁹ While the reasons for this alarming trend are certainly complex and variable, these statistics demonstrate that governmental responses to the Indigenous over-incarceration crisis have been particularly ineffective when it comes to addressing the underlying causes of Aboriginal women's engagement with the criminal justice system. These results were predicted by feminist commentators, who have criticized the *Gladue* paradigm since its adoption for failing to address the gendered aspect of the Aboriginal experience of colonialism and its effects upon the lived experiences of Indigenous women. Specifically, feminist legal scholars have argued that the *Gladue* methodology ignores the extremely heightened extents to which Aboriginal

⁸⁷ *Ibid* at para 79.

⁸⁸ *Ibid* at para 87.

⁸⁹ OCI, 2011-2012 Report *supra* note 84 at 35.

women are violently victimized, experience poverty, live as lone parents and are socially marginalized within both Aboriginal and non-Aboriginal communities, despite the fact that many of these issues were present in the facts surrounding Jamie Gladue's offence. By virtue of its failure to acknowledge these aspects of Indigenous women's lives, as well as their connection to criminalization, it is argued that the *Gladue* methodology is rendered unresponsive to the criminogenic factors of Aboriginal women, and is thus limited in its ability to reduce their rates of over-incarceration.

Statistically, Aboriginal women in Canada experience violent victimization at a rate almost three times higher than that for non-Indigenous women.⁹⁰ Like so many Aboriginal women, Jamie Gladue was a victim of spousal violence. However, the Supreme Court of Canada, though made aware of Jamie's experiences of domestic violence, did not analyse the connection between her experience of violent victimization and her own violent act, nor did the Court recognize the experience of violent victimization as a "background factor" to be considered at sentencing for other Indigenous female offenders. As Renée Pelletier argued shortly after the Supreme Court of Canada rendered its decision in *R. v. Gladue*:

Violence and abuse towards Aboriginal women have become a contemporary reality, which contradicts the traditional values of many communities that were matrilineal or matrilocal in nature. This violence results in profound effects on the Aboriginal woman's self-image, self-worth and identity. The violence and abuse directed towards Aboriginal women should be recognized as a "unique systemic or background factor" that may serve to explain their criminality. The failure of the Supreme Court of Canada to recognize this factor resulted in the dismissal of Gladue's appeal and will likely serve to mask the current realities of many other Aboriginal women before Canada's criminal courts.⁹¹

⁹⁰ Statistics Canada: Juristat, *Violent Victimization of Aboriginal Women in the Canadian Provinces, 2009* by S. Brennan (Ottawa: Minister of Industry, 2011), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11439-eng.htm> at 5 [Statistics Canada, Brennan].

⁹¹ Renée Pelletier, "The Nullification of Section 718.2(e): Aggravating Aboriginal Over-Representation in Canadian Prisons" (2001) 39 Osgoode Hall LJ 469 (QL) at para. 19.

The *Gladue* paradigm has also been criticized for failing to recognize other aspects of the Aboriginal women's lived experiences as "background factors" capable of explaining their criminalization, including their high rates of lone parenthood (more than twice that of non-Indigenous women⁹²), their extreme levels of poverty (they have median annual incomes that are \$3,000 lower than those of Indigenous men and \$5,000 lower than those of non-Indigenous women⁹³) and their experience of systemic discrimination based on race and gender, from both the Canadian state and from their Aboriginal communities.⁹⁴

Ultimately, this argument is centred upon the notion that the *Gladue* sentencing methodology fails criminalized Aboriginal women by divorcing their experience of being female from their experiences as Indigenous Canadians. Indeed, many feminist commentators argue that the experiences of Indigenous women in the criminal justice system must be understood through the lens of intersectionality, in recognition of the fact that focussing on race, gender or socio-economic class alone has a tendency to mask the complex ways in which these factors interact with one another in the lives of marginalized women.⁹⁵ In the case of criminalized Aboriginal women, this means that their experiences cannot be fully understood when they are categorized simply as "Aboriginal" experiences or as "female" ones. As Angela Cameron argued, in support of the proposition that the gendered experience of colonialism and its consequences ought to be considered as "background factors" in the *Gladue* analysis:

⁹² Statistics Canada, *First Nations, Métis and Inuit Women* by V. O'Donnell and S. Wallace (Ottawa: Minister of Industry, 2011), online: Statistics Canada [http://www.oaith.ca/assets/files/Publications/Government% 20 Documents/Women In Canada 6thReport/WmCanada_AborigWm.pdf](http://www.oaith.ca/assets/files/Publications/Government%20Documents/Women%20In%20Canada%206thReport/WmCanada_AborigWm.pdf) at 20 [Statistics Canada, O'Donnell & Wallace].

⁹³ *Ibid* at 27.

⁹⁴ Angela Cameron, "R. v. *Gladue*: Sentencing and the Gendered Impact of Colonialism" in John D. Whyte, ed, *Moving Toward Justice: Legal Traditions and Aboriginal Justice* (Saskatoon: Purich Publishing, 2008) 160 at 167-172.

⁹⁵ Toni Williams, "Intersectionality Analysis in the Sentencing of Aboriginal Women in Canada: What Difference Does it Make?," in Emily Graham et al, eds, *Intersectionality and Beyond: Law, Power and the Politics of Location* (New York: Routledge-Cavendish, 2009) at 79-82 [Williams, Intersectionality Analysis].

Considering gender in sentencing is not about “adding” gender discrimination to racial discrimination to arrive at “double discrimination,” nor is it an exercise in bare comparison between Aboriginal men and women. ... Rather, it is an attempt to understand the ways in which systems of sexism and racism reinforce and maintain each other in the lives of Aboriginal women, with a view to how these insights can serve as a tool of anti-subordination for both Aboriginal men and women in conflict with the law.⁹⁶

Cameron stresses the important role of defence counsel in this process, arguing that they must provide the sentencing judge with gender-specific facts, both about the particular Aboriginal woman being sentenced, but also about the position of Indigenous women in Canadian society, more generally.⁹⁷

Indeed, as Gillian Balfour has argued, not only were these gendered factors ignored by the Supreme Court of Canada, they are also being ignored by defence counsel and lower court sentencing judges:

The strategies of lawyers and decisions of sentencing judges – as revealed in the legal narratives of sentencing transcripts – do not recognize the gendered conditions of endangerment in Aboriginal women’s communities as a systemic factor. What is to be done about the limits of Canada’s restorative justice sentencing practices to fully recognize violence against Aboriginal women, to allow for a more complex and nuanced understanding of the relationalism of offenders’ and victims’ lives, and to see Aboriginal women as “individuals embodied in a network of relationships, which include the community and the state” (Hudson, 2006, p. 37). In this way, the responsibility and culpability of an Aboriginal woman charged with a serious offence is relational to (not justified by) conditions of poverty and gendered violence, and responsibility is shared by the community and the state. Such a paradigm shift is necessary if feminist academics are to address the backlash of retributive law reforms against Aboriginal women and the appropriation by the neoconservative state of feminist-inspired antiviolence strategies.⁹⁸

Additionally, Balfour, after conducting a study based on 168 reported sentencing decisions involving Aboriginal offenders convicted of serious personal injury offences, has concluded that “special consideration for the unique circumstances faced by Aboriginal offenders and the aim of

⁹⁶ Cameron *supra* note 94 at 166.

⁹⁷ *Ibid* at 180.

⁹⁸ Gillian Balfour, “Falling Between the Cracks of Retributive and Restorative Justice: The Victimization and Punishment of Aboriginal Women” (2008) 3 *Feminist Criminology* 101 at 116.

non-carceral sentencing alternatives are pursued most often on behalf of men convicted of sexual assault, and seldom on behalf of criminalized Aboriginal women.”⁹⁹ Accordingly, it is arguable that Indigenous women are marginalized in both the design of the *Gladue* methodology and in its actual implementation at sentencing.

However, not all feminist legal scholars agree that the consideration of these gendered “background factors” would serve to benefit Indigenous women during the sentencing process. Indeed, Toni Williams has argued that bringing such factors before the court shifts the focus towards the personal life of the Aboriginal woman being sentenced and away from questions about the systemic oppression and discrimination of Indigenous women, and in so doing renders those systemic factors “no more than the faintest of backdrops” to sentencing decisions applying the *Gladue* framework.¹⁰⁰ Williams further argues that the consideration of these personal factors could in fact result in the imposition of longer and harsher sentences for Aboriginal women:

When faced with an Aboriginal woman who embodies what are perceived to be significant criminogenic risk/needs, the sentencing judge is asked to justify a non-carceral sanction in terms of those same aspects of the defendant’s context that point to incarceration as necessary to contain and manage her risk of re-offending. While some judges may resolve the contradictory thrusts of risk and restraint in favor of community based sanctions, social context analysis does not compel such a conclusion.¹⁰¹

Williams concludes that it remains uncertain whether intersectionality analysis is capable of being “harnessed to remedy the substantive unequal effects of criminalization (particularly in light of the confluence of aboriginal women’s background factors and the risk analysis of the courts and the CSC).”¹⁰² She further argues that perhaps feminist legal scholars should turn their

⁹⁹ Gillian Balfour, “Do Law Reforms Matter? Exploring the Victimization-Criminalization Continuum in the Sentencing of Aboriginal Women in Canada” (2013) 19 *International Review of Victimology* 85 at 2.

¹⁰⁰ Toni Williams, “Punishing Women: The Promise and Perils of Contextualized Sentencing for Aboriginal Women in Canada” (2007) 55 *Clev St L Rev* 269 at 286.

¹⁰¹ *Ibid.*

¹⁰² Williams, Intersectionality Analysis *supra* note 95 at 96- 97.

attentions to more direct means of preventing the incarceration of Indigenous women, including debating how to penalize those offences that most commonly result in the incarceration of Aboriginal women, namely violent offences committed in domestic settings.¹⁰³

As the above has indicated, no consensus has emerged within feminist legal circles as to how, and whether, the *Gladue* methodology ought to be modified in order to better reflect the “background factors” most likely to explain or contextualize the criminal behaviour of Indigenous women. Furthermore, little academic attention has been paid to how the adoption of the *Gladue* methodology has impacted on the sentencing of Indigenous women. As a result, other than the empirical data that demonstrates an increase in Indigenous women’s rates of incarceration since the adoption of the paradigm and the work of Gillian Balfour, discussed above, little is known about the consistency with which the *Gladue* methodology is applied for female Aboriginal offenders, and whether issues of the gender-specific experience of colonialism and its consequence are raised in sentencing submissions.

2.4 Seen but not Heard: The Missing Voices of Criminalized Aboriginal Women

As the foregoing discussion has demonstrated, the discourse surrounding the representation of Aboriginal women in the Canadian criminal justice system has been dominated by quantitative research and, to a lesser extent, scholarly analysis. While statistics generated by the CSC and by Statistics Canada make it possible to chart on an empirical level the ever increasing over-incarceration of Aboriginal women, and academic works provide analyses of the causes and consequences of this phenomenon, little discursive space has been reserved for the Indigenous women who are so disproportionately imprisoned across the country. Indeed, while the Fox and Sugar Report provided a compelling account of Indigenous women’s pathways to

¹⁰³ *Ibid* at 97.

prison and experiences of incarceration, more than twenty years have passed since its release. In the interim, a great deal has changed in Aboriginal women's corrections: P4W was closed and replaced with regional women's federal penitentiaries, the OOHL was established, the *Gladue* methodology was adopted and Aboriginal prison programming became significantly more widespread.¹⁰⁴ However, how these changes, as well as other social, economic and political changes (including the dismantling of the welfare state) have affected Indigenous women and their experiences of criminalization and incarceration has been underexplored, particularly on a qualitative level.

The bulk of what little qualitative research has been conducted on female offenders' pathways to prison and experiences of incarceration over the last two decades has focussed almost exclusively on the experiences of federally sentenced women as a general group, as opposed to on the experiences of subsets of that population.¹⁰⁵ Nevertheless, the perspectives of Aboriginal women have, to a certain extent, been represented within this work. For example, Shoshana Pollack conducted a study of women's experiences of imprisonment and release to the community, for which interviewed sixty-eight former federally sentenced women about the programming made available to them during their incarceration.¹⁰⁶ One third of her research participants self-identified as First Nations, Métis or Inuit, and Pollack addressed the distinctive nature of their experiences of the criminal justice system, including their experiences within the OOHL. She reported that the Aboriginal participants to her study tended to find the OOHL to be

¹⁰⁴ For a thorough account of the closure of P4W, as well as the creation of the OOHL and the other regional women's penitentiaries, see Hayman, *Imprisoning our Sisters* *supra* note 41.

¹⁰⁵ See *e.g.* Joane Martel, "Telling the Story: A Study in the Segregation of Women Prisoners" (2001) 28 *Social Justice* 196; Miranda Monster & Anthony Micucci, "Meeting Rehabilitative Needs at a Canadian Women's Correctional Centre" (2005) 85 *The Prison Journal* 168; and Ellen Adelberg & Claudia Currie, "In Their Own Words: Seven Women's Stories" in Adelberg & Currie, *In Conflict with the Law* *supra* note 9 at 117.

¹⁰⁶ Shoshana Pollack, "You Can't Have it Both Ways: Punishment and Treatment of Imprisoned Women" (2009) 20 *Journal of Progressive Human Services* 112 at 116.

a less hostile and more holistic environment than mainstream prisons, but also that a conflict existed between the inmates' own personal journeys towards healing on the one hand and the "mandated healing" inherent in the prison programming on the other.¹⁰⁷ The study ultimately concluded that the women-centred rhetoric of the CSC is often not reflected in the experience of incarceration, and that prison programming does not adequately provide female prisoners with enhanced life and job skills to assist in their successful reintegration into the community upon release. In turn, Anke Allspach, using the data generated in Pollack's qualitative study, produced an analysis of the "transcarceral spaces of federally sentenced women in Canada," which includes analyses of how neo-colonial violence directed by the state at Indigenous women is related to their criminalization and incarceration, as well as of how the blending of treatment and penal practices at the OOHL affects Aboriginal women offenders.¹⁰⁸

Additionally, a small amount of qualitative work has been undertaken specifically on the experiences of Indigenous women in the Canadian criminal federal prison system. For example, Joane Martel and Renée Brassard undertook a qualitative study of twenty-five Aboriginal women's views on Aboriginal-centric prison programming, and specifically on their relationships to what the authors term the "institutionally imposed hegemonic Aboriginal identity" promoted by the CSC.¹⁰⁹ Martel and Brassard argue that the participants' experiences reveal that there are many different ways of "being Aboriginal" in prison, but that the construction of Aboriginality that has been adopted by the CSC throughout the federal prison system does not reflect, and often conflicts with, these more nuanced notions of culture and identity. Similarly, Felice Yuen interviewed Indigenous women incarcerated at the Grand Valley

¹⁰⁷ Pollack, *Can't Have it Both Ways* *supra* note 64 at 120 – 121.

¹⁰⁸ Allspach *supra* note 63 at 711 – 712 and 714.

¹⁰⁹ Martel & Brassard, *supra* note 55.

Institute for Women, a federal penitentiary in Kitchener, Ontario, on their experiences of engaging with Aboriginal spiritual and cultural practice and ceremony in prison settings.¹¹⁰ Yuen concluded that participation in Aboriginal cultural ceremonies in prison helped Indigenous female prisoners' understandings of their own Aboriginal identities to evolve from being a source of pain and shame to a being source of pride. In turn, the CSC has produced qualitative research on the specific needs of federally sentenced Aboriginal women in prison, specifically focussing on identifying their substance abuse and family-related needs and the programming that might address these issues.¹¹¹

A very limited amount of qualitative study has also been undertaken of the unique experiences of provincially sentenced Indigenous women. Specifically, Renée Brassard interviewed seven Aboriginal women from Quebec about the effects of their provincial sentences on their life trajectories.¹¹² Her study focussed on what happened to the participants after they were released from prison, and in particular on the effect that having a criminal record had on their access to housing, employment and programming, as well as on their status in their home communities. She concluded that the process of criminalization plays an important role in forcing Indigenous women to the margins of society. Cheryl Pine conducted qualitative research with currently and formerly provincially sentenced Aboriginal women in the Northwest Territories, as to the state of women's provincial corrections within the territory, where

¹¹⁰ Felice Yuen, "Leisure as Context for Justice: Experiences of Ceremony for Aboriginal Women in Prison" (2009) 41 *Journal of Leisure Research* 547.

¹¹¹ Correctional Service of Canada, *A Needs Assessment of Federal Aboriginal Women Offenders* (Ottawa: Correctional Service of Canada, 2004), online: Correctional Service of Canada http://www.csc-scc.gc.ca/text/rsrch/reports/r156/r156_e.pdf [CSC, Needs Assessment].

¹¹² Renée Brassard & Joane Martel, "Trajectoires Sociocarcérales des Femmes Autochtones au Québec : Effets de l'Incarcération sur l'Exclusion Sociale" (2009) 42 *Criminol.* 121.

Indigenous women account for 98% of female prisoners.¹¹³ Pine found that there are significant discrepancies between the facilities, resources and programs made available for male and female provincial inmates, which result in women offenders serving much “harder” time than their male counterparts. Additionally, Debra Parkes, Kathy Bent, Tracey Peter, and Tracy Booth conducted interviews with twenty Indigenous women incarcerated at Manitoba’s Portage Correctional Centre on the subject of their access to justice, as it concerns their ability to ensure that their treatment and the conditions of their imprisonment, over the course of their incarceration.¹¹⁴ They concluded that provincially sentenced Aboriginal women experienced many barriers that often prevented their access to justice, and that greater accountability was thus required.

As the foregoing has demonstrated, a small body of work has been produced on the subject of Aboriginal women’s experiences of incarceration, particularly within federal penitentiaries. Nevertheless, what Indigenous women think and feel about their own roads to incarceration and their experiences of imprisonment has been largely overlooked in the academic analyses of the Aboriginal over-incarceration phenomenon and the governmental responses thereto.

2.5 Conclusion

As Louise Arbour noted in her 1996 report, “if the history of women’s imprisonment is one of neglect and indifference, it will come as no surprise that the history of Aboriginal women’s imprisonment is an exaggeration of the same.”¹¹⁵ In the more than fifteen years that have passed since the release of her report, precious little seems to have changed. Aboriginal

¹¹³ Cheryl-Anne Pine, “Gender Sensitive Corrections in the Northwest Territories: Adopting Federal Lessons while Listening to Local Needs,” (2012) 31 WRLSI 101.

¹¹⁴ Debra Parkes et al, “Listening to their Voices: Women Prisoners and Access to Justice in Manitoba” (2008) 26 Windsor YB Access Just 85.

¹¹⁵ Arbour Report *supra* note 44 at 4.3.1.

women are more over-represented within the women's prison population today than they ever have been before. They remain arguably the most socially and economically disadvantaged group within Canadian society, and are regularly subjected to extreme levels of violence and marginalization within both Indigenous and non-Indigenous communities. As a result, they have pre-carceral lives and commit crime in ways that set them apart from both Aboriginal men and non-Indigenous women. They enter prison with significantly higher needs than their non-Indigenous female counterparts,¹¹⁶ and are also much more likely to have been incarcerated for the commission of violent offences.¹¹⁷ However, their experiences of criminalization and incarceration are rarely the subject of independent study.

As a result, significant lacunae remain within the academic literature surrounding Aboriginal over-incarceration in Canada. For example, why is it that Indigenous women make up a greater proportion of female prisoners than Aboriginal men do within the male prison populations? What is it about Aboriginal women's lives before incarceration that leads them to prison in such high numbers? Why has their rate of over-incarceration continued to climb so steeply since the adoption of the governmental initiatives aimed at its reduction? How do their prison experiences contribute to their reintegration upon release or to their rates of recidivism? How have the availability of Aboriginal cultural and spiritual programming and the development of the OOHLC impacted upon their experiences of incarceration? How do the experiences of Indigenous women in the provincial prison systems differ from those in the federal system? As the preceding discussion demonstrates, these questions, among others, require ongoing research and analysis.

¹¹⁶ Statistics Canada, Mahony *supra* note 10 at 38.

¹¹⁷ CSC, Strategic Plan *supra* note 58 at 12; Statistics Canada: Juristat, *Female Offenders in Canada*, by R. Kong & K. AuCoin (2008), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/85-002-x2008001-eng.pdf> at 12.

CHAPTER THREE: Stories from the Front

3.1 Introduction

As the foregoing chapters have demonstrated, comparatively little is known about the factors that send Indigenous women to prison at such record rates, or what experiences they may have within the criminal justice system. That which is known tends to be surmised from statistical analyses of Aboriginal women's lives, rather than learned through qualitative research with criminalized Indigenous women themselves. Indeed, there is a dearth of research into the subjective experiences of criminalization, including both its causes and consequences, as they are understood by Indigenous women themselves. This chapter represents my attempt to, as truthfully and fairly as possible, convey the experiences of the ten criminalized Aboriginal women who participated in my research project. As shall be demonstrated below, their stories, and they, are all unique. Nevertheless, certain patterns do emerge across their narratives. Experiences of violence, in particular sexual violence, are a common theme, as is having experienced significant instability in childhood. The majority of the participants have experienced a lifelong struggle with substance abuse, a problem that affects multiple generations of many of their families. Motherhood, both the experience of mothering and the experience of being mothered, are common issues, as is the experience of child apprehension by the state. Lack of understanding and responsiveness of the criminal justice system to underlying personal problems and criminogenic factors also emerge as a pattern. In the next chapter, the themes and issues that emerge from these stories will be subjected to a thorough review and analysis. The purpose of this chapter, however, is to tell the stories of these ten women, as much as possible, in their own words.

3.2 Jessica

Jessica started smoking crack cocaine nearly ten years ago, when she thirteen years old. Drinking alcohol, as well as smoking cigarettes and pot, had come even earlier, when she was nine years old and was hanging around her older cousins and friends from school. Her family was living in Alberta at the time, in a town that drew tourists who had come to visit a nearby national park. The family had moved there from southern British Columbia, because Jessica's stepdad could make more money selling marijuana in Alberta than he could in BC. However, shortly after the move, things started to fall apart for Jessica and her family.

My parents split up, when we moved to Alberta. And I was like eleven and my mom left. And she went back to [city], cause that's where my mom's side of the family is. And me, my brother and my sister stayed with my stepdad. And then he started using heroin, so my grandparents came one day when I was working and she took custody of them, she like came and took them. ... So then I was there with my dad by myself. And then he owed this guy like a whole bunch of money so he left and like I was there by myself. So then the only people that I knew there were my dad's friends Randy and Tracy, and they were drug dealers, right, and then they gave it to me for my first time. ... We used it like all the time, right from the first time.

From that point onward, drug use became a daily fixture in Jessica's life, as well as the primary source of her involvement with the criminal justice system.

By the time she started using at age thirteen, Jessica had already started falling behind in school. After her mom left, she started working in local pubs, bussing tables. "Cause my dad didn't work, right, so I was like pulling two jobs just to like keep food on the table and stuff like that – basically playing the role of my parents." With her family gone, Jessica became dependent upon her stepdad's friends, who soon lost interest in supporting her and her growing drug habit. Just before she turned fourteen, Jessica returned to the southern British Columbia city where she had grown up, to live with her mother. Once they were reunited, Jessica and her mother, who

also suffered from a significant crack cocaine problem, began using drugs together. Before long, they were living on the streets.

Yeah, well basically drugs and alcohol with all the women in my family just equals bad times. My mom in a short time basically got us kicked out of like all our family residences, like my cousins and my aunties and my uncles, and my grandpa didn't want us around. And I like I could have always gone back, but like growing up I started rebelling really young, so I never had a really good relationship with my mom until we started using drugs together, so I couldn't even fathom not being around my mom. So I basically just placed myself on the streets with her.

She and her mother were not alone in their battles with substance abuse; many members of Jessica's extended family suffer from addiction, a fact that Jessica traces back to their experiences as Aboriginal Canadians.

It's kind of like most of my family is active in addiction still right, so it's kind of like what I knew, what I grew up around. But like a lot of stuff went way back, like my grandma and my great grandma went to residential school, and that's like why they drink and do drugs, right. And it's like, I think that's why most of my family does drugs and stuff like that. So it's like, that basically started like what I knew, right. Cause like they went to residential school and they started doing drugs and drinking lots and then that's what, that's basically the only life that I saw, that I knew of, right.

Things continued like this for a few years, with Jessica intermittently attending an alternative school, smoking crack and struggling to find housing for herself and her mom. By the time she was seventeen, Jessica felt that crack was no longer giving her the high that she sought, and she started using crystal methamphetamines. "Basically I used drugs to get out of myself, and I started feeling all of my emotions and my feelings and like that right, so I switched drugs and it calmed, basically shut everything off again." At this point, Jessica was spending most of her time with a group of friends, the majority of whom were affiliated with a local street gang. Jessica began using crime as a means to support herself and her significant drug addiction, and as a result was being brought in to regular contact with the local police. Her first criminal

conviction came shortly after her eighteenth birthday, when she pleaded guilty to theft under \$5,000.00 for having shoplifted food from a grocery store when she was homeless and hungry. She was sentenced to three months imprisonment at the Alouette Correctional Centre for Women (“ACCW”), in Maple Ridge, British Columbia. Because of the relatively short term of her sentence, Jessica was denied access to prison programming while she was at ACCW. She was not able to use her time inside to receive any training or education, nor any help with her substance abuse problems, as access to these programs was reserved for inmates serving lengthier sentences.

One of the women that I was in city cells with or whatever, she was like telling me about all of these programs and stuff that they have in jail and I was like “well maybe if I just do programs and like stuff when I’m in jail then maybe I’ll stop using drugs when I get out” and then when they told me that cause the programs were six months or longer that I couldn’t do them, so I never got the chance to do that.

Jessica did however get to work as a landscaper on the prison grounds, which she enjoyed.

Importantly, she had access to an Elder, who helped her to reconnect with Aboriginal culture and spirituality, and to learn about the history and traditions of her people, the Mohawk.

... we had like our one Elder there. And she would come in like once a week. And then ... she would do like drumming or Native craft night, like once a week. So, but it was cool to get in touch with my roots again right? Cause it wasn’t really, well like growing up, cause my stepdad is white or whatever right, so and then like my mom just sort of fell out of her spirituality then and stuff like that so I was never really taught anything like that. So, it was cool when I got, when I met her, that I got like, she was like, she brought me books about my background, cause I’m Mohawk Native, so um she brought me in like history books basically about my background. So that was cool, I got to like learn about that...

For Jessica, the opportunity to work with an Elder and learn about her culture was the most helpful aspect of the time that she spent at ACCW.

Nevertheless, once she was released from prison, Jessica was immediately “back to the races,” using drugs and engaging in criminal activity to support herself and her habit. In fact, the intensity of Jessica’s criminal involvement soon began to escalate.

Well basically like when I got out of jail the first time, my buddies had like all these plans. They’re called “scores” right? ... And they had all these scores for like warehouses and all these nice homes outside of [city] that we wanted to go and do, right? So it’s like, right away I was just like back in to my old ways, right? So I did a lot of B&Es right, and actually a lot of them like turned into like home invasions, cause my buddies were really like not cool about it and they didn’t like ... Usually you, usually you set for doing a house that like nobody’s home in right, but there’s always a chance that somebody is home and like so they don’t call the cops when you’re there, it like, it turns into a home invasion... [...] And then it turned into like all the time that we were doing it. [...] And we would do like, it’s called car hopping, and you like just break into cars and stuff like that, stole whatever’s in the cars... And then my friends starting using, got a credit card making machine and so then we starting doing lots of like credit card stuff. Credit card fraud and stuff.

It was her involvement in activities such as these that soon resulted in Jessica’s arrest on a series of indictable offences, when she was just twenty years old. While burglarizing a home with her friends, Jessica, who was high at the time, removed her glove, leaving behind a complete hand print. Unbeknownst to Jessica, her friends took seven firearms from the home. A couple months later, she was arrested and charged with a range of indictable offences. The Crown wanted her to serve one year for every firearm that had been stolen.

Unlike the first time she was criminally charged, Jessica found a lawyer to represent her on a legal aid certificate. The lawyer that she retained had repeatedly represented her stepdad, and Jessica hoped that he would provide her with better representation than she had previously received from duty counsel.

Ok, so my stepdad, he used to be really bad when he was a teenager too. And I always remember him talking about what’s his name, his last name is Smith. So that’s the lawyer I was looking for, cause I didn’t like the first lawyer, cause he just went against, just really went with what the judge was saying and he didn’t really try to defend me. So, um, even though I was guilty, I just felt like I wasn’t stood up for, right? So I was looking for

this lawyer and when he showed up that night I told him who my dad was and he was all like “oh no,” he’s like “nooo, the next generation!”

Jessica was ultimately pleased with the representation that her new lawyer provided. On his advice, she pleaded guilty to breaking and entering and credit card fraud; in exchange all of the firearms related charges were dropped. At sentencing, Jessica’s lawyer told the court about some of her family and personal background, but did not inform the court of her Aboriginal heritage, or draw any connections between her circumstances as a young Aboriginal woman and her commission of the offences for which she was being sentenced. Similarly, a *Gladue* report was not prepared.

He, the one thing that he did mention though was like my drug addiction and like basically knowing my dad and like that he did drugs when he was younger and so did my mom. And I guess like my dad got caught one time that I didn’t know about for like running weed back and forth from Alberta and like he had used him a couple years before that, so like he knew that like my family was like in addiction and stuff like that. And I told him like stuff like that I basically just sleep wherever I can like and am like constantly doing drugs and doing crime so I can get more drugs and so that, that’s a point that he brought up to the judge. [...] I felt pretty understood in that situation. You can kinda tell that the other guy was pretty pissed off. Yeah, the Crown was pretty pissed off. Right, because, they obviously knew that I was doing drugs. But they thought I was just doing crime because of the people I hung out with, not because of I needed more drugs.

Jessica was sentenced to two years plus a day, to be served at FVI, after having been detained for three months prior to her sentencing.

Following intake at the penitentiary, Jessica elected to be placed in the Drug Free House, where she would be subjected to random searches and drug testing. Her parole officer thought that participating in this program, and thus proving to the parole board that she was not using drugs while serving her sentence, might assist her in securing early release on day parole.

Jessica soon found life in the Drug Free House, with the constant threat that six guards might storm in at any moment and strip the entire cottage, to be unbearable. She spoke with the Elder, who immediately fast-tracked her transfer to the Pathways house, the cottage dedicated for

Aboriginal inmates and run by the Elder herself. Jessica's stay time in Pathways was much more positive; it provided her with an opportunity to learn about and connect with Aboriginal ways, cultures and traditions.

Well it was really cool, again, cause basically I got to learn about Native spirituality. And like rules, not rules but traditions that we have to abide by when we live in that house, so like any drama that was going on out in the rest of the jail never got brought back in to the house. So it was like our place of ease and comfort, right, where we could just be ourselves and we didn't have to worry about the clique issues or like who's going to hurt who and all the drama and stuff that goes on in jail, right. So it was like, and then she always had us doing like beading or artwork and we had sweats almost every week if it wasn't raining, on Fridays. And so I really got connected again when I was in there, so it was really good.

However, Jessica's stay in the Pathways house was marred by the actions of some of the male prison guards. She filed a grievance against male guards performing bed checks at night, without female guards present. Jessica was also forced to file a grievance against one particular male guard, who used to mumble "dirty squaws" and "dirty Indians" as he exited the Pathways house. Neither grievance resulted in what Jessica deemed a serious response by the prison administration.

But for like the guard situation you could tell that a lot of the men guards that had been working there were, I don't know how to say it, like basically just they looked down upon women. So it's like, sometimes you'd get like comments like "fuckin dirty Indian" and stuff like that from this one guard, he was pretty brutal. And I told Elder, and like nothing really came about it, like he um, I think he got suspended with pay for like two months.

Nevertheless, she remained in the Pathways house for the duration of her time at FVI.

While she was incarcerated, Jessica took advantage of some of the training and education programs made available to the prisoners. She obtained her forklift ticket when she was at FVI, and also obtained her flagging ticket after being released on day parole. She also worked as a landscaper on the prison grounds, as she had at ACCW. She enjoyed the work, and appreciated that it helped her to earn money that she could use to call her friends and family. This was

particularly important given the fact that throughout her incarceration at FVI, Jessica did not have any visitors.

... you get to see all these other women that have visitors and stuff like that, like the conjugal visits and stuff like that, and I didn't get anything like that, right. And then because my like phone bills were all long distance, so it was like I never had enough money to talk to everybody in one month. And that kinda sucked. So I felt really disconnected from everybody. In the beginning it was kind of like a downer and it made me really depressed, but in the end it kinda made it better cause like I didn't have that contact with all my buddies, you know, and it was easier to disconnect from them when I got out of jail.

For Jessica, given the role that gang affiliation played in both her drug use and her criminal activity, achieving such a disconnect was a key goal.

Jessica also took part in correctional programming while at FVI, in an attempt to secure early release. This included participating in the Women Offender Substance Abuse Program ("WOSAP"). However, Jessica found the "just say no to drugs" message of the substance abuse programming to be overly simplistic: "... you already know, they're trying basically to like change our behaviours and you could say "yeah, that's bad, you don't do that" - it's pretty simple." Additionally, she felt that the correctional programming offered to her was not sufficiently responsive to the underlying factors that had led her to incarceration in the first place.

Like, one of the things that Elder touched on was the *Gladue* report. And she was really upset to find out that for most of the Aboriginal women who were at FVI, that was never brought up in trial. It's like, they know right, and they just like, yeah whatever, we did crime or whatever, but they never really asked to the extent of why we committed our crimes and the lifestyle that we lived before that led up to doing crime. Or even like further back, like childhood, right. Like what brought us to drug addiction, to committing these crimes that put us in jail. They never take any time or effort into finding out what was really going on for us, right. They're just like "of, you're in to drugs, so we're going to put you in a drug addiction program." Or, you have a problem with doing this so we're going to stick you in this kind of program. It wasn't like, they weren't really getting down to the point of what was leading up to all of that, right.

For Jessica, the problem in many ways comes down to the homogenizing effect of the correctional programming: while each inmate has a different background, and a different related set of needs and capacities, the programming is not individualized to meet each specific woman's needs.

If it was more like individualized to that person it would probably help more, more than like an overall perspective on the whole group, trying to teach like one thing to the whole group instead of like individualizing it, to that person, like personalizing it for that person ... cause like every person in there has different stories and why they are in jail and different backgrounds right. This program was like an overall look at women in the criminal justice system, it wasn't like individualized to that person, right.

Similarly, Jessica struggled to have her personal needs and circumstances acknowledged when she and her parole officer were trying to plan where she would be sent when she was paroled. Her parole officer was adamant that she should be placed in a halfway house in the city where she had been arrested. Jessica, on the other hand, thought that such a placement would almost certainly result in her relapsing on drugs. Indeed, one of the few things she took away from her participation in the WOSAP program was that at this stage of her life, she could not go home. Jessica quickly decided that she had to take matters in to her own hands.

... my parole officer, like I had in jail, I don't know if she just didn't understand drug addiction or like the kind of lifestyle that I lived before, but she wanted to send me back to [city], to the halfway house there. And I, when Carol, the woman that runs, she has worked [at Jessica's current halfway house] the longest, when she comes in to FVI and there is a schedule or whatever for each month for who is coming in to the jail from outside help. So I went to go see Carol myself and filled out my own application to come here, because like my parole officer, like I told her like a dozen times that I didn't want to go back to [city] because you are basically just setting me up for failure, right. Like literally there is the main street where the halfway house, and a couple residential streets, and then the strip, like my stomping grounds. Like where I sold drugs and committed most of my crimes. And that's where she wanted to send me, so I was like I filled out my own application to come here cause like hitting that point where it's like I basically started doing drugs every day from the age of thirteen until I went to jail, right. And it's like done like I don't know, you always have all these childhood dreams, like you have

friends your own age and graduate with your class and like go to prom, and I never got to experience any of those things, right. And it was just kind of depressing. And that's when I finally made the decision, right before I got out of jail, to come here, that I honestly wanted to change my life and that I didn't want to do drugs any more.

Thanks to Jessica's own efforts, at the time of our interview she had been residing at a women's halfway house in the Lower Mainland for over a year. She enjoys the rules and structure of the halfway house environment, but also the freedom it provides her to go out every day and work. Jessica feels supported in her efforts at rehabilitation by her current parole officer, whom she feels understands her, her background and her aspirations.

She's really cool. She really takes, I really took to her really fast. I don't even know why, but I have a really good relationship with her, so it's more like on a friend basis rather than her, like I told her – I have a problem with authority. So it's like people telling me what to do. That's another issue that I had growing up, it's like with my parents why I rebelled so young, like telling me what to do all the time. And it's like, I just wasn't having any of it – I have major issues with authority. So when I told her that she kinda came to the understanding that if we had more of a personal relationship on like a friend-to-friend basis then like our relationship would be better.

Jessica is currently employed full-time as a landscaper, and is about to start taking courses to qualify as a youth group home support worker. She is twenty-two years old.

3.3 Donna

Donna was born on an isolated Ontario reserve, but shortly after birth was adopted by a white family, who took her to an urban centre in northwestern Ontario. Her adoptive parents' marriage did not last, and Donna's mom soon became involved in a series of abusive intimate relationships with men. She was physically abused by her second husband, and young Donna would have to lie in bed at night and listen to the beatings her mom took. By the time she was twelve years old, Donna was sneaking out of the house at night to hang out with her friends. She yearned to know her birth family, whom she hadn't seen since she was adopted. She regained contact with them when she was fourteen years old, and travelled to their reserve to meet them.

Donna ended up living on the reserve for the next year; it was there that she started drinking. It was also there that, at age fourteen, Donna was raped by her birth sister's husband. Donna's sister did not believe her about the rape.

At age fifteen, Donna left the reserve and moved back in with her adoptive mom. She went to high school, but dropped out after the tenth grade. She continued to drink, a habit that brought her in to contact with the city police. She feels that the police targeted her because of her Aboriginal ancestry.

I think that the police treat us differently. ... I think just cause they think we're all drunks, that we're no good people. I don't know. That's the feeling that I get from them. And I've seen them, like ... actually they abused me when I was growing up in [city]. They took me and my cousin, handcuffed us – we were drunk, you know – they picked us up, handcuffed us, put us in the back of the paddy wagon, drove to an empty parking lot and then drove and you know, stomped on the breaks. ... And we both were just fuckin flying in the back of the paddywagon, cause they would speed and then slam on the breaks, and we would go flying right? They did that for about fifteen minutes, then they fuckin stopped and they let us out, unhcuffed us and let us go.

When she was seventeen years old, Donna left her hometown and moved to Toronto. Within the year, she had been arrested and convicted of soliciting for the purposes of prostitution, though she didn't serve any prison time. Over the next few years, Donna had a series of run-ins with the police, resulting in convictions for mischief and assault of a police officer. She attributes her conflicts with criminal justice and substance abuse to the violence that she experienced in her youth.

I guess I just wouldn't talk.... So I kept it all bottled up inside. And then I started, I started drinking you know. And then just started lashing out on people, even the cops. I got charged with mischief and stuff like that, you know.

Ultimately though, Donna's interactions with the Canadian criminal justice system have been dominated by one single offence, committed just over twenty years ago.

When she was twenty-one years old, Donna and her then-boyfriend went to spend the weekend in a small town in northwestern Ontario, close to the American border. The couple started partying in a local bar, but soon became separated. Donna left the bar and headed to a house party on a nearby reserve. She had only just met the party guests, including Frank, the man who was hosting the gathering. The party eventually emptied out, leaving Donna alone with Frank.

And the gentleman that owned the house, that lived there, just me and him, we were drinking and having a good time, when all of a sudden he grabs me by my hair, punches me in the face, you know, pulls me in to his bedroom. And, um, he kept beating me and then he raped me. And then after he was done, he got dressed and went to the living room. I got dressed and I come out and he says to me, "Donna, would you like, would you like a drink," like nothing happened. And I got so angry, I just, I picked up the coffee table and I just threw it on his head and cracked his skull wide open, and that's how he died. [...] And I stood over him and I said "you'll never rape another woman again in your life."

Donna left the house on foot and started walking in the February cold, not sure of where to go. She caught a ride to the American border, and walked across. She was drinking in a bar when news of Frank's death began to spread. By the end of the day, Donna returned to Canada for questioning. She was arrested and charged with second degree murder.

Donna was taken to city cells, where as it turned out her boyfriend was also being held on an outstanding warrant. She was assisted by a legal aid lawyer, but doesn't feel that she was given any meaningful assistance by her counsel.

I didn't think he was doing his job ... properly. Cause he took pictures of my face and that and I don't think that he took that into consideration, that, you know, I told him what happened, like I gave my statement, like I'm not lying. Said I don't need a lawyer, I just gave my statement. Told 'em what happened, and they took pictures of my face all beaten up ...

Ultimately, Donna felt her lawyer neither understood nor cared much about her circumstances and the reasons behind her attack on Frank: "I don't think he understood anything. He was just

there to get the money, I think.” Nevertheless, her lawyer managed to convince her, within three weeks of her arrest, to plead guilty to manslaughter. “And my lawyer told me, he says, you’re looking at ten to fifteen years. But he says if you plead guilty to a lesser charge, involuntary manslaughter, you’re looking at three to five years. So I pleaded guilty, which I shouldn’t even have done. I don’t know, I was twenty-one, you know.”

Donna was sentenced by a judge whom she felt, like her lawyer, cared little about her experiences and circumstances: “I think he was just there to sentence me and to get it over with. That’s the way I felt, you know.” The judge sentenced Donna to three and a half years’ incarceration, to be served at P4W, in Kingston, Ontario. Upon arrival at the penitentiary, Donna was sent to the “fish tank,” where she spent her first week of federal incarceration.

It’s where new inmates go, it’s just a little, like, a little place where they have twelve cells, maybe. And there’s two other inmates in there already, and I walked in with my stuff and they said “Oh hi, so you’re in here for murder, eh?” – they already knew what I was in there for.

She served two years at P4W before being paroled. Her time there made a massive impression upon her: “It was something that I don’t wish on anybody. And, it was an experience that I’ll never forget, you know.” Nevertheless, Donna does manage to see some good in her experience of imprisonment at P4W, specifically the sense of community that she developed with the other Aboriginal inmates.

We had a group, we used to get together, like, every month, and we’d watch movies and stuff like that and play baseball and whatever you know, just do things. And then we would have, we would even get, we would even have other like the Brotherhoods in the other prisons like come over to our prison like to get together and talk and you know... They would come over to the yard of our prison. Yeah, and we would have a dinner for them and all that when they come and just, you know, have a good time, you know.

The Native Sisterhood at P4W also worked with Native Brotherhoods at various men’s penitentiaries to set up pen pal programs, in which Donna participated. Inmates would be

matched with each other and would write and send photographs to one another, providing each other with support and companionship. Maintaining personal relationships with people outside of P4W was important to Donna, but was by no means easy. She was incarcerated over 1,500 kilometers from where she had grown up, and knew no one in the vicinity of Kingston. As a result, she had no visitors throughout her entire time at P4W, save for one visit from her adoptive mother. Her mother's visit was made possible by a program at the prison, which permitted inmates to apply to have a relative flown out to Kingston for a visit. Donna got to spend three days with her mother, in a small cottage on the prison grounds. Quite understandably, these were the best days of her time at P4W.

Donna did also gain a certain strength from the relationships that she developed with the other Aboriginal women incarcerated at P4W. In fact, she felt that being an Aboriginal woman netted her certain tangible benefits at the prison.

... cause I was Native I had more advantage because ... all Native women ... they all look after each other in there, and I don't know, for some reason, they just respected us more, I don't know why. So I had no problems when I was in there, except for one time.

Nevertheless, Donna experienced her fair share of clashes with other inmates, both Aboriginal and Caucasian. She found P4W to be rife with personal conflicts and power struggles, which at times bubbled over into physical confrontations with very serious consequences. On one occasion:

I was in, um, where we can watch TV, there's nobody there, just me. Sittin in front of the TV, watching the TV. Then one of the so-called "heavies," right, she comes up to me and says "You're sittin in my chair" and I look around and I say "There's a lot of chairs here". And she goes, "No – you're sittin in my chair." I look, I look at the chair and I say "I don't see your name on this chair" and she says "Still, you gotta get up and go sit somewhere else". So I said, "I'm not gonna move for you." And, anyways, um, I didn't see the woman on the other range. Like there's just like a, there's two ranges – A range and B range – and you can and all the women on the other range were just looking, right. And it was just to see would I go, would I just back and run away or would I stand

up for myself ... but I stood up for myself. I said, "I ain't moving". I said, "You're going to have to make me move." She tried to grab me and I stood up and the fight was on, and I did five days in the hole for that, for beating her up.

As a result of the fight, Donna spent five days in segregation.

In contrast, Donna had relatively positive relationships with the guards at P4W. At the time, prison policy was to assign each inmate to a particular guard, who would act as a sort of point person for the prisoner. Donna had a good relationship with the guard to whom she was assigned.

Now, I remember the woman that I had. She was old, an older woman. She must have been in her fifties, or something. Her name was Madame Larrivée. I'll never forget. A little old French lady. I got along with her – I used to tease her all the time. I never thought, just because they're screws or whatever, they're people too, you know. They're just doing their job.

Still, Donna found that the guards did not always do all they could to help the most vulnerable prisoners. For example, Donna feels they failed to prevent the suicide of an Aboriginal inmate, whose cell was right beside Donna's.

One of them used to live right next to my cell. She was Native. ... She was doing a five year sentence, she only had a year to go. I could see she was [depressed] – she hardly come out of her cell and hardly talked to anybody, you know. I tried talking to her all the time, but that one night when she did that we had the opportunity of going out to the gym or the big yard, or being locked up for an hour or two, or whatever. Two hours. She hung herself. I had asked her, "do you want to...", I said "c'mon, let's go to the big yard, go for a walk or whatever." "Nah," she said, "I'll just stay." I just had this feeling like, I told the guards, the screws, I told them "Watch her," I said "she's not herself tonight." No, they didn't. And she hung herself.

This was one of two suicides that took place during Donna's two years at P4W.

Donna chose not to participate in the majority of the available prison programming, preferring just to do her time in peace. She did however participate in the Aboriginal spiritual and cultural events that were conducted at P4W, such as sweats and powwows, which she found

helped her to survive her sentence. She was able to spend time with a Medicine Woman, who helped her to connect with her Aboriginal heritage:

... they had, like um, a medicine woman that came in to like the prison system, you know to talk to us and all that. ... And yeah, I actually, that was how I got my Native, my Indian name. ... Cause she knew after she told us there's only four women that are going to ask for their Indian names, and I was one of them. And I already made, I beaded a necklace for her, cause that's what you gotta do... You got to give her a pouch of tobacco and make something and give it to her and ask for your Indian name. And she knew that... Yeah, she knew before she came to the prison. And my Indian name is Morning Woman.

Another important program that Donna participated in was a temporary transfer to an off-site residential treatment centre, where she stayed for three months. While at the centre, she participated in counselling for her substance abuse problems and to address the violence of her past, including her two rapes. All but two of the other prisoners residing at the centre were Aboriginal, though the programming and the administration of the centre itself lacked an Aboriginal focus in both its programming and staffing. Still, Donna found her days at the centre to be helpful ones and she completed the program before returning to P4W.

Back in Kingston, Donna took some courses to upgrade her high school education, but quit after she got in to a fight with one of the other students. She did however work throughout her term at P4W, both as a telemarketer and in the woodworking shop, which permitted her to save money for her release, as well as to buy items that she needed from the commissary, including cigarettes and snack foods. By the time she was paroled, at age twenty-three, she had saved \$580.00. Donna was sent to Winnipeg to serve her day parole, where she has some family and had briefly lived prior to her incarceration. She was sent to live at a halfway house, but lasted only one night before taking off on the run to go party. She was eventually picked up and taken to the Portage Correctional Centre for Women ("PCCW"), a provincial women's prison in

Portage La Prairie, Manitoba. Her parole was revoked and Donna was given the choice of finishing out her sentence at PCCW or returning to Kingston. She chose to stay at PCCW, preferring the environment there to that at P4W. Indeed, Donna's experiences in Portage LaPrairie were much more positive than were those she had in Kingston. While very little programming was made available to her at PCCW, including few Aboriginal-centric programs, Donna enjoyed being permitted to work on a nearby farm, where she picked vegetables.

We got up at six o'clock in the morning, had breakfast. They gave us a lunch to, you know, take with us. And we left by seven, we all walked – took about fifteen minutes to walk to – from the jail to the farm. Yeah, we worked all day and we would come back. We were just tired, right, we just wanted to have a shower and go to bed. ... Yeah, it was great.

After serving about one year at PCCW, Donna was paroled. She moved to Winnipeg, where she met her future husband and got married.

Since her release from PCCW close to twenty years ago, Donna has not been back to prison. She got arrested for soliciting for the purposes of prostitution not long after her release, but she and her husband moved to Vancouver before the matter proceeded to trial. Donna and her husband had two children together, but he died only a couple of years after their marriage. The children were eventually sent back to Winnipeg to live with extended family, but Donna stayed in Vancouver. Today she lives in a subsidized housing facility for at-risk women on Vancouver's Downtown Eastside. She supports herself on the disability benefits that she collects, having lost the use of one of her arms in a stabbing. She remains active in addiction. This summer, Donna travelled to Manitoba to spend some time with her children.

3.4 Linda

Linda comes from a long line of Indigenous women who have gone to great lengths to resist the rules and restrictions imposed upon them through the processes of colonization. Rather than sending her children to residential schools, Linda's great-grandmother hid them in the woods and went on the run. In turn, Linda's grandmother, who lost her right to reside on her home reserve after having "married out" of the community, chose to build a home on the river bank directly beside the reserve, rather than to leave entirely. Linda's mother took her own life when she was thirty-three years old. Linda, who was only eight years old at the time, was raised by her father, who did his best to keep his children connected to both their family and cultural histories. He often took them to visit their maternal grandmother, in her home on the bank outside her reserve. They grew up attending powwows and other cultural events. Linda's father was loving, but the loss of her mother weighed heavily on her, as did the sexual abuse that Linda suffered during her youth. As she got older, Linda began to medicate herself with alcohol. She and her family moved from the Fraser Valley of British Columbia up into the province's interior, which was where Linda's drinking began to spiral out of her control. In her late twenties, she started to amass a series of criminal convictions, all for provincial offences related to her alcoholism. She was incarcerated for thirty days after having been picked up for public intoxication on too many occasions. However, Linda's experiences of the criminal justice system have been largely dominated by one central offence: in 1999, when she was thirty-six years old, Linda was charged with the murder of her boyfriend.

Linda doesn't have a full grasp on exactly what happened on the night that her boyfriend was killed. She was a full-blown alcoholic at the time, and even today has a hard time differentiating between her actual recollections of the events surrounding his death, and the

evidence that was presented at her preliminary inquiry. What she does know for certain is that their relationship was an abusive one. His abuse had been focussed upon Linda herself, and he had generally left her two children, who at the time were nine and eleven years old, alone. However, in the weeks running up to his death, Linda had come to believe that her boyfriend was sexually abusing both her nine year old daughter and her daughter's friend. After a night of heavy drinking, Linda confronted him about her suspicions and things quickly escalated into a physical altercation.

I was defending myself. I remember being dragged by the hair. I was passed out. And my brother was there. My brother is not that well either, like schizophrenic. My brother handed me the knife. Words were said anyway. It was awful – it was blacked out. And I can't remember from the trial, you know from pieces all put together, and I don't know if I'm saying what I know to be as true because I don't remember, and it feels like people are putting things at me. You know, at the time. And what is true and what's not. I was mad because of an accusation that he was going to marry my daughter. And there were other incidents before that, suspicious. I found my girl, he had my girl on his lap and he wouldn't let her go. So things like that. And the abuse that he gave me. It was just awful.

As a result of the altercation, Linda's boyfriend was killed. The autopsy report would reveal that Linda had stabbed her boyfriend over thirty times. She had also cut off his penis and put it in his mouth. However, when she woke up the next morning, Linda did not remember having done any of this. In fact, she had left the scene of the murder in such a drunken state that she had been picked up by police and taken to spend the night in jail to sober up. When she was released in the morning, Linda still did not recall having killed her boyfriend. It was not until she spoke with her brother later that morning that she learned what she had done. She was soon arrested and charged with second degree murder.

She was held in city cells, but then eventually transferred to the Burnaby Correctional Centre for Women ("BCCW"), where she would remain as she awaited trial. Linda has a hard time remembering much about the time she spent in custody, prior to her conviction.

I didn't know anything about jail or anything, so it was all really new to me. I didn't know why I was in the jail. It seemed like I was drunk for about, like, nine months. Cause I was a bad alcoholic, so everything was so yucky. But finally when I did go to trial, it was the year 2000.

In fact, Linda never did have a trial. Rather, she had a preliminary inquiry, as a consequence of which she was committed to stand trial. She was represented by a legal aid lawyer, whom she felt failed to consider the relevance of her alcoholism and the sexual abuse of her daughter to the commission of her offence. She felt alone and helpless, and as a result decided that she should plead guilty to second degree murder rather than proceed to trial. She was sentenced to life imprisonment with no chance of parole before ten years. When she heard her sentence she said: “ ‘Good – throw away the key’ ... I just wanted to go die in jail.”

Linda was incarcerated at BCCW, which at the time housed both federally and provincially sentenced female prisoners. She wanted to take prison programming to address the problems and trauma that had brought her to prison in the first place. “I needed to deal with ‘What’s my life?’ – like trauma. I didn’t understand anything. Where does it stem from?” However, Linda soon found that BCCW did not offer programming that was relevant to her as an Aboriginal woman. It was very important to Linda that the programming she took have an Aboriginal orientation, because “I couldn’t comprehend or understand any other way.” Linda began working with the prison’s Elder, and the prison began contracting with other Aboriginal medicine men and women to provide certain programs and cultural activities for the prisoners. For Linda, these Aboriginal-centric programs and activities helped her to reconnect with her culture, which had fallen away from her in recent years.

It started out with ...smudging, prayer. ... I liked the wholeness and the medicine wheel part of it, that was for a good Aboriginal culture that I had lost and missed. ... That was the best care as we were going through emotional work, our medicine men and women coming with the mind and mental and emotional and helping us in our ways.

After having been incarcerated at BCCW for less than a year, Linda received devastating news that would have a significant impact on her life and on how she experienced her incarceration. Her father and her two children, who were living with her father while she was incarcerated, had all perished in a house fire. Linda immediately sunk deeply in to grief. Approximately ten months after the tragedy, it was suggested to Linda that perhaps she might like to be transferred to OOHL healing lodge prison in Maple Creek, Saskatchewan.

After I lost my children, the warden and the guards, everyone suggested that we should send her to the Healing Lodge. They had true sympathy for me, and empathy. Like whatever I asked for they tried to help me. They were really good.

The OOHL, designed and operated in an Aboriginal-centric fashion, offered programming and healing opportunities simply not available in BCCW's mainstream prison environment. Linda jumped on the chance to go. She was flown to Saskatoon, and from there had to make the five hour drive to OOHL. It was during that drive that Linda began to realize how different life at the OOHL could be from that she had known at BCCW: "... they took me out for fish and chips. I had never been in a restaurant, like what – for quite a few years. And I was – it was so nice. And I thought "really"? And she goes – "order anything you want." And I thought "Oh, wow." It was nice."

When she arrived at OOHL, Linda was assigned to a cottage, where she would live with one other prisoner. However, it so happened that Linda had arrived at OOHL right in the middle of a hostage taking, which had the prison on lockdown. Linda was left alone in the cottage, where she struggled to comprehend her new living environment.

I was just exhausted, so I tried to sleep. And I couldn't sleep in the big bed so I had to cuddle on the couch, cause I'm so used to being in a cell, my little cell, all the time. And then there was a great big kitchen, and a great big three bedroom house with a den... And food galore in the fridge and everything.

Before long, the hostage taking was resolved and all of the OOHL inmates, including Linda, were brought to the Spiritual Lodge to hold a talking circle about the day's events. Linda felt compelled to tell the other prisoners how fortunate she felt to be at the Healing Lodge.

And so, and then we had to sit in circle. And it was a big circle, like all day. And everyone had to speak and the Elders were there. And I spoke – I said “this is a privilege to be here!” You know, I just lost – I was in a deep sorrow and I spoke my feelings and I thought “Smarten up!”

Talking circles played an important part in Linda's time at OOHL; in fact, it was mandated that each prisoner attend the healing circle that was held every morning in the prison's Spiritual Lodge. Linda found participation in these circles to be very helpful and productive.

However, Linda found that participating in sweats on the prison grounds, which she did four times a week, was a source of even greater healing.

But I remember doing sweat lodge, getting the teachings, doing sweat lodge like four times a week. And I cried every round. I did the best healing I could. ... for myself, I would do the sweat lodge and just cry, cry every round. And be exhausted. But I had to, I had to cry. Cause I, I lost my children and my dad. Did a lot of good healing there.

Additionally, Linda participated in many other programs, some cultural and others based on the development of practical skills: “they offered so much there, like arts and crafts, sewing, I did computer skills, they had a gym... Programs were really good. They always had people coming in for programs.” Furthermore, the prison brought in Elders from a variety of First Nations to work with the prisoners. This was in addition to the permanent Elders, who came from the local Nekanee Cree community to work with the women inside. Linda felt that she learned a great deal from the Elders at the OOHL, even if they did not necessarily share her exact Aboriginal cultural background or language.

I felt I always had a deep yearning for my own people. But while I was there, I respected and cherished those moments. I still care for those Elders that brought me under their

wing, especially in the deep darkest time in my life, through my crime and through my losses. I think I had a great privilege.

After having served only nine months of her sentence at OOHL, Linda made the decision to return to BCCW. While she was in Saskatchewan, she began to feel terribly ill, and was diagnosed as suffering from breast cancer. Believing that she would receive better medical care on the West Coast, Linda left OOHL. Nevertheless, her time there made a huge impression upon her, impacting on both her healing journey and her contextual understanding of her own prison experience.

To be around Native teachings, and the care and love from the Elders and just the whole setting, being that it is a Healing Lodge and specifically made for Aboriginal women. And I got to know the history of why that Lodge was being built, because of Native women being incarcerated in Kingston, and I learned all about women being imprisoned in Kingston, so far away, it was the only prison in Canada. Like say if I had like a decade or so before, that's where I would have been. And I probably would have been hanging from a rope, along with all the other women. Truly.

Upon her return to BCCW, Linda immediately sought and received treatment for her breast cancer. She felt that she received excellent health care from the prison doctor, whom Linda felt really advocated on behalf of the prisoners' health needs. Her cancer treatment continued through 2002 and 2003, and resulted in Linda having to undergo a double mastectomy and reconstructive surgery. The following year, Linda and the other federally sentenced prisoners housed at BCCW were transferred to FVI, which had just opened its doors. Upon being sent to FVI, Linda experienced the same feelings of confusion that she had felt on arrival at OOHL; she was unsure of how to exist in such a comparatively relaxed living environment.

It was overwhelming, being incarcerated woman and doing a life sentence, I thought it best just how I was used to. Like structured – point A to B. Then we were put on these grounds and it's just open, but we – we made it. I made it happen. It was nice.

Linda again threw herself into her healing journey, and was hoping to take programs that would assist her. However, she soon found that she had already taken essentially all of the available programs, some of them more than once, when she was at BCCW and OOHL. She did engage in some useful psychological work, while she was living in the Dialectical Behaviour Treatment (“DBT”) house.

There they really wanted to look into my psyche about what – my crime. So I did. Intense work. Like, for two weeks I went with the event, the feeling ... Minute by minute play. And they just really wanted to get right in to my psyche, and that just drove me up the wall ... it was hard to do.

Linda found the treatment that she received in the DBT program to be helpful, but very emotionally difficult.

Additionally, Linda got involved in the Aboriginal cultural events that took place at FVI, working as the Elder’s helper, doing sacred ceremonies and attending sweats. She also participated in a victim-offender reconciliation program, which ultimately resulted in her meeting with the sister of the man she had killed. In order to prepare herself for the meeting, Linda engaged in intensive introspection and culturally-based work:

... my Elder called in our people from our reserve, medicine men to come and sit with me. I did my cold water baths. I wrote a letter ... showed it to my Elder, my Elder passed it over to the restorative justice team – that brought it over in a traditional way with tobacco to the victim of my crime.

The meeting took place in the offices of the victim’s sister’s psychologist. In Linda’s view, the reconciliation process was a very useful one.

It helped both of us, as Aboriginal families. Like, I, I just wanted it all to stop and I would do anything in my, you know with no ego coming in, to let her share what she thought of me or ask me any questions like she didn’t even know – must have been confusing for her. I wanted that to happen. ... Cause I have lost so much and I thought – when will this all end? I wanted it to end. Cause I went through so much.

Indeed, the process gave Linda great strength, and helped her significantly on her healing journey.

Linda's day parole hearing was also conducted in a largely Aboriginal fashion, making her one of the first Indigenous female prisoners in the country to have a culturally Aboriginal day parole hearing. The hearing took place in a longhouse, reflecting the traditions of Linda's Coast Salish band, and was an incredibly intense and emotional process for her.

... it was a beautiful day. I didn't really know what was happening, cause I knew it was my day parole hearing and it wasn't rehearsed or anything. I got to the home of my people in the Longhouse, my cousin and my mom's cousin was there. And the Elders of the Longhouse, the spirit, the medicine people. The Elder was there. And all these other people were there from Corrections Canada and the National Parole Board people, so it was the first of its kind. And I didn't know all this really, cause I was still working on my path and on what I had to do. And it was still all so raw from doing the ceremony with the victim of my crime. Like the restorative justice reconciliation, you know. So I got there that morning and it was – the Elder come and said “you're going to walk in with us – we're going to sing you in to the Longhouse. We're going to sing you in, walk around once, once and a half, and you'll sit on the blanket that will be there. And I will speak for you, you just sit there and say nothing.” – I said “Oh, ok.”

So we come in, it was like “uh” – it was the dirt floor of my ancestors. And I thought “Oh, wow – this is like wondrous. This is where I'm from. I can feel it.” And I sat on the blanket and the Elder spoke, said “this is what is going to happen – we brought our daughter home. We'll blanket – blanket her, and welcome.” That's all I can remember. And then he spoke to me, he goes “Get up, my girl.” He goes, “I have two blankets here, now you have to give them away. Who do you want the first blanket to go to?” And I looked at him, and I looked at all these people and they were all officers and very important people, and I was just brought there, and I thought – I looked over at my Elder sitting over...

In our Longhouse it's four directions, but if you're flying from the air it's like ok – you sit there, you're from Matsqui, you sit there because you're from Chehalis, you sit here because you're from Capilano, you're from Musqueam, you're from Semiahmoo – like we're situation. But my Elder, she was from South Dakota, so she was sat in the south, far far away. I looked at her and she didn't know – she didn't have the answer for me. I thought, “Help me,” I'm saying “Help me,” and I kind of broke down and hung my head. “Who does this blanket go to?” Something come up from the ground, it was a shiver that went right through me. And I heard a voice say “why are you here?” “Why am I here? Because I killed this man. I'm going up for day parole. Is the sister...” I looked at the Elder and I said “is she here?” She comes from that side – she come out from the woodwork down on the step, she come down, and that's how the parole hearing started. I

put the blanket on her, and we cried for two minutes. It was so emotional. And then that was done.

The one that I was sitting on, from the dirt, “who do you want this to go to?” I seen another sister that did a lot of hard time with me, and she was Native, and she was accused of beating a child or killing a child, but there was a big sad story behind it – suicide, beating, rape, everything. She won’t mind if this blanket comes from the dirt – I know – that’s my sister. And she come, all happy just to put that blanket on her.

[The day parole hearing] was held in a circle and the National Parole Board Elder was there, the Elder from my reserve was in the circle, and the National Parole Board people were in the circle. They had to audiotape it, because you absolutely cannot visually tape it because of the scene, because we were in a sacred space. And I remember them asking me a bunch of questions. ... they were in depth questions. The only thing I can really remember is that I finally told about what my daughter and my daughter’s, the friends, what they went through. And I explained in detail the different men and what happened to my children, my girl and my daughter’s girlfriend. And I explained in detail about the abuse he did to my daughter and my daughter’s girlfriend – the sexual abuse that they endured. I can’t really remember, it was so emotional.

In the end, as a result of this process, Linda was granted day parole and was released into the community.

Upon her release, Linda was sent to the Tsow-tun Le Lum Society (“Tsow-tun Le Lum”), a substance and abuse healing lodge treatment centre located on Vancouver Island. Tsow-tun Le Lum, which frequently treats individuals under supervision by the CSC, offers comprehensive residential treatment to Aboriginal people suffering from substance abuse and the effects of traumatic life experiences. Initially, Linda was sent to Tsow-tun Le Lum for a three month stay, during which she was to do in-depth work on herself, to help her come to terms with the experiences that led her to commit her crime.

It was a trauma program – I want to heal my inner child. I want to know why I did this. And that’s where the light went on and I found my defence and coping mechanisms deep within my own spirit. I wanted to know why I did all these horrible things, and have a better understanding of the energies that were provoked and that came towards, my, our spirit of our family and my children. I got a good sense and found out how it all came about. ... it stemmed from my own childhood sexual abuse. And the loss, like abandonment issues from my mother, from the suicide. That’s where it stemmed from.

In the end, she would spend a year and a half at Tsow-tun Le Lum, off and on. While she was there, Linda engaged in intense role playing and other psychological exercises to help her deal with her history of personal trauma. She found the programming at Tsow-tun Le Lum to be very helpful in her healing.

They brought in good psychiatrists – they had good psychology there, where they actually acted a scenario out where I was a little girl. And somebody in my group played me. ... I got to watch myself. A client played myself, cause I told her the story of what happened. And she acted it out and I got to watch. I could visually see what had happened in both cases – with the sexual abuse and with the abandonment of the suicide. ... it helped all of us. Because not only did they watch me, I watched them. There was eleven in our group, at one time, and I forget – nine or ten in the other...

Very intense – it was. And I thought “How can I ever – there’s so many trauma and abuses in my life – how can I ever get them all out?” But with each and every one of us, with our issues – maybe I dealt with two issues, but in each issue of our own it helped. [...] because I had something in common – we all had something in common with each trauma and abuse in our lives. And even more so with my Elders, because it was a – the trauma program was for residential school survivors of trauma and abuse. That’s where I learnt of the history of our peoples... I didn’t know anything about that.

Linda is now forty-nine years old. Since leaving Tsow-tun Le Lum, she has been living in suburban Vancouver, in a residential facility run by a women’s organization. She hasn’t always found adapting to life on the outside to be easy. A condition of her day parole is that she must report any intimate relationships that she forms, a requirement that she has found to “make life lonely.” She is now eligible to apply for full parole, but hasn’t yet decided when she will do so. Her breast cancer remains in remission.

3.5 Kimberly

Kimberly is forty-one years old. She grew up in suburban British Columbia in a safe and loving home. Her mother is a Chief's daughter from the Northwest Territories, and her father is Caucasian. Even though she grew up without a strongly developed identity of herself as being an Aboriginal person, Indigenous ways and traditions have always resonated with her.

Well I've always been a city girl, but any kind of learning or knowledge or connection that I've had with Native ways of living or spirituality seem to just fit and work with the kind of person that I was, and am.

Today, Kimberly lives in a suburban centre outside of Vancouver, less than an hour away from where she grew up. She lives in a residential facility operated by a women's group, which provides both short term shelter to women in need and more long-term housing for women such as herself, who are on day parole. Kimberly has lived in the facility, on and off, since she was released from FVI in mid-2010.

Kimberly's interactions with the criminal justice system have been dominated by one prominent theme: her addictions to heroin and cocaine. Her drug use began at age fifteen, in the aftermath of a terribly traumatic event.

When I was fifteen I was gang raped in [park]. By six men. That's how I lost my virginity. Soon after that, I started using drugs. I started when I was fifteen. After about two years, I quit. And only because I did, all of a sudden one day I just didn't want to do drugs anymore. But at that point I hadn't, I suppose my body hadn't developed the kind of addiction that I guess you could say seasoned drug addicts have acquired. Like it hadn't gotten to the point where I was... well they class alcoholics but I think you can class drug addicts too. I mean, I was able to stop because I wanted to.

Kimberly made it through her first phase of drug addiction, between the ages of fifteen and seventeen, without incurring any criminal convictions. However, when she relapsed on drugs at age nineteen, she soon found herself in conflict with the criminal justice system. Following an altercation with some fellow drug users who had been staying at her apartment, Kimberly was

charged with illegal possession of a firearm. While this charge was stayed, Kimberly proceeded to amass various provincial offence convictions related to her addiction and its support. She served several short prison sentences, ranging between fifteen and forty-five days, for various crimes and breaches of court orders.

However, after another couple years of drug use, Kimberly managed to get herself clean, at least from hard drugs. During this time she had no conflict with the criminal justice system. She would remain that way until her late twenties, when she again relapsed. She would subsequently use more or less consistently for the next eight years. Kimberly traces each of her relapses on drugs to her relationships with men: "I would start using because a relationship ended badly and I couldn't cope with emotions or anything like that." During this period Kimberly's drug habit was significant, and thus was very expensive. She turned to a range of criminal activities to support her substance abuse.

I learned how to be more creative in my criminal activity. And learned how to do fraud, bank identity theft...everyone I knew was involved in some way. You just pick things up and partner up and learn what they know and put things together...

During these years, Kimberly's personal and social life was dominated by people who, like her, were heavily involved in illegal drug use and in criminal activity. To Kimberly, these were relationships of convenience, rather than of actual substance.

There are no relationships. They're just people who do drugs and who are involved in similar activities that you are. I mean, there are people who commit car thefts and there's people who commit fraud, and there's people who commit robberies, you know what I mean, and there's people who drug deal, and each one in their own little circle...

Much as Kimberly's drug use affected her personal relationships, it also had a significant impact on her familial relationships. When she was thirty years old, Kimberly discovered that

she was pregnant. She already had an eleven year old son, who at the time was being cared for by her mother. Kimberly knew that she wanted to keep her unborn child, but worried for her child's health, in light of her significant abuse of both heroin and cocaine. While she managed to cut back on her drug use, she was not able to stop using drugs during her pregnancy.

The doctor in which I went to see said, cause I told her I wanted to have the baby but I couldn't just quit cause I would miscarry, like immediately, I would miscarry within the few days of detoxing, so she suggested that I cut down my use. So I said, well – how would you suggest that I do that? Like really I'm barely functioning mentally as it is. And she said, well – you could use intravenously. And I did. I took her suggestion. It did work, but it made me even more mentally unstable. Like I wasn't, like my thinking even got worse. I did try, I tried to get in to, was trying to get in to women's hospital for the pregnant women program, but then my water broke like a few days prior to going in to that program. And so like I had him a few months premature and so they took him in to custody.

My mother was looking after my older son at that time. And just prior to that, she convinced my older son – if we get the Ministry involved your mother will probably quit doing drugs, which is just ludicrous because no circumstances other than maybe being arrested or being physically thrown in the hospital – there's something that stops you, like it's not like you just go “oh, I'm going to stop using drugs.” It's not like you wake up one day and just go “oh, I'm going to be a drug addict today” – it just doesn't work that way. I mean there's a lot – there's a series of events in my life that led me to using drugs, right. And none of them very good.

Consequently, Kimberly's newborn son was apprehended by the Ministry of Children and Family Development at birth. It took her two years, but Kimberly eventually regained custody of both of her sons. Nevertheless, the process to do so was a complicated one, and Kimberly very much resented the control over her personal life that the Ministry was able to exercise.

Shortly after she regained custody of her children, Kimberly chose to send them to live with their respective fathers. She returned to a life of heavy drug use, and its associated criminal involvement.

It took me two years to get him back. There was all kinds of circumstances and shit that went on, but I did get him back. I got them both. And then as soon as I got them back, cause I really hadn't really committed to quitting using drugs. I was told to, I was told I

had to, and you know I couldn't just go "Ok, I'm going to quit using drugs and I'll just go back to drinking, to smoking weed, to being normal" because they said I couldn't. So I had this huge resentment and "I'm going to do what I want" and I faked piss tests. And then I got them back and then I sent them away.

Because I didn't want them to... When they're gone, they can't, I don't know where they are – I thought they were with you. Yeah, and because I still hadn't really recovered. Like I said, at that time I had been using since the time I was thirty. Which is when I was pregnant. I was clean for periods of time, after, it was about two years. My son was two. And then I sent him to his dad. And then my son who was probably fifteen or something by then, I sent him to his dad. Who wasn't really doing that well either...

Kimberly's drug use continued throughout her thirties, and as a result she began experiencing more and more conflict with the criminal justice system. She pleaded guilty to a charge of possession of stolen property, even though she felt strongly that she should have been acquitted of the charges. Kimberly blames the poor representation she received from her lawyer for her conviction.

It was, the police got a warrant for drugs to come in to my house, based on a pulling over someone who had drugs on them, and they claimed that they got them from me. But they kept this person over the weekend, so they didn't get this information in like, like they threatened him and told him "we know you got this from her, blah blah blah blah" and they didn't, so it was like ok, and then they got a warrant. We didn't have any drugs, but we did have stolen property, so based on law that should not be, those charges should not be admissible. Like, yeah ok they could seize the material because it was found to be stolen during a raid on the premises, but they can't charge us with stolen property, which they did, and we were convicted.

I told [my lawyer], I said well this is not, how it is it that you can't defend me on this, on these grounds, but you know, he advised us that they will convict us based on "blah blah blah blah" and I knew he was lying, so, I mean I have no proof that he sold me out, but I mean he wasn't willing to put the time and energy, like he would rather us take a deal that clearly we didn't have no reason to take. We could have fought that and gotten off.

... I think we took a CSO. And yeah. It was, right, cause I didn't have the money to pay a lawyer. And if he wasn't willing to do it, what was I going to do? Really, it's not like I was of sound mind at the time. You know, I'm polluted with drugs and you know, really just wanted to get the full ordeal...

Following this conviction, for which Kimberly served a term of house arrest, she continued to use criminal activity to support her drug habit, engaging in a significant amount of credit card fraud and identity theft. Eventually, she was arrested and charged with a series of indictable offences. Kimberly, who previously had worked more or less alone, traces the fact of being caught back to her decision to cooperate with another individual to commit her criminal activities: “I got charged because I trusted untrustworthy people. Of course – everybody who’s in addiction is not trustworthy...” Kimberly was taken to Surrey Pre-Trial, where she would remain for six months before her charges were resolved. While initially she wanted to fight the charges and take the matter through to trial, she eventually changed her mind. In fact, Kimberly started to see a penitentiary term as an opportunity to change the course of her life.

... they wanted six years for the charges that I had. But I also knew that I was under investigation for a long time for other charges so I told [my lawyer] to plead out any charges that the Crown had, any investigations they had on me, they wanted to charge with whatever, cause they didn’t have enough evidence really to follow up on charges, but I was willing to plead guilty on whatever charges they were deciding ...that they were considering bringing and I would plead guilty to all of them. And I would consent to three years without trial.

... It didn’t matter what lawyer I had. That lawyer only spoke for what I directed them to speak for. It’s not like I didn’t know what I was up against, I knew what kind of evidence they had. I also knew that I wanted to change my life, so I was willing to take everything so I could start over, right?

Consequently, Kimberly pleaded guilty to a range of federal offences related to fraud and identity theft. In January 2010, she was sentenced to serve a three year term at FVI. At no point during submissions at the sentencing hearing did Kimberly’s counsel advise the court of her Aboriginal ancestry.

Kimberly did not find her time at FVI to be particularly healing or helpful on her road to recovery from drug addiction. As an Indigenous woman who doesn’t possess many typically Aboriginal physical characteristics, Kimberly felt excluded from the Aboriginal community that

existed at FVI. As a result, she didn't feel comfortable participating in the majority of the Aboriginal-centric programs and events available within the prison.

I spent a lot of it isolating. I stayed on my unit, our living house or whatever. I mean, I probably would have attended more of the Aboriginal... But as you can see I'm quite milked down. And I don't look Indian, so I didn't really fit in to that area so much. Like it's hard to go to culture night as a Native woman when you're white. It's not like they welcome you in to the circle of community that they have, simply because I don't look Native.... I just wasn't comfortable. Like I didn't feel like I belonged.

It was documented that I was of Aboriginal descent, but they ask do you want to have, and you say yes, but then um at the time the Elder was kind of really kind of working on her own. They have more of a team there now. I think they're trying to make it, not so, I don't know. I really like [Elder], I think she was a wonderful lady and I still, like I – you know, she recognizes me, she knows me and stuff, but I don't know, I don't feel like I was drawn in...

And specifically, because I mean if you tell somebody you're of Aboriginal descent and you don't look of Aboriginal descent, I think there should be more consideration taken in including you in to that circle of, that environment. Because if you don't look, you're not going to be accepted, unless brought in. And sort of, you know, allowed to be given time to connect with people. Cause they just won't, right. Yeah, it was hard for me to connect.

Similarly, Kimberly felt a lack of connection with the corrective programming made available to her at FVI. As a result, she participated in it only to a very small degree. This was in part because she found herself unable to trust the prison staff and counsellors, many of whom were former prison guards, a fact that led Kimberly to not feel safe in being open or forthcoming with them.

I mean you work for the system for so long, there's an "us" and "them" thing. Like, it's not that bad in the FVI compared to like men's institutions, but there is still an "us" and "them." And if you're getting counselling and your programming stuff from that area, they are already pre, they have already predetermined their opinion on the type of women who are in there regardless of... like cause like a counsellor kind of needs to get to know a person individually. Whereas if you've been working there as a guard, your opinion has already been predetermined. So it's not an appropriate way of staffing someone that you need to establish an emotional connection with.

While Kimberly was able to develop relatively more positive relationships with some of the prison staff, she generally found it very difficult to connect with the majority of them.

... some of them were nicer than others. I mean, I wouldn't say I had good relationships. But some were more considerate and thoughtful than others. I would say less judgmental and opinionated than others, right.

Kimberly found that the substance abuse programming, such as WOSAP, that was made available at FVI was neither conceived nor administered in a manner that would make it helpful to the addicted prisoners it sought to assist. For one, it too was taught by prison staff, many of whom had previously worked as guards. Furthermore, the individuals leading the programs had not necessarily experienced a personal struggle with substance abuse. To Kimberly's mind, this made them out of touch with the true realities and consequences of addiction.

Well I attended the program. And I had been in recovery before. And the stuff that they were telling it was just like someone who has absolutely no idea whatsoever. Like when you're in recovery, the people you are working with have been addicted and are recovered from using and drinking and having lived that state of, that hopeless state. Whereas these people, they don't. They have never ever experienced it. So when they're trying to clinically give you information about how it affects someone physically, mentally and emotionally, spiritually, then it's just smoke. It doesn't actually, people don't actually listen.

Like I've had the same program but I mean that's why in the twelve step fellowship is that one alcoholic helps another alcoholic, one addict helps another addict. Cause the best way to for them to believe that the program works is that they see that it works for you and that you have experienced the same things that they have. That's why their program works. That's why their program doesn't.

Kimberly felt that the WOSAP program treated substance abuse as a rational decision, one that was made in a calculated way. This contrasted with her own experiences of addiction, which she found to be something that existed outside of her own control.

... for one, they're trying to clinically analyse addiction and why we commit crimes and trying to put patterns and analyse our attitudes and thinking patterns, when we don't have thinking patterns. There's no – when we're on drugs we're crazy. There's no sound mind. There's no "Oh, you know, when things start happening I'll see it coming." That's not going to happen. Like something happens and then your first response is to get high, or drink. Cause that's how you've always coped with it in the past. So unless you have something in place to help draw you mentally back into grounding, like to get grounded again. Well, like I stayed clean for four years. Well, I drank, I was normal so to speak, for four years. And then I was normal for eight years. But then when something emotionally traumatic occurred then any mental capability of staying focussed on any kind of normal lifestyle went right out the window. Cause at that point I didn't care. I was angry, hurt, frustrated...

Having found that FVI's substance abuse programming would not meet her needs, Kimberly chose not to participate in it.

Prison administrators and staff tried to convince her to participate in corrective prison programming, but she refused, in part because of her dislike for group programming. Still, she tried to use her time at FVI to work internally on the problems that had resulted in her criminalization.

... I'm not really good in groups anyways. I'm not really comfortable in that area. But you know, I don't know, I did the best that I could with my mental state as it was at the time. Cause I was withdrawing from methadone at the time. And I was withdrawn anyways, with all the last ten years of drug abuse and isolation and subculture and etcetera and so forth.

After serving six months of her three year sentence at FVI, she was released on day parole and moved to a residential facility for women. Shortly after her release, Kimberly began having real struggles with her addiction issues, and felt herself sliding towards relapse. She spoke with her parole officer, and requested help. She admitted having used once or twice, and asked to be sent to the residential substance abuse treatment program at Tsow-tun Le Lum. Instead, her parole officer sent her back to FVI.

So she revoked my parole and I went back, and then they reinstated my parole. Which is kind of stupid, because I had already requested help and asked to go to Tsow-tun Le Lum

and to get some – that I wasn't doing well – so it was kind of a very not a very cost effective way of dealing with the situation, considering that I had already disclosed that I was having uses and needed some sort of help. But whatever. It wasn't a big deal. I was actually grateful to be removed. I had been here a long time and couldn't emotionally detach myself from the whole situation that I was involved in. The ex-boyfriend and all this stuff that I felt obligated to be involved in and all this stuff that I was doing. It was just not good.

After spending about thirty days back at FVI, Kimberly's parole was reinstated and she was allowed to return to the community.

Kimberly was then sent to participate in a six week residential substance abuse treatment program at Tsow-tun Le Lum, as she had requested. Unlike at FVI, Kimberly felt welcomed and accepted fully by both the staff and clients at the healing lodge. "It was for Aboriginals, Aboriginal descendant of any kind. If you have Native... so it worked very good. I was comfortable, everyone was very accepting. It was a really good experience." Kimberly had the opportunity to engage in a range of activities while she was there, including counselling and substance abuse support group therapy.

There was Elders that come in and there was teaching and there was praying. There was addictions, twelve step based, not... without actually pushing any particular twelve step fellowship, we went to NA meetings, um... You know they had arts and crafts, kind of a balanced daily routine. Good food, respectful. You know, it was good – it was a really good program.

Kimberly completed the six week program, and commenced another program at Tsow-tun Le Lum. However, after a couple weeks, she was discharged from the healing lodge and again sent back to FVI.

I got discharged because of a miscommunication. You know, it was disappointing, but I'm not going to hold it against them. That was one person's lack of proper communication and yeah, it wasn't good. I was arrested. Yeah, because my residency, so they hadn't prearranged for me to go somewhere else, so there was no bed arranged for me through CSC, so I had to go back to prison until they could arrange some place for me to go. So that was a really bad experience. It was not done in a very healing and

therapeutic manner, so it was very disappointing. But I had completed the program and had done a couple weeks into the next program.

After having spent another fifteen days at FVI, a bed became available for Kimberly at the housing facility where she still lives today, allowing her to be released from prison.

Since her return to the housing facility earlier this year, Kimberly has secured full-time employment, and also has begun to occupy her time with advocacy work on behalf of criminalized women and other marginalized social groups. She sees this work as a sort of obligation, one that arises from some of the privileges and good fortune that she feels she has had in life.

I mean, my life has mostly been stable. Like, I come from a good family. I suffer from some emotional, anxiety and mental disorders that aren't extreme in any way, but extreme circumstances can make a small problem into a big one, and unable and you know I just didn't have any awareness of you know, you know like I'm medicated now, I'm supervised twenty-four hours a day. Like I'm doing well, I'm working full time, I volunteer my free time, I spend all like available free time that I have with my family. I tend to, you know, the City Hall council meeting for Elizabeth Fry, I spoke you know and that's not in my nature. I think that the things that they do, the programs that they offer are extremely valuable and very necessary in society and that that there needs to be more like Atira, The Lookhouse Society, Elizabeth Fry – there just isn't enough. I have a moral obligation to stand up and say something you know to, for that, right. Yeah, so, I did that. And I was at the Homelessness Task Force. It's not really my gig but I'm well educated and I understand all the legal terms and the mumbo jumbo that goes on, so I am capable of being politically active on a deeper level that I would say most people are.

Her experiences in the prison system have left her with little belief that the system, as it is currently administered, is incapable of healing the women it imprisons and providing them with pathways to a better future.

... you got to consider that these are women who don't identify with or have any faith in any system. Particularly the one that is you know the key like particularly I guess they call it "the keeper of man," right – you know. How do you... Like I couldn't have that job, I couldn't do that job. I wouldn't be able to dictate how one should think, feel and be. It's not, yeah. You know, if they commit a crime then throw them on an island somewhere and let them survive on it. I'm all for the Native way of fixing, you know what I mean? You wanna be like that? Well you need to see what it's like to live this

without, otherwise if you want to live in society then this is how you need to behave. Works really well. It works really well.

3.6 Nicole

Over the course of the ten months prior to our interview, thirty-three year old Nicole has been working tirelessly to change her life. Since finding out she was pregnant with her son Alex, who at the time of the interview was seven months old, Nicole had managed to both get herself clean and to move her and her new born son into a housing facility for at-risk new mothers and their infants, located in the suburbs of Vancouver. Before making these changes, Nicole had been living a “dope life” for nearly twenty years. The seeds of her addiction were sewn early, over the course of a turbulent childhood. As she was growing up, Nicole at various times lived with her mother on the Eastside of Vancouver, in foster homes, and for a period of two years with her father, who abducted her from her mother’s care. Sometimes, she would be sent to live on her band’s reserve, with members of her extended family.

When I was really young actually – I can barely remember. But I can remember going to the rez and staying there with my family and my mom not being there, you know what I mean. Cause my mom, well my mom used to work the streets and have a dope life too, right. And she wouldn’t sometimes take care of me, so she would send me home.

Her mother, a residential school survivor, oscillated between being active in addiction and all its associated criminal activity, and periods of stability and sobriety.

My mom, at a couple times in her life was really really good, and she was a natural mom and she was clean, you know what I mean. She did good things with her life. She’s been to college, Langara College. She’s been a social worker. And a Native Courtworker, you know.

Nicole's own drug use began when she was very young, but at first was limited to just smoking pot. However, by the time she was thirteen or fourteen, Nicole had begun occasionally smoking crack cocaine.

And then like just different crowds I used to hang out with they used to do like cocaine powder and then just one time I was with a group of people and he started to like cook it up and he was like "oh, it's just cooked up coke," right and I was like "oh" and like before I know it I'm like "what the hell, I'm smoking crack."

Her hard drug use remained sporadic until she was seventeen years old, when she began a relationship with a man who was addicted to crack cocaine. Before long, Nicole was using crack on a daily basis.

I was with a guy and he used to smoke rock all the time. And I never did; I used to smoke weed. And he was like "I got this and I'm going to smoke it in the other room". And he used to spend a lot of time doing that and he used to spend no time with me, so I figured one night I would go get some and he would spend some time with me. Little did I know, that drug was so addictive and I got hooked. And then me and him just started smoking and smoking and smoking. And that was it, my world just spiralled downhill.

Nicole soon left that relationship, but her addiction remained with her. She was supporting herself and her habit through street prostitution when she met a new boyfriend, with whom she would remain in a relationship for the next fourteen years.

I would hook up with – well you know when I was seventeen I hooked up with this guy, and I was working the streets. I can remember that night so clearly, was Canada Day and uh I had started smoking rock and it had gotten real bad with this guy I was with. And I was like "Please God, like somebody, help me." And I was just working one night, I was working the streets, and this really good looking guy drove by, like in a nice car, and I was like "Oh my god, look at that guy, look at that car, there's no way he's coming back for me." Sure enough, he did. And uh, he offered me, "how about you just smoke weed with me, be my girlfriend, and I'll look after you and you don't have to do this." And I fell in love, right. And then, uh, I used to hide my dope problem from him, so I used to smoke behind his back, every once in a while. And he caught on to it, and he started to hit me. And I stayed with that guy for fourteen years. And I put up with a lot from seventeen to thirty-one. Maybe eighteen to thirty-one, I stayed with that guy. And he used to beat me up every day. We went from having everything to living homeless on the street, doing everything.

Eventually, Nicole's boyfriend himself became addicted to crack. Together, he and Nicole became daily users of crack, and later also of heroin. They supported their increasing drug habits in a variety of ways: "We used to do pretty much everything to get our money to get our dope. We used to rip people off, I used to do dates, we would do hustles here or there, you know what I mean? To supply our habit. It was pretty bad. I think about it now, it's like – 'Holy cow – what was wrong with me?'"

Unlike many women who live this sort of life, Nicole has spent a relatively short amount of time in prison. Her first conviction, for shoplifting from a drug store, came when she was eighteen years old. She was given probation, and only spent one night in jail. In fact, it was not until she was in her mid-twenties that Nicole would be incarcerated, when she spent twelve days in Surrey Pre-Trial. Nicole's arrest came at the end of a week-long binge on crack and heroin, as a result of which she was hallucinating badly. Believing that her mother's apartment building was on fire, Nicole repeatedly called 911. The police eventually attended, arrested Nicole and took her to jail. Upon her arrival at Surrey Pre-Trial, Nicole was put in segregation, where she would stay for the next five days.

... because I was so high at the time, and I was dripping sweat, and they were like "Oh my god, this girl is hallucinating – look at her," you know what I mean, so they threw me in Seg Two for five days and I was like so sick.

... cause I was going through withdrawal. By the time I got out of there, I was clean – right? One good thing came out of it. And that was probably the only thing that was going to get me clean, you know what I mean, right? Yeah, I came out of there clean, so that was nice. But the first little bit of it I was like "Why did you throw me in Seg Two? Like what's up with that, right?" And they never really answered me, they were just like, because I was so high, right? I don't know, right. But I think I would have been fine in the regular jail, right. You don't have to throw me in Seg Two with another girl who's as sick as me, maybe ten times worse? She's in really rough shape, and I had to stay in that room. I was allowed out for one hour of the day, just for one hour, twenty-three hours of it I had to be in there with her. It was not nice. And she was going nuts herself too, it was horrible.

After spending five days in segregation, Nicole was moved to the general population of the prison.

A week later, she was released from jail, and transferred to a recovery house in suburban Vancouver. She left that facility within less than twenty-four hours, so that she could go get high. After going on the run, Nicole was eventually caught by the police. Ultimately, she served fourteen months of probation for the mischief charges. She was assisted throughout these charges by the Native Courtworkers Association, which provided her with assistance throughout the court process. She found her interactions with the Native Courtworkers to be very positive: she liked how they treated her, and appreciated the way they drew the court's attention to the underlying causes for her addiction.

... it was really really nice. Yeah. They were really really nice. Treated me really really well and asked me all the right questions and they know how to go about things around me, and just know how to talk to me properly. Like, treat people like how I would like to be treated. And so, that's how I was treated.

They dealt with me quite a bit and just asked me questions like, um, just about my life. And they would tell it to the judge in a quick, a quick way of saying it. They just like say "Oh, she's the daughter of a residential school survivor," and they would bring it up with the courts and all that.

As a result, Nicole felt understood and well-represented throughout the process.

Since then, Nicole has only been incarcerated on one further occasion. When she was nearly thirty years old she spent two days in prison after her mother made false allegations about her to the police. "I used to get high with my mom. And so because one night I wouldn't give my mom what she wanted, which was more dope, she got mad, kicked me out, called the cops and said that I beat her up, assaulted her, threatened her life, you know and B&E'd the place, and so I guess she sent out a warrant for me." After another brief stint in a recovery house, Nicole was again placed on probation. Throughout this entire period, Nicole and her boyfriend continued to

abuse both heroin and crack. In order to support their habits, Nicole engaged in sex work on a consistent basis. As a result she had regular contact with the police, many of whom she found to be hostile towards her, something she traces in part to her Aboriginal status.

They're very rude, sometimes they would pass by and they would make fun of me. They were just really rude, ignorant right? Aboriginal, working the streets, smoking dope. I was just another little Indian crack whore, right, so... that's how they treated me. ... they would act totally different towards a white person or someone else. But to the Aboriginals, they'd treat us like shit.

However, Nicole noticed an improvement in her treatment by police in the period following the conviction of Robert Pickton for the serial murders of sex trade workers on Vancouver's Downtown Eastside. She found that they became more caring towards her and other sex workers, as well as more responsive to their needs. During this period, Nicole began to think of the police as her friends.

I can remember a couple times I called the cops because I almost got a bad date and in that type of situation they treat you a lot different, because of I think Willie Pickton. ...

They used to always ask if I was ok, watch out for this guy... Do you have food, where are you staying, are you ok – you know? Or if they picked me up with someone, ok you go home, right – you ok? They were really really nice and helpful.

For Nicole, experiencing racism has been a regular occurrence in life. While she still experiences prejudice today, she found both it and its effect upon her self-image to be more prominent when she was using drugs and working the streets.

Cause like pretty much every day I deal with it. I go places and people think I'm going to steal something. Or like look at me like, you know, I've dealt with [racism] a lot. "Look at that Indian right there," you know.

It makes me feel like, uh, like I'm not good enough. Or I could never be as good as white people, you know? I don't know... But yeah, I know that. I know it's not true, but... that's how it made me feel.

When I was doing dope and you know, that's how it made me feel, you know. But now, I'm clean and I just, no – it's not like that. ... And I think it has a lot to do with the drugs and you know, what you're doing at that time. What made you look like that, you know. Cause I was working the streets, because I was hooker, because yeah I smoked crack and did heroin, and yeah I'm running from the cops and got caught doing this, and you know what I mean...

After spending nearly half her life in addiction and prostitution, Nicole began to make changes to her life when she was thirty-one years old. One day, she mustered the courage to leave her abusive boyfriend, and hasn't been back to him since.

And then one day, he had beaten me that morning because the twenty dollars that we had saved last night for our heroin for the next morning to get us not sick, we ended up buying a twenty rock and it made it worse. So he ended up beating me up and sending me off to work at noon in the afternoon. It was a sunny Sunday afternoon, I can remember so clearly, I was thinking "Oh my god – what am I doing?" And I just, I never went home. I left with the clothes on my back. Fourteen years. And I haven't been with him since.

After she left, Nicole remained active in drug addiction for more than a year. However, when she found out she was pregnant with Alex, she sought help. She was admitted to a program for addicted expectant mothers at the Vancouver Women's Hospital and, after a period of Ministry of Children and Family Development involvement, was able to obtain full custody of her son.

Nicole has been clean since shortly before Alex was born, but struggles to provide for him on her disability allowance. His father, who doesn't believe that Alex is his son, does not provide them with any support, financial or otherwise. As a result, Nicole has been forced to steal to provide Alex with necessities, such as diapers and formula. On one occasion she was caught stealing baby formula and is currently facing related shoplifting charges.

It's just when you need something and you know you can't get it anywhere else, which was my last situation, I mean like how desperate am I, right? I would do anything for him, you know. So I got caught shoplifting...

... it's really hard. I'll spend every dollar on him, and sometimes, it's still not enough – you know. But I'm doing really good now, I've been clean – going on eight months. I don't know, I think I'm doing really good raising him. It's only happened the one or two

times that I have stolen for him, and I'll be sure not to ever ever let it happen again. It's just a matter of budgeting my money, right, so I'm just learning.

Nicole is again seeking help from the Native Courtworkers Association, which had assisted her over the course of her mischief charges. She hopes to never spend time in prison again.

3.7 Tammy

Tammy is forty-nine years old. She was raised on an Albertan reserve that is now infamous for the extent of its violence and social problems. She grew up in a family of nine children, of which only four are still alive today. As she was growing up, Tammy's father worked and her mother stayed home with the kids. Both parents had terrible drinking problems, and their home environment was a violent one. Tammy started drinking when she was just eight years old. The first time it was with her sister; they stole a gallon of wine and took it to the toilet to get drunk. As punishment, Tammy's sister was whipped by their father. Most of the adults in Tammy's life were residential school survivors, a fact that Tammy connects to their violent behaviour and substance abuse problems. When she was just thirteen years old, Tammy was raped by one of her uncles.

I was thirteen years old and he raped me. He held a knife to my throat. He was a psycho. He got drunk. Cause he was a residential school survivor. So he thought it was ok to rape your own kind. That's what residential school did to him, I guess.

Tammy never told her parents about the rape. One year later, she left her home reserve and went to live in the city with her aunt and uncle, who adopted her.

Tammy's life with her aunt and uncle was much better than her early childhood had been: "my mom today, my auntie, I just love her. She taught me the Bible. And my dad, my uncle, taught me the Aboriginal ways." However, she didn't stay with her aunt and uncle for long.

When she was fifteen years old, she became pregnant, and made the decision to give her daughter up at birth.

So when I was fifteen I got pregnant. I had my daughter, my baby. And I had to give her up, I did, I gave her up to welfare. And I think that's the best thing I done. Because I wasn't taught how to be a mother, nothing like that. Cause my mother was too busy being an alcoholic, she didn't have time for me. She didn't even want to know me, cause I got pregnant.

When she was sixteen years old, Tammy and one of her girlfriends decided to come to Vancouver for the weekend. After a brief stint back in Alberta, Tammy returned to Vancouver, where she has been living ever since. Within a year of her arrival, she had been caught and convicted of fraud, for which she was given probation. Since then, every one of Tammy's convictions has been related to drugs; she estimates that there have been around two hundred.

Tammy's problems with drugs began when she was twenty years old, prior to which she had only drank and smoked pot. She descended quickly into full-blown addiction, and was soon using criminal activity to support herself and her habit.

... I started experimenting with cocaine. PCP. Acid. MDA. You name it. Hard drugs. And I was selling them to support my habit. Cause I was selling my body on my street, selling myself. And I was making enough to make ends meet. And I was living in hotel rooms, here and there. Just couldn't make ends meet. So I started selling drugs... So my first offence, they busted me in a bar. And how ... somebody said someone ratted on me. Cause when the cops come in, he grabbed me by my throat and threw me up against the wall. I mean, he deliberately grabbed my neck.

Tammy was charged and convicted of possession for the purpose of trafficking, and sentenced to three months at Oakalla, a now closed provincial women's prison in Burnaby, British Columbia. According to Tammy, life at Oakalla could be pretty good, in large part, because the guards could be quite understanding.

They were from the old school. I was in jail with older women who were more streetwise than me, who knew the system. And that's how I started to get to know the system, was

from these women. I met this woman, she died a long time ago, her name was Grace. And she goes “ you know, just be good with the staff and they’ll be good with you.” Sure enough, they were really good guards. But then, BCCW opened up, and it was different.

After being released from Oakalla, Tammy continued to use drugs on the street. By the time she was twenty-two years old, she was heavily addicted to heroin. She was selling heroin and cocaine to support her habit, but got caught and was sent to BCCW to serve a six month term of imprisonment for trafficking. When she arrived at BCCW, Tammy became terribly ill from withdrawal.

... in those days, they didn’t know what methadone was. They threw me in segregation. ... And I’m sick. And they thought by shoving pills my way, it’s going to make me better. And they did that to all the girls. And sometimes I was so sick I was puking on myself and puking up the pills. And they’d shove more pills down my throat. It was the only way to shut us up.

Tammy kept telling the guards that she didn’t need more pills, but that something was terribly wrong with her; they didn’t listen.

And I kept telling them that. I had pain here, all the way down. My chest. I said, “there’s something wrong.” I kept telling them. Sure enough, that night I had a mild stroke. The same night they brought me back to jail. They didn’t even, they checked up on me maybe once a day. Didn’t have no shower, didn’t help me take a shower. My food, they shoved me a tray – “here, eat your food.” If you didn’t eat they’d take the tray – too bad. And I was sick, I had just had a mild stroke. So I thought it was only me that was being treated like that. It was other girls too. I heard the doors being banged – “feed me.” The other girls – they were so sick. They were coming down, they were hungry. But they were too sick to get the food, the tray. They would take the trays with the food and they were hungry at night. They let us starve.

As she was going through withdrawal, Tammy noticed that she and the other Aboriginal prisoners were not accorded the same treatment as the non-Indigenous inmates. Not only were they treated with less kindness during their withdrawal, they were also housed in over-crowded

cells once they were released into the general prison population. Tammy noticed similar patterns during her subsequent stays at BCCW. For example, she found that it was the Indigenous women who were made to wait the longest before being processed and seen by doctors during intake at the prison.

And it was terrible. They would make you take a shower and they'd check for lice. They'd give us a cold lunch. Stick us in a room and we'd have to wait to go up to the unit. You'd sit there and sit there. You're starting to get sick, starting to withdraw. You'd sit there and sit there. You'd smell the puke and people having diarrhea. It was terrible. But we had to make the best of it. Sit there and help each other, and rub each others' backs. We were so sick. I was crying I was in such pain. Withdrawing and waiting to be sent up to the unit. Waiting to be seen by the nurse, by the doctor. Waiting. Hurry up and wait. It was terrible. It was Aboriginal women. There were other women too, white, black, Chinese. They were doing the same thing. But we were always the last, I find. Aboriginals were always the last people. There were too many of us.

In some instances, the racism to which Tammy was subjected was more overt. One incident in particular, which took place at Surrey Pre-Trial, sticks out in her mind. Tammy was brought to jail after having fallen and hit her head at a bar. A prison guard looked at her and said : "all you fucking Native junkies are all alike." Tammy filed a grievance with the warden, but as far as she knows, no action was taken against the guard.

He pretended he cared. But nothing happened. Oh they told me to stay away. She called me that, it really hurt me. She hurt me. Native junkies. She made me cry. It still hurts me today. It didn't hurt me because I cried, it hurt me because it was true, you know. It was true. I'm a drug addict, you know. But we're all different, you know. I didn't like that.

As a result of this experience, among others, Tammy has very little good to say about the time she has spent at Surrey Pre-Trial.

Tammy was soon caught up in prison's revolving door; in fact, she guesses that she's been imprisoned for eighteen of the last twenty-five years. She was dealing drugs to support her habit, and was regularly being sent to BCCW to serve sentences ranging from three to eight

months long. At first, she had no interest in participating in the prison programming available to her.

I'm the type of woman that knows it all. I'm a drug dealer, ok? I know everything. I don't need no programs, ok? Just let me do my time and leave me alone. That was my attitude. So one day, and this is out of the blue, at BCCW, my grandma, my flesh and blood grandma, became an Elder. ...

I feel that small. My grandma became an Elder. But she helped me. But I had just gone through my withdrawals, and I was really thin. She started crying. ... She said "oh, so many demons." Oh I felt so bad. So she said come to ... she only had a little trailer. Bring some girls. Candy, give 'em candy. Here's some candy. Tell the girls to come meet grandma, the Elder. I said ok. I went around and said "there's an old lady here, we got an Elder."

Once her grandmother started working as an Elder at BCCW, Tammy started participating in the available Aboriginal programs. She began smudging regularly and became a drummer for the Native Sisterhood operating within the institution. She soon felt that her participation in the programs was helping her: "I really enjoyed it. It kept me levelled. That's what I needed. I think that's what any girl in prison needs. That's what she should do – programs. You would be amazed." It was during a stay at BCCW that Tammy had her first opportunity to go to the Tsow-tun Le Lum Healing Lodge, where she has since been placed on two other occasions. Her time there was very valuable to Tammy: "That's what really helped me, was my spirituality. In prisons. I try telling these younger generations, but they're like me – they know everything."

Even though Tammy felt that some of these programs were helpful, she still started using again each time she was released from prison. Consequently, she kept returning to drug dealing as a means of supporting her habit. After nearly twenty years of being busted with relatively small amounts of drugs, Tammy got caught with close to a kilo of heroin. The Crown was seeking a sentence of eight to ten years, and Tammy spent one year in pre-trial custody at ACCW. Her time there wasn't bad; she participated in programs and spent time with the Elder.

Eventually, she pleaded guilty and was sentenced to three years at FVI, which she began serving in 2003. After serving one-sixth of her sentence, Tammy was granted day parole. She was sent to live at Anderson Lodge, on the Downtown Eastside of Vancouver. She relapsed, and two months after her release from FVI, Tammy's day parole was revoked.

So I screwed that up. ... Because come on. It's close to skid row. And I'm still kind of, I'm still pure. Of course I'm going to two months and then relapse. ... the location's bad. And they had no programs. ... The only program they had was soup kitchen. What the hell is a soup kitchen? And we were on our own after that. Of course everybody is going to bugger up.

Tammy returned to FVI, and turned down the offer of a return to day parole. She was eventually granted full parole, but relapsed yet again. She returned to FVI, where she remained until two months before she was to be given statutory release, when she was sent to Tsow-tun Le Lum.

In total, Tammy spent four years going in and out of FVI. Her time there was for the most part positive; she lived in the Pathways house, worked with the Elder and participated in the cultural programming. She would cook and drum at the weekly Culture Night, and met with visiting Elders. She obtained her GED, as well as her forklift and flagging tickets. Tammy also participated in corrective prison programming, like WOSAP, but found there to be some problems in the way that the programming was administered.

Well some programs they go deep, and they go too personal. And they touch spots where they shouldn't. They set you off, and they don't know how to cool you down when the program's over. They don't know how to control you, how to level you out, how to calm you, calm you down. And that's not right.

... They didn't have the ... they learn from the books when they should actually be learning from prisoners what they should be doing before that happens, before anybody freaks out because you touched a nerve. Learn how to control the prisoner about their feelings. If you ask them a very personal and they don't want to answer but you keep insisting because it's part of the program? No, it's not. They don't want to answer it. But some facilitators tend to keep bugging and bugging until you answer and you flip out, cause it hit a nerve. And they don't know how to – they let you flip out and throw chairs. They call the guards, you're handcuffed and you're back to segregation – for how many

days? Maybe a week? Two weeks? Cause you flipped out cause a facilitator asked you a question you didn't want to answer.

.... And they don't know the consequences, that's what I was trying to say. They don't know what to do when they've set somebody off. Just let that question be. And then at the right time, they'll tell you. Maybe they don't want to tell you in front of everybody. Maybe just one on one. If you ask "do you want to talk about this?" and they still say no, just let it be.

Nevertheless, Tammy credits her time at FVI with helping her to turn her life around. Since her release, she has only had one subsequent conviction, for which she is currently serving an eighteen month conditional sentence.

Over the years, Tammy has had good relationships with her defence counsel. She used the same legal aid funded lawyer for seventeen years, and felt as though he really understood her and the personal problems and experiences that underlie her drug addiction and related criminal behaviour.

He understood me. Because he actually sat down for a whole hour and, maybe an hour and a half. He brought me coffee. He came to see me at BCCW and, brought me coffee, and it was so good, it was so tasty. So anyway, he sat me down and says "I want to know everything about yourself – don't leave nothing out." [...] So I told him about my background, growing up. My family is from a reserve. Alcoholics. My mom and dad were wicked drunks. My dad worked. My mom was a housewife, raised the kids. I was raped when I was thirteen. My uncle raped me, took my virginity. And so I started being on my own.

On the advice of a former boyfriend, Tammy changed lawyers for her federal charges. She has a good relationship with this lawyer as well, who has been counselling her to turn her life around and stay away from her old life on the streets.

... he said "Tammy, you gotta stop this. Enough is enough. You're too old for this." And I said "Gary, you're right." He said "you don't belong in this life no more Tammy." And it hit me. He was right. Enough is enough, you know. I've seen the ups and the downs of prison life. It was all I knew. It was all I knew how to do was to go to jail.

Since the commencement of her conditional sentence, Tammy has been making big changes in her life. She stopped using, and has stable housing. She has been making moccasins and dreamcatchers, and has been teaching other Aboriginal women how to bead in the Cree way. Tammy says that this is going to be her “first and last” post-FVI sentence.

3.8 Lori

Born in Nunavik, Lori was adopted by a white family from Southern Canada when she was only ten months old. Her adoptive father was a reverend, and he and his wife also adopted two Indigenous boys, with whom Lori grew up. She was just nine years old the first time she got in trouble with the police. She was caught smoking and drinking, and was sent to spend a week in juvenile hall.

... they just tried to scare the crap out.. you know.. but you know like, I was, I was adopted. I was adopted and it was a really bad situation. I was badly abused. So being in lock up was better than being at home. They couldn't scare me, cause I had already been through it all.

She ran away from home at age fourteen, and stayed away for a whole year. Her family had moved to Manitoba in the year that she was away from home, and she eventually went to join them there. Lori soon began spending much of her free time drinking at a biker bar; before long she was making money by doing odd jobs for a local biker gang. When she was still just sixteen years old, Lori was sent down to the United States to smuggle back a pound of cocaine for the biker gang. She was caught by the police, and served six months in an American youth prison before being sent back to Canada. Upon her return, Lori continued to work for the biker gang.

By the time she was eighteen years old, Lori was addicted to cocaine. Throughout her twenties, she supported herself and her habit by working for the biker gang, dealing drugs and even working to collect debts owed to the gang.

... I became very very angry, right. Because of all the abuse I went through, I guess. I just didn't care, and when you don't care you're capable of anything. And so I became violent. It's just a whole big part of my life that I wish didn't happen, but it did.

... I would be paid to, you know, I'm a small person, but I would get paid to go and deal with people because they wouldn't expect it from me. And I can put down on a person, real fast. And that was just because I was so angry and so hurt, right. ... And so I got paid to hurt people. You know, I did robberies and stuff like that.

Lori also committed fraud, applying for loans and cashing cheques in other peoples' names. She used the money to party and support her drug addiction.

I just didn't take anything seriously. It was all, it was all just , you know, scamming and not taking ownership for anything. I didn't care, I really didn't care. And it was a horrible place to live my life.

She was repeatedly caught, and served several terms of incarceration at PCCW during her twenties and thirties. While she was at PCCW, Lori had no access to an Elder or to any Aboriginal prison programming: "You know, the men's prisons, they help the men get through all this trauma and get out of the prison. I've never seen that in women's prisons." During her stays at PCCW, Lori spent much of her time in segregation, where she felt more comfortable.

I mean, I did a lot of time in Portage LaPrairie Women's jail. And it was like going home to me, which is pretty sick. And the majority of time I did in the hole, because I felt comfortable in the hole. ... because I could shower by myself. I ate by myself. They would bring me magazines. Cigarettes. I could listen to whatever channel of the radio I wanted to.

Furthermore, the confinement of segregation reminded her of her childhood, when she would be locked in a crawl space as punishment by her adoptive parents.

Lori's involvement with the biker gang continued until she was thirty years old, when she became pregnant with her first daughter, who was apprehended at birth. Lori continued to support herself and her habit through criminal activity until she was about thirty-three years old, when she started to choose a different path for herself. She moved to Vancouver, living on the Downtown Eastside. She had developed a heroin addiction, which she supported through collecting and selling wares on the street. She stopped using nearly ten years ago, when she became pregnant with her second daughter. She moved to Vancouver Island, cleaned up and started a new life for herself. She started a relationship with a woman, who had been married to a man for twenty years. When this man tried to kill Lori, her young daughter was apprehended by the Ministry of Children and Family Development. "And then the RCMP told me not to go back to my home, and I had a home based business, cause they couldn't keep me safe... So I came to Vancouver and I've been drinking ever since."

In the five years since her return to Vancouver, Lori has kept herself out of prison. She sees this as a choice that she has made.

... it's definitely not the charity. No, I don't want to go to jail. I developed a conscience. I've been broke ever since. I just, I just, I don't know. I just developed a faith and a conscience. I still drink, you know, you know, living down here on the Eastside, you see a lot of shit. But I'm getting pretty tired of it.

She has had her share of interactions with law enforcement. One day, she was tasered by police for drinking in public; she still has a burn mark to show for it.

I worked two hours one morning just to have enough to get a beer. I had just cracked it and they pulled over and said "Lori, pour it out." I'm looking at them and I'm thinking, "I'm hungover and it took me too long to get this for me to pour it." The next thing you know I feel the worst pain in the world, and I'm on the ground. I hear doors close and they drove off.

Similarly, when she was homeless, she had many incidents of her cart, which contained all of her possessions, being randomly confiscated by police, leaving her with no food, money or clothes.

Lori is now forty-five years old. In recent years, she has developed a strong connection to her Aboriginal culture. She drums and attends sweats regularly, and has learned to carve. She often spends her days sitting out by the ocean, carving. “I’ve been sitting there for five years. And I’ve met the world. Cause I can’t stop talking.” She plans on getting back into sundancing, something that she used to do in her youth. “I do believe that next year I will be sundancing again. Cause I’m tired of hurting.”

3.9 Stephanie

Stephanie is forty years old. She has served a life sentence, as it is colloquially known, on the installment plan. Her first term of incarceration came at age fourteen, when she was convicted of shoplifting and breaking and entering. She was sent to a bootcamp for criminally involved youth, located in rural Northeastern British Columbia. Her experience there was a horrible one. When she returned to her family’s home on Vancouver Island, she continued to get in trouble with the police. When she was sixteen, she was sentenced to prison for a year after having been repeatedly caught riding her motorcycle without license or insurance. She was sent to the Youth Detention Centre (“YDC”) in Burnaby, British Columbia to serve her year of imprisonment, but soon found the length of her sentence being increased. “I just kept running away and I just kept getting more time. And I was just, in a circle, right.” By this time, Stephanie had already developed a significant drug habit, which was what inspired her to run away from YDC.

I started doing drugs when I was young. Like I started doing drugs when I was really young...I started smoking crack when I was fourteen and I started smoking pot when I was, I don't know, eleven or something. And I started fixing when I was sixteen. So when I would run away from jail I started fixing.

While she was at YDC, Stephanie tried to kill herself. She was transferred to a treatment facility for youth, and was eventually released directly from there.

Stephanie's interactions with the criminal justice system have been largely related to her heroin addiction, with which she has been struggling since she was sixteen years old. In turn, Stephanie traces both her addiction and her anger issues back to the sexual abuse that she endured as a child.

Well, when I was really little, before I started going to jail and stuff, I was sexually assaulted. And then when I went to court, they found him guilty on some people and not on other people. And I was really pissed off about that. And then um that's when it kind of all started because I was all angry right. And then I started doing drugs and stuff like that. [...]

... Cause then I started freaking out and doing stupid things, right. Like I would freak right out, I'd be so mad. And.. then I'd freak out and I'd just do stupid things. I'd get bored and then I'd just do stupid things, right. That's where it started.

She also attributes her conflict with the law to some of her mental health issues, which include diagnoses of borderline personality disorder and depression. Over the years, she has accumulated a long list of convictions, ranging from assault and breaking and entering to shoplifting and dangerous driving. Because of the number of sentences she has served in provincial prisons, it is hard for Stephanie to distinguish amongst them. On one occasion, she was released from prison, only to be arrested and re-admitted the following day. Overall, Stephanie has spent the majority of the last twenty-five years of her life incarcerated.

Stephanie received her first federal sentence in 1998, when she was twenty-six years old. She was living in Vancouver at the time, but had rented a car and travelled over to Vancouver

Island to spend Hallowe'en with her friends and family. When the police tried to pull her over, Stephanie refused to stop. She led the police on a high speed chase, before eventually being caught and arrested.

So you know I've had some run ins with them where they weren't very nice to me, so I didn't want to stop for them. So I don't really care for them, right. So I just like was driving as fast as the car could go, right, and they were chasing me. And that's it, it started because I didn't want to stop for them. I started it.

She was sentenced to two years to be served at BCCW, which at the time housed both federally sentenced and provincially sentenced women. While serving this sentence, Stephanie became more connected with Aboriginal culture and spirituality, which made her time more tolerable. Indeed, the majority of her personal interactions with Aboriginal culture and spirituality have taken place while she was incarcerated.

It was good, it was alright. Like I got in to... like I had an Elder there and stuff, and I did like sweats and um you know drumming, I did the whole thing, you know. I got my animals and stuff like that. So it was ok, because I did all the balanced lifestyles and there was all these Native programs and stuff.

Furthermore, she finds these to be the only aspects of prison programming that responded at all to the underlying causes of her involvement in the criminal justice system: "They just throw you in jail, you do your time and then you get out. Just the Native or Aboriginal programs are good."

After having been repeatedly detained at BCCW for in-prison infractions, such as drug possession and fighting, Stephanie was eventually released in 2001. She served a series of provincial sentences in the following years, but didn't have another federal sentence until 2007. This time she was arrested for aggravated assault, after having repeatedly stabbed a man with whom she got in to a fight at a crack house on Vancouver Island.

I went to this crackhouse in Campbell River. And I was partying. I had alcohol and cocaine and I went there, cause it was a crackhouse. And this person was like "you can't

be here, or something” and I was like “Yeah, I can” Cause I had never seen this person before, cause I was I had been in jail for four months and this guy had got with this girl, or something. I never knew he was with her. And then we ended up in a fight. Three of us were fighting. Physical fighting. And then the guy followed me outside, and every time he punched me, I stabbed him. With this little tiny knife. It was so tiny. ... it was just a little knife. And it was just in my little hip hugger pants. It didn’t even have a top on it or nothing, I just had it in my pants, luckily. ... I think I stabbed him five times.

The Crown sought a sentence of eight years, but Stephanie pleaded guilty and was sentenced to four years to be served at FVI. Once again, Stephanie became involved in the Aboriginal cultural programming that was available to her. She attended the sweats that were held weekly at FVI, when it wasn’t fire season. She worked directly with the Elder, assisting in the organization of cultural and spiritual events and engaging in one-on-one counselling. For Stephanie, these were the most meaningful aspects of her time at FVI.

I did inmate committee for six months, I did CoreCan for a year. It was alright. Everything was alright. And I did like Aboriginal things all the time, worked with the Elder all the time. Went to culture night and all that. ... Like we had um, we made drums. I had a drum there, we had drumming. We had a whole bunch of drums come in and they had like powwows and stuff like that there. They had everything. Yeah, the Native Elder is really good there.

Eventually, she obtained statutory release, and was sent to live at an Aboriginal Healing Lodge on the Downtown Eastside of Vancouver.

I got out on statutory release and I went to Anderson Lodge, which is a Native based lodge, and it was really awesome there. Like I made drums, and like you know they have sweats there and they have everything there. And like it’s so awesome. And you know I was clean in there, and I was there for six weeks, and then my parole officer, cause you know I was doing methadone so I was going in like um taking pee tests once a week cause I was on methadone, and then like six weeks I was there and my probation officer, my parole officer, she phones up and says “like um, you have to go in for a urine today” and so I was like “ok, well I gotta do this and I gotta do that, like I have some things that I have to do, like on my release,” and I, you know cause they give you all these conditions that you have to do, you have to go see this person and do this and that, and so then I said I might not be able to make it today, and she said “well you have to go today” and so I went and I couldn’t pee, like on demand, so then the next day the cops came and took me to jail. They said that if you don’t pee right when you have to pee, then you’re dirty. Right. So they took me back to jail for a year.

Back at FVI, Stephanie got into a serious fight with one of the other prisoners. She was detained and was not again released until warrant expiry, in 2011.

Stephanie is able to discern certain patterns that exist across her various convictions and interactions with the criminal justice system. Her Aboriginal heritage has never been raised by her counsel at sentencing, despite the fact that she has told her lawyers that she is an Indigenous woman: “I’ve told them that I’m Aboriginal cause people talk about it, like the Elder talked to me about it and stuff. But they weren’t interested. They just wanted me to plead out, that’s all.” Indeed, Stephanie has consistently felt as though she did not receive proper representation from her defence lawyers, a fact that she attributes in part to the fact that she her representation was funded through legal aid: “If you have money they seem to fight for you, but if you don’t they just seem to be there.” She believes that this fact has led her lawyers to refuse to take steps to secure her release from prison, such as by running bail hearings.

I always kind of feel like I get sold out, you know. Like I don’t feel like they ever really fight for me, or anything. ... Like, for instance, sometimes like you know I’m like “I want to get out” or whatever and they’ll be like “well you can’t get out, cause you know...” You know, they just won’t fight for me. ... Like, they’ll be like “I don’t want to run a bail hearing for you cause I don’t think that you’ll get it, you might as well just stay in...” And I’ll be like “I want a bail hearing, you know I want out, I don’t want to be in there”...

In all of her years of engagement with the criminal justice system, Stephanie has never taken any of her charges to trial, nor has she been counselled by her lawyer to do so: “I don’t go to trial cause I don’t think I’m going to win.”

Stephanie has two children, who are twenty-two and twenty years old. Being separated from them has always been the hardest part about serving her prison sentences.

I just miss Steven so much. I don't really miss my daughter any more cause they took her away when she was little and gave her to her dad. And I didn't like her dad, so I didn't see her. But I miss Steven.

Her children live with their respective fathers, and Stephanie hasn't seen them since she was released from FVI more than a year ago; she is subject to a court order that prevents her from leaving the city of Vancouver. As a result, she missed her son's high school graduation. She now lives in a halfway house for at-risk women, located on Vancouver's Downtown Eastside. She remains active in addiction.

3.10 Ashley

Ashley is twenty-eight years old. She has three children, aged nine, six and four, all of whom were adopted by the same family. She was raised on Vancouver's Eastside, moving between her mom's custody and the foster care system. Her mother has been an addict and a sex worker since the age of nine, and struggled with addiction throughout Ashley's childhood. Ashley's own criminal involvement began at age thirteen, when she was arrested for mischief after trashing the kitchen of her group home. Shortly thereafter, she was charged and convicted of uttering death threats against another individual at the same group home. In total, Ashley has amassed a criminal record that is seven pages long.

My charges range from uttering death threats, to shoplifting, to mischief, to obstruction, prostitution, possession of narcotics, possession of stolen property, being in a stolen vehicle, um driving without a license, um communication for the purpose of prostitution, break and enter, robbery with weapon, assault with weapon, assault, yeah I have quite the criminal record. Breach – I have four pages of breaches alone.

While she has served a series of provincial sentences, Ashley has only served one federal sentence, over the course of which she was incarcerated at FVI.

Ashley's federal sentence stemmed from a series of incidents in the spring of 2008, in the wake of a crack cocaine and heroin bender.

I had been on a three day binge and was caught shoplifting at a Save-On-Foods, where I pulled a needle out and threatened the floor walker. Told him that if he came any closer I was going to stab him, told him that I had an infectious disease, which I do not. And I got away. Same thing at a liquor store later that night. Um, and yeah. Welfare day, April 26, 2008, went to pick up my welfare cheque, got my cheque, walked out, got on the bus went one to stop to Money Mart got off. And two people came up to me and said "Are you Ashley Jones?" I'm like "yeah" and they're like "You're under arrest for dat-dat-dat-dat-da." I'm like "Ok, I'm not Ashley Jones" and yeah, I was incarcerated until May 20, 2010 when I was released and went on the run. So, I'm no longer on bail, parole, probation, nothing. I'm free and clear. I basically did my whole three years inside...

For Ashley, these events and her subsequent arrest were the culmination of years of substance abuse, which date back to when she was just twelve years old. Following her arrest she was incarcerated at ACCW, while her lawyer negotiated with the Crown, who was seeking a sentence of five years' incarceration. During this period, Ashley had to make regular trips from the prison to attend court in Vancouver.

You know, like the sherriff van ride is hell. Having to get up at 5:30 in the morning and having to go all that way. It's hard on the ass! You know, like, yeah. Let's just get it over and done with. Give me the pen time and let me go there. Back then you could smoke and they couldn't get me there faster, right.

In an attempt to just get it over with, Ashley pleaded guilty and was sentenced to three years, to be served at FVI.

Ashley has been represented by the same lawyer for the last seven years. He has also represented Ashley's mother on a variety of charges. She has a good relationship with her counsel, and feels that he understands her and the reasons underlying her addiction and her criminal behaviour. Similarly, she feels that he has done a good job of bringing these issues to the attention of the court:

I've been raped numerous times. I was molested and raped when I was five years old, you know. Um, he's brought that up, you know. It's this kind of stuff that he's brought up to the courts, you know. That I was in the sex trade when I was twelve years old. In and out of foster homes and group homes when I was five. Since I was five. Ran away from my mom's when I was eleven, and in foster homes and running back to my mom's since then. On the streets since I was eleven, twelve, right. Drugs when I was twelve, right. Up to date. So yeah, I'm pretty messed up. Because all of this, I've gotten bipolar. And when I'm not on my meds I'm a mental case, you know. So, he's brought up a lot of stuff. So the courts... you know that's why I didn't get five years, I got three.

As a result of the violent nature of her crime, as well as some infractions committed over the course of her incarceration, Ashley ended up serving the whole three years of her sentence.

Not all of Ashley's experiences at FVI were negative ones. In fact, she is grateful for some of the opportunities that she received by virtue of her incarceration there.

I'm really glad and thankful that I got that three years. I learned so much about my culture in there. I learned to drum and I learned to sing. I went to powwows, you know. I helped build a couple sweat lodges, you know.

This was especially important for Ashley, because it was only in prison that she learned of her Aboriginal heritage. She has not seen her father since she was less than two years old, but became reconnected with him while incarcerated at FVI. With the help of a support worker, Ashley was able to track down her father, and spoke to him on the telephone.

That's how I learned I was Métis. I have always been in to the Native ways and you know, it's, everybody is like "why is that white woman going to sweats and smudging" and I'm like "I don't know, in my heart it's like something that I feel I need to do." Then I find this out...

While she was incarcerated, Ashley focussed on her education, and nearly completed her high school diploma. She also participated in corrective prison programming during her time at FVI. She lived in the DBT house, where she worked on some of her behavioural issues. During her time in the DBT program, Ashley developed a relationship with a counsellor, and was quite disturbed when she left FVI:

I was connecting really well with her. And then she moved on, she left the facility. And the next one that came in, I didn't trust her as far as I can throw a stone. ... I didn't like her persona, so to speak. I didn't like her, the way the vibes came off her when I sat with her. Not a lot of people did, right. ... When I open up to somebody and I get comfortable with somebody, and then they leave, it's hard for me to do it again.

Ashley also participated in substance abuse related programs, including WOSAP and Relapse Prevention. However, she found them to be of only limited assistance.

I mean, unless you've been a drug addict, you can't actually sit there and tell me how to ... You can't be a drug and alcohol counsellor unless you've been an addict. That's how I look at it. You can't tell me you can relate unless you've been there. You know? So, it's "Oh, but my family has." So?

Ultimately, the fact that the programming staff were former guards who lacked personal experience in drug addiction prevented Ashley from gaining much benefit from these programs.

After serving two-thirds of her sentence, Ashley received statutory release. She was sent to live at a halfway house, but almost immediately went on the run. She was caught two months later, and sent back to FVI to serve another six months. She was released from FVI, but again went on the run. Her motivations were "wanting to get high, wanting to see my mom, not wanting to be there. Mostly just wanting to see my mom and wanting to do drugs." She was again caught, and returned to FVI after eleven days on the run. According to Ashley, the vast majority of the other women at FVI also suffered from addiction: "All the girls there have drug and alcohol problems. I would say 85% of the girls." Still, Ashley received almost no effective help with her addiction issues in her time at the penitentiary. She was eventually released on warrant expiry, and immediately returned to her life on the streets.

In the year since her release, Ashley has lived in a range of accommodations. She lived for a while in Surrey, but had to move out when she could no longer afford the rent. This left her essentially homeless for a number of months, moving between shelters, her mom's home, and

those of friends. Her relationship with her mother remains fraught, in large part due to their ongoing mutual struggles with addiction.

I mean, my mom is pretty dope simple. I can be too, yes. But she is so money hungry. You know, she steals from me. I have to sleep on my purse when I sleep at her house. I use it as a pillow, underneath an actual pillow. You know, and that's sad.

At the time of our interview, Ashley had secured a space in a halfway house for at-risk women, located on the Downtown Eastside of Vancouver. She remains active in drug addiction and supports herself and her addiction through sex work.

3.11 Lisa

Lisa worked the streets of Vancouver as a prostitute for twenty-two years. She turned her first trick when she was twenty years old, about one year after she had moved to Vancouver from her hometown in central coastal British Columbia. She had left home after she was outed as a lesbian, which was not well-accepted in her community. Once in Vancouver, Lisa soon found herself caught up in the gay party scene, and quickly became addicted to cocaine. Lisa's older sister was also living in Vancouver, and supported herself by working the streets. One night, Lisa accompanied her sister as she worked the streets, acting as a lookout. Towards the end of the night, Lisa's sister approached her about the possibility of Lisa turning a trick.

And um so anyways she comes walking up and I was kind of standing in a doorway and she goes "Lisa, I'm going to ask you something, but I want you to say no." And I said "Gosh, ok what." And she says, "Well, there's this little... there's this man. And he's my reg." I remember his name, my first trick. His name was Chuckie. He was a little Chinese man. And then she goes, "He gives me \$80, but he's willing to pay you double." And then she turned and then she kinda walks away. But I just went "Fuck - \$150 bucks." She wasn't even ten feet and I said "Candace!" and she came up and gave me all these instructions - it was very nerve wracking. She said "he goes to this hotel" - I knew what hotel it was. She said you go in to the hotel and you pay for the room and you get taken to the room. But she goes "Don't forget! Ask for the money first!" I said ok. And so, she told me what hotel it was and I was trucking off, walking off to Hastings. I remember looking back and this little man was just giggling. And I was just like - "what is it, is there something wrong with me?" He was just giggling - I will never forget. I was taking

off my clothes and then I was like “Oh shit – I forgot to ask for the money first!” But I didn’t even have to ask for it, he was already putting it on the dresser. I’ll just never forget, he just kept giggling. I was so nervous getting undressed, I busted my necklace. So nervous. It wasn’t my first time getting with a guy or anything, but you know. And that was that. So I walked back. Couldn’t believe I had \$150 in my pocket. I kept pulling it out and looking at it – like “what the fuck am I going to do with this money?”

From that night onwards, for the following twenty-two years, Lisa supported herself through sex work .

Lisa’s path to prostitution and drug addiction began earlier, during her childhood. She spent the early part of her life on Vancouver Island, living with her father, siblings and stepmother. Her father did his best for Lisa and the other kids, but their stepmother was abusive. They lived in an urban environment, and Lisa experienced racism from an early age: “When I was in [city] I was the only Indian in the class. That was a strike against me, right there. Strike one. You want to talk about strikes? I had a lot of strikes against me. Strike one – Aboriginal. Strike two – lesbian. Strike three, you know, whatever.” Lisa and her brothers and sisters fell in with a gang of local kids when she was about ten or eleven, and started committing petty crimes. They would break in to fishing boats to steal what cash or other valuables they could find. Before long, Lisa and her siblings got themselves in to some real trouble.

We broke in to the school just with the intention of ... I don’t know what we were trying to find... We started, you know, messing up the rooms. And then one person started lighting paper and then we all started.. I think. I don’t know if we all did, or whatever. But the school was on fire.

... Got convicted of that. At that time I was twelve, thirteen not sure, I can’t remember. Cause after that, I’m not saying that my dad had enough or seen enough, but that’s pretty heavy, eh? Yeah... my dad... we sure, we shamed him, we shamed the family. So we moved from [Vancouver Island] to [Central Coastal British Columbia].

After the family moved, Lisa and her siblings continued to get in trouble with the police. They found themselves a new gang, and soon were committing break-ins and other similar crimes.

Drinking, break and enters. We were breaking in to the band store, shipyards... We were breaking in to the band store for cigarettes. Back in the day, can't do it now, right, but back then we would get boxes and cartons of the stuff and sell it. Broke in to the hotel, uh what do you call it, the hotel pub. For liquor. Partied for like a month. It was the same thing, there was just a gang of us. Like, always was a gang, you know.

Nevertheless, Lisa never received another youth conviction. She completed her education and took a job at the local cannery. She worked there until she was outed as a lesbian, and decided to move to Vancouver.

Despite having spent the vast majority of her life on the streets, Lisa has only served two prison terms. The first came when she was twenty-two or twenty-three years old, and was arrested and convicted of soliciting for the purpose of prostitution. She was sentenced to six months, and ended up serving three months in the now closed Oakalla prison for women. Being young and “fresh meat,” she survived in prison by aligning herself with older women, who could offer her a certain level of protection.

Well, first of all, me being there first time and all, I would like to say that anybody, even myself to this day and I'm tough, when you're in there you kind of have to be... so that you're tough and you can handle shit. Luckily for me, I bumped in to my cousin, my cousin in there. Her first name is Elaine. Shaking her head – “you shit, what are you doing.” “Oh hi cuz – I just came in for a little stopover, a sleepover.” And she put the word out for nobody to bug me, muscle me or whatever – however you want to put it. Elaine is an old dyke, a really tough lady. Nobody would fuck with her. Whatever she says, goes. I found some good friends, sugar mommas, if you put it that way. I wasn't sick, I wasn't dope sick or anything. But I found out that the drugs were there. I didn't indulge, I didn't use in there. I couldn't, I'm not saying I couldn't have, but I didn't. I just didn't see any friggin point. It didn't make any sense – how could you go and get high in jail and be in a room? I smoked pot, took pills, that was my high.. that was about it. Found myself with this lady, mama. And she would go out and she would come in and she would be carrying. And I would end up muelling the drugs for her. And wasn't nothing small. It was what it was. Heroin, cocaine, needles... that was what it was. And I got kind of like favours... I was just a kid. And I could kind of say it was just like another party, just in jail and stuff. I had a relationship in there. That was about it, just did my time.

Lisa also had a relatively positive relationship with the guards at Oakalla, and in particular with one female guard who was herself a lesbian: “...she ended up giving me certain privileges, like

phone privileges. And it wasn't to get at me or anything, it was just maybe cause she liked me. We got along, put it that way." These relationships were the only positive aspect of Lisa's time at Oakalla; no prison programming or cultural activities were made available to her during her time there.

After she was released, Lisa went immediately back to her old life on the streets. She eventually started working as an escort, which permitted her to earn a good living. She supported herself, her girlfriend and their addictions through escort work for many years. After she and her girlfriend broke up, Lisa's addiction worsened. After a while she found herself in a relationship with another addict, who before long was abusing Lisa, both mentally and physically. She started smoking crack cocaine, and resorted to street level prostitution to support her increasing habit. She stayed with her abusive partner for ten years. Eventually, Lisa just couldn't go on as she was. During the 2007 Robert Pickton trial, she left the streets. She moved in to a residential facility for women on Vancouver's Downtown Eastside. She began to reduce her drug use, and stopped prostituting herself.

Since leaving the streets, Lisa has continued to struggle with addiction issues. She would frequently resort to stealing to make money to buy drugs and alcohol, and began to amass a series of shoplifting convictions. This year, after having failed to appear at court on a few occasions, Lisa was arrested and sent to Surrey Pre-Trial. She spent four days in prison, before pleading guilty and being released. Lisa didn't tell anyone about the days she spent in prison, she was simply too embarrassed. However, while she was at Surrey Pre-Trial she ran in to another cousin of hers, who was also serving a short sentence. Once Lisa was released, she did her best to support her cousin.

I feel, that for Aboriginal people – women and men- that are incarcerated... some of it is a cycle. Some of it probably is be, could be, to take a break. And some of it is just bad luck. For me, when I was in there just recently, I was fuckin... cause you know when you're in there, you think. Oh my god, you fuckin think. And I was thinking that this is it, holy shit, I'm not going to do this, never. You'll never catch me in friggin jail again. Unless I'm visiting somebody... But what I got out of this, and this is the good note, I got to see my cousin. Got to see her, meet her. I gave her support. I went to trial with her, last, a couple of days ago. And she got out. She looks damn good. She's off the dope. And she's in rehab. And you know what, I'm not saying that part of it was because of me. Yeah, part of it was because of me. Because I showed up. I showed up for her. And that's something that's not done. That's something that's not done for us. She didn't have – there was two people there for her. Me, and this other woman, who is BC Children's Hospital. And first time I showed up for her, she just smiled. And I'm pretty sure she was walking on air when she went back to jail. But at least somebody showed up.

Lisa has also been trying to support another young Aboriginal woman who she met during her days at Surrey Pre-Trial. Indeed, she plays the role of mentor and counsellor to lots of young Aboriginal people on Vancouver's Downtown Eastside: "I'm not out there to counsel people, you know. But somehow or another, it sort of happens that way..."

3.12 Conclusion

As the stories of these ten women demonstrate, the reasons for which Indigenous women are criminalized and imprisoned are extremely varied. So too are their experiences with the criminal justice system, including of incarceration. Naturally, some of these differences stem from the differences inherent in the research participants themselves: they range in age from twenty-two to forty-nine years old. While some of the women have their whole lives at society's margins, others grew up comfortable, in loving and safe homes. While some participants have spent much of their lives trapped in prison's revolving door, others have served only a couple of brief prison terms. Indeed, they have been convicted of crimes ranging from mischief to murder, and have been sentenced to terms of incarceration as short as twelve days and as long as life. All but one of the participants are mothers, but of them only one has her child in her own care. While

some of the women felt well-represented by their lawyers, others felt sold out and ignored. Some of them responded well to programming in prison, others found it alienating and improperly administered. Seen as a whole, their stories paint a complex picture, one that weaves together issues of gendered violence, poverty, substance abuse and racism. In the following chapter, the patterns and themes that emerge from these narratives shall be explored in depth.

CHAPTER FOUR: REFLECTIONS ON THE PARTICIPANTS' EXPERIENCES

4. 1 Introduction

The lived experiences of the participants to this research clearly illustrate that while criminalized Indigenous women may be bound together by the shared experience of existing at the intersection of Aboriginality and womanhood, they, their pre-carceral lives and their prison experiences cannot be painted in broad strokes. Nevertheless, certain patterns did emerge from their narratives. In this chapter, I will review and discuss the themes that their experiences have raised, with a view to developing a more nuanced understanding of how criminal justice interventions, as they are currently conceived and implemented, affect criminalized Indigenous women in Canada. In particular, this chapter will address the extent to which procedural and structural factors, including practical limitations on access to Aboriginal-centric criminal justice interventions, shape the experiences that Indigenous women are having within the Canadian criminal justice system.

I begin by discussing the patterns that have emerged with respect to the participants' pre-carceral lives, which illustrate the types of experiences that may bring Indigenous Canadian women into disproportionate levels of contact with the criminal justice system. I then identify and analyse the patterns that exist across the participants' experiences of incarceration within the federal prison system, as well as across their interactions with other facets of the Canadian criminal justice system. As shall be demonstrated below, these patterns provide insights into the workings of various criminal justice programs and initiatives, including those programs that have been implemented with the aim of reducing the rate of over-incarceration experienced by Aboriginal Canadian women. Specifically, the participants' experiences help to suggest which

criminal justice interventions are likely to be most effective and which are failing to respond to the actual needs and circumstances of criminalized Indigenous women in Canada.

4.2 Patterns in the Participants' Demographic Characteristics and Pre-Carceral Lives

While great diversity exists amongst the lived experiences of the women who participated in this research, many of the participants share certain demographic characteristics. For example, the participants were highly urbanized, all residing in metropolitan or urban areas at the time of their interviews. Indeed, only two of the ten participants had spent the majority of their childhoods on reserve, while none had lived on reserve as adults. These patterns reflect a more general trend across Aboriginal Canadian women as a whole, over 70% of whom now live in non-reserve communities.¹¹⁸ Similarly, the participants reported high rates of poverty and lone parenthood, both of which disproportionately affect Indigenous women in contemporary Canada.¹¹⁹ Furthermore, nine of the ten participants reported having been violently victimized, either physically or sexually, on one or more occasions over the course of their lives. This is consistent with Statistics Canada's finding that Indigenous women suffer from a disproportionately high rate of violent victimization.¹²⁰ Some of these characteristics speak to the manner in which the participants were recruited to participate in this research (*i.e.*, through

¹¹⁸ Statistics Canada, Mahony *supra* note 10 at 182.

¹¹⁹ See Aboriginal Affairs and Northern Development Canada, *Aboriginal Women in Canada: A Statistical Profile from the 2006 Census* (Ottawa: Queen's Printer, 2012), online: Aboriginal Affairs and Northern Development Canada http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ai_rs_pubs_ex_abwch_pdf_133_33_74_752380_eng.pdf.

¹²⁰ Statistics Canada, Brennan *supra* note 90 at 7.

women's organizations operating in the Greater Vancouver area), as well as to certain patterns in the contemporary circumstances of many Indigenous women across Canada.¹²¹

Nevertheless, the participants remain a diverse group of women, who have had a broad spectrum of pre-carceral life experiences. They ranged in age from twenty-two to forty-nine, with a median age of forty-two years. With the exception of Jessica, the youngest participant, all of the women were mothers, having borne their first children between the ages of sixteen and thirty-two. Their children ranged in age from ten months to thirty-two years, but only Nicole currently had her child in her care. Only one of the women reported being currently involved in a romantic relationship, and only one other had ever been married. With respect to their employment statuses, one of the participants was legally employed at the time of the interview, while one worked under-the-table and another supported herself through sex work. The remaining seven women were entirely unemployed, supporting themselves through disability payments or other social assistance transfers. At the time of the interviews, all of the participants resided in subsidized housing facilities run by women's organizations in the Greater Vancouver area. As demonstrated in the table below, all of the participants had multiple negative experiences in their lives outside of prison that may arguably have contributed to their subsequent criminalization.

Table 4.1: Reported Adverse Factors in the Pre-Carceral Lives of the Participants

Adverse Factor	Number (Total n = 10)
Parental figures attended residential schools	4
Parental figures suffered substance abuse	4

¹²¹ See Aboriginal Affairs and Northern Development Canada, *supra* note 117. See also Douglas A. Brownbridge, "Understanding the Elevated Risk of Partner Violence Against Aboriginal Women: A Comparison of Two Nationally Representative Surveys of Canada," (2008) 23 J Fam Viol 353.

problems	
Experiences of physical domestic violence (including spousal and parental)	4
Experiences of sexual violence (including molestation and rape)	7
Addiction to drugs and/or alcohol	10
Abuse of drugs and/or alcohol under age sixteen	8
Engagement with criminal justice system under age sixteen	5
Engagement in prostitution	5
Experiences of homelessness	5
Diagnosed mental illness	4
Experiences with Children's Aid (including being apprehended and having children apprehended)	6
Mean number (range) of adverse factors	6.2 (4 – 9)

The prevalence of these adverse factors is generally consistent with the results of the existing research that has been undertaken with criminalized Indigenous women as to their personal pathways to prison.¹²² For example, as Louise Arbour noted in her report on conditions at P4W, substance abuse is a very significant problem for federally sentenced Indigenous women, and tends to play a substantial role in their offending.¹²³ Arbour's conclusion was borne out by the experiences of the participants to my research, all of whom reported suffering from

¹²² See e.g. Fox and Sugar Report, *supra* note 37; Arbour Report, *supra* note 44; Statistics Canada, Brennan *supra* note 90; CSC, Needs Assessment *supra* note 111.

¹²³ Arbour Report *ibid* at 4.3.4.

significant drug and/or alcohol addictions, which they almost universally identified as the primary cause of their criminalization. Additionally, the participants reported similarly extreme levels of childhood violence (including both physical and sexual violence) as those experienced by the respondents to the Fox and Sugar survey.¹²⁴ Conversely, the participants reported having experienced less violence in adulthood than was reported by the participants in Fox and Sugar's research: while 87% of the participants in the Fox and Sugar survey reported having been violently victimized in adulthood, six of the ten participants to my study reported having experienced similar violence.¹²⁵

Ultimately, my findings with respect to the personal characteristics and pre-carceral lives of the participants generally mirror the portrait of criminalized Indigenous women that can be stitched together from criminal justice statistics and previous reports. This portrait is, as the foregoing chapter illustrated, frequently a tragic one. The women who participated in this project have lived at society's margins for most or all of their lives, experiencing highly elevated rates of violence, abuse, poverty and addiction. Their frequently instable and traumatic childhoods and adolescences led many of them into early and often prolonged contact with the Canadian criminal justice system. The similarity of the participants' pre-carceral experiences with those of the criminalized Indigenous women who were consulted for both the Fox and Sugar and Arbour reports suggest that the underlying social, personal and cultural triggers for criminalization amongst Indigenous women in Canada have remained intact over the course of the last two decades. However, over this same period, there have been significant changes to how the criminal justice system deals with Aboriginal women offenders, including both the adoption of the *Gladue* methodology and the proliferation of Aboriginal prison programming.

¹²⁴ Fox and Sugar Report, *supra* note 37 at 475.

¹²⁵ *Ibid.*

Nevertheless, as shall be discussed in the following sections, great variety exists as to the effectiveness of the interventions that have been implemented.

4.3 Understanding the Participants' Experiences of the Criminal Justice System

Within the small body of qualitative research that has been undertaken as to Indigenous women's experiences of the criminal justice system, there has been a significant focus on the experiences of federally sentenced Aboriginal women within traditional prison settings.¹²⁶ Consequently, while a very limited academic understanding may exist as to the challenges facing federally sentenced Indigenous women in prison, almost nothing is known about their experiences within many other facets of the criminal justice system, including courtrooms, remand centres, healing lodges, provincial jails, halfway houses and probation offices. Over the course of my interviews with the ten women who participated in this research project, the participants revealed a great deal about their experiences within federal women's institutions, much of which was consistent with previously conducted research into Aboriginal women's pathways to prison and experiences of incarceration. However, the participants also provided me with insights into the experiences of Indigenous women in these other essentially unexplored areas of the criminal justice system, including as to their relationships with their own counsel, their decisions to plead guilty, the problems they faced upon being released from prison, the lack of recognition of their Aboriginal status at sentencing and their experiences in healing lodge facilities. These factors, in addition to their experiences in federal prisons, shall be analysed below.

¹²⁶ See *Creating Choices* *supra* note 33; *Arbour Report* *supra* note 44; *Martel & Brassard* *supra* note 55; *Yuen* *supra* note 110 and *Pine, Gender Sensitive Corrections*, *supra* note 112.

4.3.1 The Participants' Experiences in Federal Prisons

Seven of the ten women who participated in my research project have been, at one time or another, federally sentenced. Their federal offences, which ran the gamut from identity theft to murder, netted them sentences ranging from two years plus a day to life imprisonment. Of these seven women, six have served time at FVI in the last five years. Two of the seven also served time at other federal institutions, namely P4W and OOHL, while four of them served all or part of a federal sentence at a provincial institution such as BCCW. Nevertheless, the women tended to focus their reflections on their time spent at FVI, and as such the bulk of the information that my interviews generated on the experience of being a federally sentenced Indigenous woman prisoner in Canada is centred upon life at FVI. These experiences underscore a number of important issues in the current state of women's federal corrections in Canada, but also more specifically in the treatment of Indigenous women within the federal prison system. In light of the fact that providing "effective interventions for First Nations, Métis and Inuit offenders" is currently one of the five key priorities of the CSC, the participants' experiences serve to illuminate the extent to which the CSC has been succeeding in its stated goal.¹²⁷

4.3.1.1. Reflections on Corrective Prison Programming

Over the course of the last fifteen years, the CSC has increasingly focussed its programming efforts on the prevention of violence and the treatment of substance abuse, as opposed to on the provision of employment and educational opportunities.¹²⁸ In the case of female offenders, this prioritization has led to the creation of the Women Offenders Substance Abuse Program (WOSAP), among other substance abuse-related corrective programs that

¹²⁷ Correctional Service of Canada Review Panel, *A Roadmap to Strengthening Public Safety* (Ottawa: Minister of Public Works and Government Services Canada, 2007), online: Public Safety Canada <http://www.publicsafety.gc.ca/csc-scc/cscrprprt-eng.pdf> [CSC Review Panel, Roadmap].

¹²⁸ *Ibid* at 46.

federally sentenced women may be encouraged to take while serving their sentences. In light of the fact that substance abuse disproportionately contributes to the criminalization of Indigenous women in Canada, and given their over-representation in prison, Aboriginal women make up a significant proportion of the participants in this programming.¹²⁹ Indeed, federally sentenced Aboriginal women have been found to enter the prison system with a significantly higher need for corrective programming (including substance abuse programming) than do Caucasian female offenders; 67% of federally sentenced Aboriginal women are classified by the CSC as having a “high” need for corrective programming, as opposed to 39% of Caucasian female prisoners.¹³⁰ Accordingly, the efficacy of substance abuse-related prison programming is an important factor to be considered in any assessment of how well the penal system meets its claim to respond to the needs and circumstances of criminalized Aboriginal women. It is especially important to consider this issue in light of recent reductions in the amount of government funding being allocated to such programming within federal penitentiaries. Indeed, despite the high need for substance abuse programming on the part of federal inmates, the CSC’s annual budget for substance abuse programming dropped from \$11 million dollars in 2008 to \$9 million in 2010.¹³¹

The participants’ accounts illustrate the centrality of this programming to their prison experiences: every participant who served time at FVI participated, to varying degrees, in

¹²⁹ Colleen Dell & Jennifer Kilty, “The Creation of the Expected Aboriginal Woman Drug Offender in Canada: Exploring Relations between Victimization, Punishment and Cultural Identity” (2013) 19 *International Review of Victimology* 51.

¹³⁰ See CSC, Needs Assessment *supra* note 111 at 3. See also Colleen Anne Dell & Roger Boe, “Research Reports: An Examination of Aboriginal and Caucasian Women Offender Risk and Needs Factors” (December 2000), online: Research Branch, Correctional Service of Canada <http://www.cscsc.gc.ca/text/pblct/forum/e132/e132ind-eng.shtml> [Risk and Need Factors]. For critical analyses of the ways in which “risk” and “need” are construed, and often conflated, within women’s penal institutions in Canada, and the impact that this trend has on the carceral experiences of Aboriginal women offenders, see Joane Martel et al, “When Two Worlds Collide : Aboriginal Risk Management in Canadian Corrections” (2011) 51 *Brit. J. Crimino.* 235; Kelly Hannah-Moffat, “Pandora’s Box: Risk/Need and Gender-Responsive Corrections” (2006) 5 *Criminology & Public Policy* 183 and Kelly Hannah-Moffat, “Crimonogenic Needs and the Transformative Risk Subject” (2005) 7:1 *Punishment & Society* 29.

¹³¹ Office of the Correctional Investigator, 2011-2012 Report, *supra* note 84 at 16.

corrective programming aimed at addressing their problems with substance abuse. Significantly, not a single one reported having found it to be helpful in the least. In fact, as Stephanie explained, “You just sit in there cause they make you, that’s all.” The participants’ complaints with respect to the substance abuse programming available at FVI focussed on both the content of the programs and the manner of their administration. Jessica found that the programming treated all addicted women as a homogenous group, and as a result, felt that the programs failed to respond to her particular circumstances and needs. Both Jessica and Kimberly complained about the manner in which addiction was analysed and understood, which they felt was far removed from their own experiences as drug addicts. Similarly, Kimberly and Ashley complained that the programs were administered by former prison guards, who were not themselves recovering from drug or alcohol addiction. As Kimberly explained, “They have never ever experienced it. So when they’re trying to clinically give you information about how it affects someone physically, mentally and emotionally, spiritually, then it’s just smoke. ... people don’t actually listen.” This particular complaint was consistent with the findings of *Federally Sentenced Aboriginal Women in Maximum Security*, a 1999 CSC report based on interviews with seventeen federally sentenced Aboriginal women, as well as with CSC staff, which found as follows:

100% of the Aboriginal women stated that qualified facilitators (not social drinkers) are required for substance abuse programs. Correctional staff, present or former will not be accepted as facilitators. Facilitators should be from outside agencies, individuals who are non-authoritarian in their facilitation style. Facilitators with similar experiences or backgrounds (e.g. ex-prisoners, poverty and/or having lived on the street) would be appropriate.¹³²

¹³² Correctional Service of Canada, *Federally Sentenced Aboriginal Women in Maximum Security: What Happened to the Promise of Creating Choices?* by S. Morin (Ottawa: Correctional Service of Canada, 2002), online: <http://www.csc-scc.gc.ca/text/prgrm/fsw/skyblue/toce-eng.shtml> [CSC, Federally Sentenced Aboriginal Women Report].

The participants' negative experiences of corrective substance abuse programming at FVI, especially when considered in conjunction with the findings of the Federally Sentenced Aboriginal Women Report, indicate that staffing decisions on the CSC's part may be serving to reduce the likelihood of this programming actually helping federally sentenced Aboriginal women to overcome their struggles with addiction and thus, to reduce their rates of recidivism. By choosing to use former prison guards, rather than former addicts, to administer substance abuse programming, the CSC is alienating Indigenous women and limiting its own ability to assist prisoners in dealing with their addiction issues over the course of their incarceration. This missed opportunity, especially when considered in light of the heightened levels of substance abuse problems amongst criminalized Indigenous women, demonstrates the extent to which administrative decisions, such as staffing, can serve to reduce the effectiveness of criminal justice interventions at addressing the underlying criminogenic factors of Aboriginal women.

4.3.1.2 Reflections on Aboriginal Cultural Prison Programming

The participants' negative impressions of the CSC's substance abuse programming stand in stark contrast to their near universal approval of the Aboriginal cultural programming made available to them at FVI. This programming included working with an Elder, attending weekly culture nights, participating in sweats, potlatches, and powwows, as well as learning to smudge, sing, drum and bead. As all but one of the six participants who served time at FVI made clear, having the ability to participate in Aboriginal prison programming and to work with an Elder was categorically the best part of their experiences at the penitentiary. Indeed, many of the participants have only been exposed to Aboriginal spiritual and cultural practices while incarcerated, and thus viewed this programming as a way to develop closer ties to their own cultures. Several of the participants mentioned that the programming gave them an opportunity

to learn about the history of Indigenous peoples in Canada, which they found to be a fulfilling and healing experience, one that has had a continued positive impact in their lives. The participants' comments regarding this prison programming are consistent with the findings of other qualitative studies undertaken with Aboriginal offenders, which have found that participation in Indigenous ceremonies and engagement with Aboriginal spirituality can contribute to both personal healing and to successful re-integration into the community upon release.¹³³

Ultimately, five of the six participants who served time at FVI did not identify any problems whatsoever with the availability, design or implementation of the Aboriginal cultural programming at the penitentiary, nor could they suggest any ways in which the programming could be improved. The only participant to have some critical perspective about the program was Kimberly, a highly urbanized Indigenous woman who lacks what might be seen as a traditionally "Aboriginal" physical appearance. Kimberly explained that because of her appearance she felt excluded from the Indigenous community at FVI and did not feel comfortable participating in Aboriginal cultural programming: "I mean if you tell somebody you're of Aboriginal descent and you don't look of Aboriginal descent, I think there should be more consideration taken in including you in to that circle of, that environment. Because if you don't look, you're not going to be accepted, unless brought in." Nevertheless, Kimberly did spend some time working with the prison Elder at FVI, for whom she has great respect. Overall, the participants' experiences of the Aboriginal programming available at FVI were very positive,

¹³³ See Yuen *supra* note 110; David Milward, "Sweating it Out: Facilitating Corrections and Parole in Canada Through Aboriginal Spiritual Healing" (2011) 29 Windsor Y.B. Access Just. 27; Doug Heckbert & Douglas Turkington, "Turning Points: Factors Related to the Successful Reintegration of Aboriginal Offenders" (2002) 14 Forum on Correctional Research 55.

a fact that is indicative of a significant improvement in such programming since the days of the Task Force on Federally Sentenced Women and the Arbour Report. Nevertheless, Kimberly's experiences do indicate a potential limitation in the administration of the Aboriginal programming, one which might not easily be rectified

4.3.1.3 Reflections on the Pathways Living Units at FVI

A new and important component of the CSC's interventions aimed at federally sentenced Aboriginal offenders is the establishment of Pathways living units. Although Pathways units were launched as a pilot project in 2000, they were initially only established in men's penitentiaries. In the last few years, Pathways units have been established in two women's federal prisons: FVI and the Edmonton Institution for Women.¹³⁴ In 2010/11, 18.2% of the total (male and female) Aboriginal federal inmate population spent time in a Pathways unit.¹³⁵ However, since their establishment, the impact of Pathways units on Indigenous women's experiences of incarceration has not been the subject of published qualitative research. The CSC's own (gender-neutral) data has shown that Aboriginal offenders who reside in Pathways units have significantly lower rates of re-offending after release than Aboriginal offenders who were housed in mainstream living units (17% versus 35%).¹³⁶ Additionally, the CSC has found that these units are safer for staff, and have lower rates of both violent incidents and detected drug use.¹³⁷ However, no research seems to have been undertaken as to whether these patterns hold true in the case of federally sentenced Aboriginal women.

¹³⁴ Public Safety Canada, *Marginalized supra* note 65 at 13.

¹³⁵ Office of the Correctional Investigator, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa, Office of the Correctional Investigator, 2012), online: Office of the Correctional Investigator <http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf> at 27 [OCI, *Spirit Matters*].

¹³⁶ CSC, *Strategic Plan supra* note 58 at 10.

¹³⁷ *Ibid.*

Of the six participants who served time at FVI, three spent at least a portion of their sentence living in the Pathways unit, which provided them increased access to Elders and to Aboriginal programs and cultural activities than are available to Indigenous prisoners residing in mainstream ranges. All three had positive experiences within the unit. Jessica and Tammy in particular expressed appreciation for the opportunity that it provided them to work closely with the prison Elder and to follow a more traditionally Aboriginal path within the penitentiary. For Jessica, the Pathways house became a place of refuge, where she felt safe and insulated from the conflicts that often arise in prison: “So it was like our place of ease and comfort, right, where we could just be ourselves and we didn’t have to worry about the clique issues or like who’s going to hurt who and all the drama and stuff that goes on in jail, right.” Linda, on the other hand, enjoyed her time in the Pathways unit, but also felt that life there ultimately differed little from her experiences in a minimum security unit at FVI.

The participants’ accounts indicate the potential for residency in these units to have a positive impact on federally sentenced Aboriginal women’s quality of life and capacity for healing over the course of incarceration. Further and more in depth research is required to truly assess the benefits and potential risks of this arrangement. Indeed, of serious concern is the fact that a significant proportion of federally sentenced Indigenous women remain excluded from the opportunity to reside in these more culturally-relevant living units while serving their sentences.¹³⁸ This exclusion stems both from the CSC’s failure to have established Pathways units in all women’s federal prisons (presently, only two of the five mainstream women’s penitentiaries contain such ranges), as well as potentially from the CSC’s own limiting and

¹³⁸ See Correctional Service Canada, *Report on Plans and Priorities (2011 – 2012)*, online: Government of Canada <http://publications.gc.ca/site/eng/397867/publication.html> at 10, where the CSC states that it has plans to establish seventeen new and Pre-Pathways living units, some of which may be established within women’s penitentiaries.

exclusionary policies with respect to admittance to the units.¹³⁹ For example, the CSC's *Commissioner's Directive on Aboriginal Offenders* demonstrates that the CSC's policies with respect to residency in the Pathways units are not informed by notions of inclusivity and culturally-based rights for Aboriginal prisoners:

It is important to convey the message that being placed on a Pathways unit/range is a privilege, not a right. Offenders must do a lot of work before getting there and they will be expected to continue that work when they are transferred or released. With this privilege comes responsibility for their own healing journey and they must be ready to be accountable to their Elder/Spiritual Advisor, their community, their fellow offenders and themselves.¹⁴⁰

Accordingly, more thorough research ought to be undertaken as to the experiences of Aboriginal women both residing in and attempting to secure residency in these units, with a particular view to understanding if and how CSC policy may be preventing equitable access to the units and/or otherwise reducing the potential for residents to heal during their stays in Pathways.

4.3.2 The Participants' Experiences in Other Facets of the Criminal Justice System

As much as the experiences of Indigenous women in the federal prison system have been overlooked in research, their experiences in other parts of the system have been all but ignored in academic literature. For example, virtually no research has been conducted on how criminalized Aboriginal women feel about their lawyers, or as to their experiences in court. Similarly, little is known about their experiences in institutions other than the penitentiary, including provincial jails, remand centres and healing lodge facilities. However, as shall be discussed below, my

¹³⁹ For critical analyses of the CSC's risk classification system, which disproportionately classifies Aboriginal women offenders in the highest risk category and results in their disproportionate assignment to the highest levels of custody, see Patricia Monture-Angus, "Women and Risk: Aboriginal Women, Colonialism, and Correctional Practice" (1999) 9 *Canadian Woman Studies*, online: York University <http://pi.library.yorku.ca/ojs/index.php/cws/article/viewFile/8068/7248>; Cheryl Marie Webster & Anthony Doob, "Classification without Validity or Equity: An Empirical Examination of the Custody Rating Scale for Federally Sentenced Women Offenders in Canada" (2004) 46 *CJCCJ* 395 and Kelly Hannah-Moffat & Margaret Shaw, "Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada" (Ottawa: Status of Women Canada, 2001), online: <http://www.publications.gc.ca/collections/Collection/SW21-66-2001E.pdf>.

¹⁴⁰ Commissioner's Directive 702, *supra* note 50.

research has generated a number of insights into the experiences of criminalized Indigenous women in these facets of the system, many of which serve to shed light on the connection between the administration of the criminal justice system and the over-incarceration of Aboriginal women in Canada.

4.3.2.1. Reflections on Provincial Jail and Pre-Trial Detention

While Indigenous women are undoubtedly over-represented within the federal prison system, making up 31.9% of all federally sentenced women, they are often even more drastically over-represented within the country's provincial prisons and remand centres. Indeed, while accurate statistics on the rate of Indigenous women's incarceration in provincial institutions are virtually non-existent, gender neutral statistics indicate that Aboriginal representation in provincial prisons ranges from a low of 2% in Quebec to a high of 81% in Saskatchewan.¹⁴¹ In British Columbia, where Aboriginal women make up 4.9% of the female population, Indigenous people account for 20% of admissions to provincial custody and 21% of admissions to remand.¹⁴² Nevertheless, the rate of over-incarceration experienced by provincially sentenced Indigenous women in British Columbia is unknown. Furthermore, despite these statistics, almost no research has been undertaken as to Aboriginal women's experiences within provincial institutions, and as such little is known about the challenges specific to Indigenous women serving a provincial sentence.¹⁴³

All of the ten participants to my research have served time in provincial prisons and remand centres, on sentences ranging from only a few days to just under two years. However, for a variety of reasons, including the relatively brief duration of and/or high number of their

¹⁴¹ See Statistics Canada, Perreault *supra* note 4 at 21.

¹⁴² *Ibid*; Statistics Canada, O'Donnell & Wallace *supra* note 92 at 7.

¹⁴³ Exceptions to this trend include Pine *supra* note 112 and Parkes et al *supra* note 113.

provincial sentences, as well as the fact that many of the participants were dealing with the effects of withdrawal over the course of their provincial incarceration, they were in most instances unable to recall many of the specific details of their experiences within these institutions. As Linda explained, “I didn’t know why I was in the jail. It seemed like I was drunk for about, like, nine months. Cause I was a bad alcoholic, so everything was so yucky.” Indeed, for many of the participants, their recollections from their stays in provincial prisons are dominated by their own withdrawal, as well as the withdrawal being suffered by the other women around them. Nicole spent five days withdrawing in segregation at Surrey Pre-Trial Detention Centre, where she was locked up with another woman who herself was experiencing extreme effects of withdrawal: “I was allowed out for one hour of the day, just for one hour, twenty-three hours of it I had to be in there with her. It was not nice. And she was going nuts herself too, it was horrible.”

One pattern that does emerge across the participants’ experiences of serving time in provincial institutions is the extent to which it is truly “dead time,” in the sense that the women gained few to no benefits (such as programming or counselling) from the time that they served.¹⁴⁴ With the exception of having, in more recent years, the weekly opportunity to work with Elders at both ACCW and BCCW, the participants essentially described provincial time as something that they just had to survive, rather than as an experience that helped them to address the underlying reasons for their criminalization. They reported that access to programming in provincial institutions is very limited, and generally reserved for prisoners serving the lengthiest sentences. As a result, even if Indigenous women enter provincial institutions with the hopes of making changes in their lives, they are generally released with no more coping skills, tools and

¹⁴⁴ For analyses of the barriers to rehabilitation faced by women serving time in provincial prisons, see Monster & Micucci *supra* note 104 and Pine *supra* note 112.

resources than they had upon admittance. For example, Jessica began a three month sentence at ACCW with the hopes that she would be able to get help for her addiction issues: “I was like “well maybe if I just do programs and like stuff when I’m in jail then maybe I’ll stop using drugs when I get out” and then when they told me that cause the programs were six months or longer that I couldn’t do them, so I never got the chance to do that.” Upon her release from ACCW, Jessica returned almost immediately to the drug use and criminal involvement that she had engaged in prior to her provincial incarceration. It was not until she was sent to FVI to serve a federal sentence that she had any access to substance abuse programming, even though this programming proved, in her opinion, to be poorly designed.

As was noted above, the participants were generally able to provide only a glimpse into their experiences of provincial incarceration and pre-trial detention, and thus this research project has failed to generate substantial insights into the experiences of Indigenous women in this aspect of the penal system. However, in light of the important role that provincial and pre-trial detention plays in Aboriginal women’s interactions with the Canadian criminal justice system, it is imperative that in-depth study be undertaken as to what Indigenous women experience within these types of institutions. Ideally, given the participants’ inability to recall some of the details of their stays at these facilities, such research would be conducted over the course of or shortly after release from provincial incarceration.

4.3.2.2 Reflections on Healing Lodge Facilities

Another important aspect of Indigenous women’s engagement with the criminal justice system that has gone essentially unexplored in academic literature is the experience of serving time in a healing lodge facility. These institutions include the OOHL in Saskatchewan, as well as other healing lodges that are open to women under CSC supervision, such as Anderson Lodge in

downtown Vancouver and Tsow Tun Le Lum, on Vancouver Island. Of the ten participants in this study, four have spent time at one or more of these healing lodges. On the whole, their stays in these institutions have been extremely positive, and like the Aboriginal cultural programming available at FVI, have served to provide the women with significant opportunities for growth, healing and self-reflection. In fact, the participants generally described their experiences in these institutions as far superior to those had in prisons (both federal and provincial), and credited their time in these facilities with helping them to make significant strides in dealing with their past experiences of trauma and its consequences, including addiction.

Of the four women to have spent time in a healing lodge, only Linda served time at the OOHL. She was transferred there after the deaths of her children and father, and found that her stay, which included daily access to healing circles, sweats up to four times a week and extensive contact with Elders, permitted her to heal in a way that would not have been possible in another institutional setting. As Linda explained,

To be around Native teachings, and the care and love from the Elders and just the whole setting, being that it is a Healing Lodge and specifically made for Aboriginal women. And I got to know the history of why that Lodge was being built, because of Native women being incarcerated in Kingston, and I learned all about women being imprisoned in Kingston, so far away, it was the only prison in Canada. Like say if I had like a decade or so before, that's where I would have been. And I probably would have been hanging from a rope, along with all the other women. Truly.

Linda's experiences at the OOHL are largely consistent with those of the participants in Shoshanna Pollack's qualitative study with sixty-eight criminalized women (of whom twenty-two self-identified as Aboriginal), in which participants reported that the environment at the OOHL was significantly less hostile than those at mainstream prisons.¹⁴⁵ However, unlike some of the participants to Pollack's study, who questioned the appropriateness of "mandated healing"

¹⁴⁵ See Pollack, *Can't Have it Both Ways supra* note 64 at 120-121.

and felt that OOHL staff wanted prisoners to heal on the institution's terms, Linda did not report having any concerns with respect to the administration of the healing lodge¹⁴⁶

However, my research study offers reasons to believe that broader administrative problems are preventing criminalized Indigenous women from having full and equitable access to the OOHL. Significantly, of the six participants to have served federal sentences since the OOHL was opened in 1995, only two had ever heard of the institution's existence. This lack of knowledge amongst the participants is troubling, and arguably reflects a failure on the part of the CSC to fully inform federally sentenced Aboriginal women as to the options available to them over the course of their incarceration. The only other participant who knew of the OOHL was Tammy, and she was deterred from applying for a transfer by the long distance between her home in Vancouver and the OOHL's location in rural southern Saskatchewan. Tammy's predicament underscores the extent to which the OOHL's location, while beneficial for the many criminalized Indigenous women who come from the Prairie provinces (including Saskatchewan and Manitoba, neither of which houses a mainstream federal women's prison), may be limiting its ability to provide all criminalized Canadian Aboriginal women with the more culturally-appropriate correctional environment that the OOHL was designed to deliver. Indeed, women like Tammy, as well as those who hail from central, eastern and northern Canada, are left in the unenviable position of having to choose between the more healing prison environment of the OOHL and the opportunity to remain closer to their families, friends and support networks that mainstream prison facilities may provide. While the Pathways living units serve to fill some of these gaps, they have only been implemented in British Columbia and Alberta. Furthermore, like the OOHL, Pathways units are only accessible to women who are minimum or medium security

¹⁴⁶ *ibid* at 121.

classified.¹⁴⁷ Consequently, a large number of federally sentenced Aboriginal women remain shut out of the more culturally-appropriate environments that both the OOHL and the Pathways living units are designed to provide, to say nothing of provincially sentenced Indigenous women.

These findings are consistent with those of the Office of the Correctional Investigator (the “OCI”), which in its October 2012 report, *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act*, concluded that a series of barriers are preventing federal Aboriginal offenders from having access to healing lodges, as well as to other Aboriginal community-based alternatives to incarceration provided for by the *Corrections and Conditional Release Act* (the “CCRA”).¹⁴⁸ With respect to access to CSC-run healing lodges (such as the OOHL), the OCI found that “in effect, CSC policy excludes almost 90% of incarcerated Aboriginal offenders from even being considered for transfer to a healing lodge. With this limitation, it is no surprise that the investigation found that healing lodges do not operate at full capacity.”¹⁴⁹ The OOHL was no exception to this trend: the OCI found that it operated at 82% of capacity in 2009/10, and 91% of capacity in 2010/11.¹⁵⁰ The OCI report also examines the CSC’s failure to enter into agreements with Aboriginal communities for the provision of correctional services to Aboriginal offenders (*i.e.*, the establishment of community-run healing lodges and other such facilities to which Aboriginal offenders could be transferred from CSC-run institutions), as provided for in section 81 of the *CCRA*. The OCI found that since the passage of the *CCRA* in 1992, only eighty-four “Section 81” beds for Aboriginal offenders have been established, of which only sixteen are for Aboriginal women. Indeed, prior to the opening of

¹⁴⁷ Public Safety Canada, *Marginalized supra* note 65 at 13.

¹⁴⁸ OCI, *Spirit Matters supra* note 135; *CCRA supra* note 48 at ss. 81 and 84.

¹⁴⁹ OCI, *Spirit Matters ibid* at 3-4. The OCI based this conclusion on the fact that access to healing lodges is limited to minimum security offenders and, on rare occasions, to “low risk” medium security classified offenders. Because just over 10% of Aboriginal federal inmates meet these requirements, practically speaking 90% of them are excluded from consideration for a transfer to a healing lodge.

¹⁵⁰ OCI, *Spirit Matters ibid* at 23.

Edmonton's Buffalo Sage Healing Centre in September 2011, there were no Section 81 beds for federally sentenced Aboriginal women whatsoever. Ultimately, these findings led the OCI to conclude that "twenty years after the enactment of the *CCRA*, the CSC has failed to make the kind of systemic, policy and resources changes that are required in law to address factors within its control that would help mitigate the chronic over-representation of Aboriginal people in federal penitentiaries."¹⁵¹

However, the experiences of the participants to this research reveal that while Aboriginal offenders may have difficulty accessing healing lodge facilities while they are serving a custodial federal sentence, they may have an increased opportunity to access healing lodges once they have been released from the penitentiary. Indeed, though only one participant served time at the OOHL, four spent time in healing lodge facilities while on conditional release. They were not sent to healing lodges administered by the CSC (or by an Aboriginal community to which the CSC had delegated responsibility pursuant to s. 81 of the *CCRA*), but rather to privately operated institutions with which the CSC has contracted for the provision of treatment to individuals under the CSC's supervision. Of the four participants to have spent time in such facilities, Stephanie and Tammy were both sent to Anderson Lodge, a healing lodge located on Vancouver's Downtown Eastside. Stephanie was sent there after having been released from FVI, and very much enjoyed her time in the facility: "... it was really awesome there. Like I made drums, and like you know they have sweats there and they have everything there. And like it's so awesome. And you know I was clean in there..." However, following a dispute with her parole officer, Stephanie was removed from the healing lodge and returned to FVI, where she would remain for another year. Tammy too was sent to Anderson Lodge, but did not have as positive an

¹⁵¹ *ibid* at 6.

experience. In fact, she found it lacking in helpful programming, and felt that its location on Vancouver's Downtown Eastside made it very difficult for her to remain clean during her stay: "I screwed that up...Because come on. It's close to skid row. And I'm still kind of, I'm still pure. Of course I'm going to go two months and then relapse."

Three of the participants also spent time at Tsow Tun Le Lum, a Vancouver Island healing lodge that specializes in treating Aboriginal individuals suffering from trauma and substance abuse. They each had very positive experiences in the facility, and in fact both Tammy and Linda have returned to the lodge for further treatment. For Kimberly, who felt excluded from the Aboriginal programming at FVI, Tsow Tun Le Lum represented an open and inclusive environment in which she could freely address the underlying personal struggles that have shaped her criminal involvement and substance abuse: "It was for Aboriginals, Aboriginal descendant of any kind. If you have Native ... so it worked very good. I was comfortable, everyone was very accepting. It was a really good experience." However, like Stephanie, Kimberly was forced to leave the healing lodge following a miscommunication, in her case between herself and one of the lodge's employees.

You know, it was disappointing, but I'm not going to hold it against them. That was one person's lack of proper communication and yeah, it wasn't good. I was arrested. Yeah, because my residency, so they hadn't prearranged for me to go somewhere else, so there was no bed arranged for me through CSC, so I had to go back to prison until they could arrange some place for me to go. So that was a really bad experience. It was not done in a very healing and therapeutic manner, so it was very disappointing. But I had completed the program and had done a couple weeks into the next program.

The manner in which Kimberly was discharged from Tsow Tun Le Lum, as well as the way in which Stephanie was discharged from Anderson Lodge, underscore the important role that CSC discretion plays in criminalized Aboriginal women's access to more healing facilities.

Indeed, the participants' experiences would indicate that access to all three types of healing lodge facilities remains very much something that the CSC classifies as a privilege, rather than a right, much as it does with access to the Pathways units.¹⁵² This attitude, combined with factors such as the CSC's apparent failure to properly advertise the OOHL to federally sentenced Indigenous women and the limitations against maximum security classified women being sent to such facilities, serves to hinder the ability of the healing lodges to effectively assist Aboriginal female prisoners in addressing the root causes of their criminalization. Indeed, the results of both this research and the OOCI's investigation indicate that only a very small number of federal Aboriginal inmates have access to these facilities. Consequently, while the adoption of the healing lodge model may, on its face, appear to be a progressive move by the CSC, administrative issues (particularly with respect to questions of access) are limiting the initiative's ability to make a significant impact on the lives of the majority of federally sentenced Aboriginal offenders.

4.3.2.3. Reflections on Representation by and Relationships with Defence Counsel

Another important aspect of the experience of criminalization that has gone essentially unexplored in academic literature is the relationship between Indigenous female accused and their defence counsel, including the impact that this relationship has on Aboriginal women's experiences within the criminal justice system. This gap is a significant one, in light of the important role that defence counsel can potentially play in shaping the outcome of criminal charges and the sentence ultimately imposed. However, as the participants' experiences indicate, the relationship between criminalized Aboriginal women and their counsel can be marked by mistrust and conflict. In part, that conflict can stem from a cultural divide between counsel and

¹⁵² Commissioner's Directive 702, *supra* note 50.

client.¹⁵³ Indeed, in the vast majority of cases, criminalized Indigenous women are represented by defence counsel who are neither Aboriginal, nor of the same socio-economic background as the women themselves. Fox and Sugar found that this divide was at times at least partially responsible for criminally charged Aboriginal women receiving unfavourable federal sentences:

In many cases, attitudes to white authority formed an important background to the way in which the women received federal sentences. There are several reports in the interviews by women who neither believed that the court system would treat them justly, nor trusted the lawyer who was supposed to act on their behalf. Since they felt powerless and had no trust in the process, some acquiesced. They accepted an unfavourable plea bargain, or remained silent, refusing to offer evidence that either exonerated them or implicated others in the more serious features of the crimes with which they had been charged. They endured being sent to prison in the same silence with which they had greeted past victimization.¹⁵⁴

The experiences of the participants to my research are largely consistent with Fox and Sugar's findings in this regard. In fact, of the ten participants in this study, only Nicole reported having ever been represented by an Indigenous lawyer. She found that this made a significant difference, compared to her previous experiences of working with non-Aboriginal lawyers: "I think it made a lot of difference. It was just, they were more lenient. They took the time to understand where I'm coming from."

Furthermore, five of the ten participants reported having problems with their defence counsel, and in particular, feeling as though they were the recipients of poor legal representation and bad legal advice. As Stephanie explained, "I always kind of feel like I get sold out, you know. Like I don't feel like they ever really fight for me, or anything." Indeed, a common pattern amongst the participants was the feeling that their lawyers did not try as hard as they might have to prevent conviction. Several of the women felt pressured by their counsel to plead guilty,

¹⁵³ Colleen Anne Dell, "The Criminalization of Aboriginal Women: Commentary by a Community Activist" in Wendy Chan & Kiran Mirchandani, eds. *Crimes of Colour: Racialization and the Criminal Justice System in Canada* (Toronto: Broadview Press, 2002) at 131 – 133.

¹⁵⁴ Fox and Sugar Report, *supra* note 37 at 476.

regardless of whether there was a chance of acquittal at trial. Kimberly felt such pressure, and believed that it stemmed from the fact that she was a legal aid client, rather than a paying one: “I mean I have no proof that he sold me out, but I mean he wasn’t willing to put the time and energy, like he would rather us take a deal that clearly we didn’t have no reason to take. We could have fought that and gotten off.” Similarly, both Donna and Linda felt that their lawyers did not take into account the circumstances surrounding their offences, which they believed ought to have been mitigating. As Donna explained, “I didn’t think he was doing his job ... properly. Cause he took pictures of my face and that and I don’t think that he took that into consideration, that, you know, I told him what happened, like I gave my statement, like I’m not lying.” Despite her best efforts, Donna could not get her lawyer to see her perspective: that she had acted in self-defence when she killed Frank. Many of the participants, including Donna, when confronted with counsel who seemed disinterested in aggressively defending the charges laid, gave up on their initial plans to go to trial and decided instead to plead guilty. In fact, not one of the ten participants reported ever having taken a single charge through trial.

The factor that seemed to divide those participants who felt poorly represented by their counsel from those who were more positive about the relationship was whether or not the woman felt that her lawyer understood her and the circumstances surrounding her criminalization. Of the participants, four reported having been, at one time or another, represented by a lawyer whom they felt understood them and was acting in their best interests. For Jessica and Ashley, these lawyers were ones who had previously represented one of their parents, and were thus knowledgeable as to their respective family histories. The lawyers were then able to use their knowledge of their clients’ circumstances to craft sentencing submissions that Jessica and Ashley felt provided the court with a good understanding of the lived experiences that had helped to

bring them into contact with the criminal justice system. For Tammy, feeling well-represented was also about feeling understood, as she did in her relationship with a lawyer who represented her for seventeen years:

He understood me. Because he actually sat down for a whole hour and, maybe an hour and a half. He brought me coffee. He came to see me at BCCW and, brought me coffee, and it was so good, it was so tasty. So anyway, he sat me down and says “I want to know everything about yourself – don’t leave nothing out.” [...] So I told him about my background, growing up.

However, a greater number of the participants felt that they had consistently received poor legal representation. Indeed, the participants’ experiences with their own defence counsel indicate the possibility that criminalized Aboriginal women are not being accorded the fulsome defence to which they are entitled. While the participants’ assessments of the quality of their legal representations are complicated by issues such as their lack of familiarity with certain workings of the criminal justice system, the mere fact that more than half of them felt as though they had been poorly represented by their counsel indicates a need for further research. In particular, the extent to which criminal defence counsel may be unnecessarily urging criminalized Aboriginal women to plead guilty rather than proceeding to trial is a question worthy of further research and analysis.

4.3.2.4 Reflections on the Implementation of the Gladue Methodology

A further way in which defence counsel can exert influence over Aboriginal female offenders’ experiences of the Canadian criminal justice system is through their decision of whether and how to bring their clients’ Aboriginality to the attention of the court at sentencing, as required by the *Gladue* and *Ipeelee* decisions.¹⁵⁵ While addressing the circumstances of Aboriginal offenders at sentencing is considered mandatory (and a failure to do so can amount to

¹⁵⁵ *Gladue supra* note 5; *Ipeelee supra* note 86.

a reversible error on appeal¹⁵⁶), the experiences of the participants to this research illustrate that Aboriginal status is inconsistently addressed by defence counsel. In fact, only two of the participants recall having their Aboriginality made known to the court at sentencing. Kimberly was unequivocal that none of the lawyers who have represented her have ever even asked whether she is Aboriginal: “Only after I have been convicted or have been in jail or I have never ever been asked in court, prior to court, during proceedings, at any time.”

Furthermore, even if defence counsel choose to address an offender’s Aboriginality at sentencing, they retain a significant amount of discretion as to how fully and thoroughly they will canvas the issue. For example, defence counsel may opt to simply inform the court of an offender’s Aboriginal heritage, without providing specific details of the individual’s experiences as an Aboriginal individual. In the case of Indigenous female offenders, defence counsel may choose to provide only gender-neutral information to the court, and not focus on the particularities of the Aboriginal female experience.¹⁵⁷ Furthermore, defence counsel has the discretion to decide whether or not to request the production of a *Gladue* report. These reports essentially act as an Aboriginal-centric alternative to the pre-sentence report, serving to draw the court’s attention to the role that the “systemic and background factors” identified by the Supreme Court of Canada in *Gladue* have played in the lived experiences of the individual being sentenced. As was explained by Kelly Hannah-Moffat and Paula Maurutto:

In keeping with the legislation’s non-custodial emphasis, reports prepared for Aboriginals are intended to advise the court about the availability of culturally relevant or mainstream healing resources and relevant alternatives to incarceration (Campbell Research Associates, 2006, 2008). This analysis is meant to provide the court with culturally situated information which places the offender in a broader social-historical group context. It offers a different and more holistic understanding of the Aboriginal offender,

¹⁵⁶ *Ipeelee* *ibid* at para. 87.

¹⁵⁷ Cameron *supra* note 94 at 180.

which clarifies how broader systemic factors are related to offending and sentencing. These factors are not intended to mitigate offending, but can be used to justify a non-custodial sentence (where one may be appropriate), or, to shape conditions in the case of a conditional sentence or probation order, and to present creative alternatives to the court. This kind of analysis can reframe the offender's risk/need by holistically positioning the individual as part of a broader community and as a product of many experiences.¹⁵⁸

While sentencing judges may request the production of a *Gladue* report to assist them in crafting a sentence for an Aboriginal offender, practically speaking, it is most often defence counsel that will determine whether or not such a report is ordered by the court. However, the experiences of the women who participated in this research indicate that defence counsel may not be regularly requesting the production of these reports. In fact, none of the ten participants reported ever having had a *Gladue* report prepared for their sentencing hearing.

The unanimous information that *Gladue* reports were not requested suggests the need for a more in-depth investigation of the failure to ensure that Aboriginality is thoroughly addressed at sentencing, and of the role that defence counsel may play in this regard. To date, research on the implementation of the *Gladue* paradigm has tended to focus on the judicial application of the methodology, rather than on potential ambivalence on the part of defence counsel.¹⁵⁹ However, the role that defence counsel plays in determining whether and how an accused's Aboriginality will be brought before the court has received a certain amount of academic attention in the province of Manitoba, where it has been found that Aboriginality is not being systematically

¹⁵⁸ Kelly Hannah-Moffat & Paula Maurutto, "Re-contextualizing Pre-sentence Reports: Risk and Race" (2010) 12 *Punishment & Society* 262 at 274.

¹⁵⁹ See e.g., Roach & Rudin, Promising Decision *supra* note 6; Roach, One Step Forward *supra* note 83; Rudin, Assessing Aboriginal Over-representation, *supra* note 83; Brent Knazan, "Time for Justice: One Approach to *R. v. Gladue*" (2009) 54 CLQ 431; Alana Klein, "*Gladue* in Quebec" (2009) 54 CLQ 506; Jonathan Rudin, "Aboriginal Over-representation and *R. v. Gladue*: Where We Were, Where We Are and Where We Might Be Going" (2008) 40 SCLR (2d) 687 and Brian R. Pfefferle, "Gladue Sentencing: Uneasy Answers to the Hard Problem of Aboriginal Over-Incarceration" (2008) 32 Man LJ 113.

addressed at the sentencing of Indigenous offenders.¹⁶⁰ Specifically, in a qualitative research study conducted with twelve Winnipeg-based criminal defence lawyers, Rana McDonald found that defence counsel frequently do not bring their clients' Aboriginality to the attention of the court.¹⁶¹ She determined that the decision of whether or not to speak to Aboriginality at sentence is often based in part on the lawyer's own ideologies (*e.g.*, the belief that *Gladue* represents a form of reverse discrimination), counsel's assessment of the likely benefit of making a s.718.2(e) argument and counsel's knowledge of whether or not the client is Aboriginal.¹⁶² Additionally, practical considerations, including the mechanics of plea negotiations, added time that a client may have to spend in remand while awaiting the preparation of a *Gladue* report and a lack of available alternatives to incarceration, may have bearing on the decision of whether such a report is produced, and in turn on how thoroughly Aboriginality is addressed at sentencing.¹⁶³

Furthermore, as David Milward and Debra Parkes have argued, financial disincentives may be serving to limit defence counsel's willingness to engage in a thorough examination of a client's circumstances as an Aboriginal Canadian.¹⁶⁴ They argue that this is particularly the case for legal aid funded counsel whose fees are set according to a tariff, rather than by reference to the actual number of hours worked. As Milward and Parkes note:

It will often be considerably more work for a lawyer to properly make use of *Gladue* in comparison to other cases resolved by guilty plea, as MacDonald's thesis hints. It will often require more research, more preparatory work, advocating for the production of a *Gladue* report, and making more extensive submissions based on the *Gladue* factors and their role in an individual client's case.

¹⁶⁰ David Milward & Debra Parkes, "Gladue: Beyond Myth and Towards Implementation in Manitoba" (2011) 35 *Man LJ* 84 at 87.

¹⁶¹ Rana McDonald, *The Discord Between Policy and Practice: Defence Lawyers' Use of s. 718.2(e) and Gladue*, (M.A. Thesis, The University of Manitoba, 2008) [unpublished] at 153.

¹⁶² *Ibid* at 153 – 157.

¹⁶³ *Ibid* at 105 – 120.

¹⁶⁴ Milward & Parkes, *supra* note 160 at 92 – 93.

This extra work, which would essentially go uncompensated, provides another possible explanation for defence counsel's potential unwillingness to consistently and thoroughly raise Aboriginality at sentencing. Given the limited financial means of the participants to this research, all of whom were represented exclusively by legal aid funded counsel, it is conceivable that financial disincentives played a role in contributing to the fact that none of the participants had *Gladue* reports prepared for their sentencing hearings.

While the work that has been conducted in Manitoba on this issue is very informative, it remains essential that similar research be conducted in other Canadian jurisdictions. Furthermore, special care should be taken to ensure that any research conducted on the frequency and thoroughness with which Aboriginality is brought to the attention of the sentencing court reflects possible variations between the treatment of male and female Aboriginal offenders.¹⁶⁵ The need for such specificity is underscored by the work of Gillian Balfour, who after conducting a study based on 168 reported sentencing decisions involving Aboriginal offenders convicted of serious personal injury offences, concluded that “special consideration for the unique circumstances faced by Aboriginal offenders and the aim of non-carceral sentencing alternatives are pursued most often on behalf of men convicted of sexual assault, and seldom on behalf of criminalized Aboriginal women.”¹⁶⁶ If such non-carceral alternatives are not being pursued in the cases of Indigenous women, or, if as my research has shown, their Aboriginality is rarely being put before the court at sentencing, this might help to explain why the rates of

¹⁶⁵ For an in-depth examination of how the pre-carceral life experiences of Aboriginal women are incorporated into and treated within sentencing decisions, see Elspeth Kaiser-Derrick, *Listening to What the Criminal Justice System Hears and the Stories It Tells: Judicial Sentencing Discourses About the Victimization and Criminalization of Aboriginal Women* (L.L.M. Thesis, The University of British Columbia, 2012) [unpublished].

¹⁶⁶ Balfour, Law Reforms *supra* note 99 at 86.

incarceration of Aboriginal women have continued to rise dramatically since the adoption of the *Gladue* paradigm.¹⁶⁷

4.3.2.5 Reflections on Release and Parole Revocation

A final aspect of the criminal justice system into which the participants provided insight was the experience of being released from prison. This is an experience that each of the participants has had, and certain patterns emerged across their narratives. In particular, the participants' experiences of release from prison were characterized by significant personal and financial instability, in addition to the struggle against relapse.¹⁶⁸ As Tammy explains, many Indigenous women leave prison with no resources and nowhere to go, which in turn engenders feelings of abandonment and resentment, as well as a return to the behaviours that previously resulted in their incarceration:

They get released, they have to find their way back from Surrey. And they come right back down skid row again, looking for money. Of course they're going to get right back in to it. Maybe do a B&E, maybe rob somebody, maybe do a trick. They think that by not giving them access to get back to Vancouver or wherever they have to go is going to help them. What are they thinking? Of course they're going to do something – they're mad. They have a grudge against the system. You let me out with nothing, no place to go. You don't even give me the time of day. Well I'm going to go do this. I need money, you know. I'm going to go get high. To hell with you guys, you don't help me.

Tammy's comments are borne out by the experiences of the other participants, many of whom have returned to prison shortly after being released. Indeed, on one occasion, Stephanie was released from provincial prison, only to return the following day. While for the other participants the return to prison has never been so quick, they have all struggled, at one point or another, with staying out.

¹⁶⁷ See OCI, 2011-2012 Report *supra* note 84 and Statistics Canada, Dauvergne *supra* note 1.

¹⁶⁸ For an analysis of the practical challenges facing women offenders upon their release from prison, see Laura Shantz et al, "Echoes of Imprisonment: Women's Experiences of 'Successful (Re)integration'" (2009) 24 CJLS 85. at 85.

Their experiences are consistent with the CSC's own research on the experiences of Aboriginal women on parole, which has found that Indigenous women parolees are more likely than their non-Aboriginal counterparts to be deemed to be a "high risk" for re-offending. Indeed, while 72.1% of non-Aboriginal women federal parolees are considered to be "low risk" on the CSC's "Community Intervention Scale," that figure is only 49.6% for their Aboriginal counterparts.¹⁶⁹ In fact, the CSC has found that Indigenous women on parole tend to experience high levels of need in all but one of the seven "need domains" included in the CIS, namely associates, community functioning, employment, marital/family, personal/emotional and substance abuse.¹⁷⁰ Furthermore, the CSC has found that the needs of Aboriginal women on parole do not decrease the longer they remain in the community:

Although there were several similarities between the analyses reported for the entire and Aboriginal samples, there was one important difference. Notably, the proportion of Aboriginal women offenders who experienced problems in these need areas did not diminish the longer they remained in the community. This finding was highly unexpected, as past research has strongly suggested that the need levels of offenders generally decrease the longer they are in the community. This suggests that the strategies to address and manage the needs of women offenders under community supervision may need to be revised to be responsive to issues such as culture.¹⁷¹

The participants identified a number of problems with the manner in which they were released from prison, which they felt may have contributed to their ultimate re-incarceration. Jessica, for example, was pressured by her parole officer to return to her home city when she was granted day parole, where she would have been placed in a halfway house close to the city's skid row. Jessica objected, certain that living so close to the area where she had bought and sold drugs

¹⁶⁹ Dowden, Craig & Ralph Serin, "Assessing the Needs of Aboriginal Women Offenders on Conditional Release," (2000) 12 Forum on Corrections Research 57 at 58.

¹⁷⁰ *Ibid* at 59.

¹⁷¹ *Ibid* at 58 – 59.

prior to her incarceration would result in her relapse. Without her parole officer's support for her efforts to remove herself from previous triggers, Jessica independently sought out other options, and ultimately secured a space in a halfway house located in the Lower Mainland. Similarly, Tammy was on one occasion sent to serve her day parole at Anderson Lodge, located right in the heart of Downtown Eastside of Vancouver. For Tammy, the stresses of this arrangement proved too great; she relapsed on heroin within a matter of weeks. She argues that it is imperative that Indigenous women be released into treatment facilities located in areas where access to drugs and old connections is not a daily temptation: "When they release these kids they should have at least a place, like a safe house to go to before they release them. ... In Vancouver, they'll have access to people that they know. Stick 'em somewhere where they don't know people. Send 'em to wherever, away."

In addition to the experience of being released to ill-conceived locations, the participants' accounts illustrate a lack of understanding on the part of certain parole officers, which in turn resulted in the participants' unnecessary parole revocation. For example, Kimberly was re-incarcerated after failing a urine test several months after she was released on day parole. However, prior to and after using, she had repeatedly explained that she was struggling and requested being sent to Tsow Tun Le Lum for substance abuse treatment, a request that was denied.

So she um revoked my parole and I went back, and then they reinstated my parole. Which is kind of stupid, because I had already requested help and asked to go to Tsow Tun Le Lum and to get some – that I wasn't doing well – so it was kind of a very not a very cost effective way of dealing with the situation, considering that I had already disclosed that I was having uses and needed some sort of help. But whatever. It wasn't a big deal. I was actually grateful to be removed.

Similarly, Stephanie was re-incarcerated after having missed a court date in Abbotsford, after having repeatedly explained to her parole officer that she had no means of transport to Abbotsford from downtown Vancouver, where she was living. On another occasion, Stephanie's parole was revoked when she found herself unable to urinate for a test, which she was informed was deemed an automatic failure.

The participants' experiences with respect to prison release and subsequent parole revocation suggest that the manner in which the release of Indigenous women from prison is being managed by the penal and parole systems may contribute to their disproportionate rates of incarceration.¹⁷² As Tammy and Jessica's experiences illustrate, locations to which Aboriginal women are sent to serve their parole, and the relationship of these locations to the successful completion of their parole periods, might productively be the subject of further research and analysis. While this issue likely affects non-Indigenous prisoners as well, the heightened rates of substance abuse and marginalization amongst criminalized Aboriginal women may result in higher rates of parole revocation.¹⁷³ Similarly, poor personal relationships with parole officers, and potentially a lack of understanding of the needs and triggers of criminalized Aboriginal women on the part of parole officers, might be serving to increase their rates of re-incarceration. Each of these factors may contribute to the incarceration rates experienced by Aboriginal women in Canada, and ought to be subjected to more thorough research and review.

4.4 Conclusion

The participants' experiences indicate the existence of progress in the way in which Indigenous women are treated by the criminal justice system, as well as a significant series of

¹⁷² See Andrew Welsh & James RP Ogloff, "Full Parole and the Aboriginal experience: Accounting for the Racial Discrepancies in Release Rates" (2000) 42 *Canadian J. Criminology* 469.

¹⁷³ See Arbour Report, *supra* note 44 at 4.3.4; Dell & Kilty *supra* note 128.

ongoing problems. The introduction of culturally driven criminal justice interventions, including the provision of Aboriginal prison programming, the establishment of Pathways living units and the use of healing lodge facilities, have the potential to measurably improve Aboriginal women's corrections in Canada. However, as has been demonstrated in this chapter, administrative and procedural issues often serve to limit the ability of these interventions to respond to the true needs and criminogenic factors of Aboriginal women in conflict with the law. Indeed, my interviews indicate that staffing decisions alienate federally sentenced Indigenous women from substance abuse prison programming, while provincially sentenced Aboriginal women have almost no access to programming at all. The limitations that have been placed around access to more culturally-relevant facilities, including geographic and security classification barriers, threaten to turn the initiatives into paper tigers that have only a limited likelihood of addressing the underlying reasons for Aboriginal women's heightened levels of criminalization. Consequently, while their existence may appear progressive, the findings of my research indicate that they are failing to have the practical impact that might be possible if changes to their administration were implemented.

Furthermore, my research has demonstrated that certain aspects of the criminal justice system may be serving to aggravate, rather than alleviate, the rate of over-incarceration experienced by Indigenous women. Specifically, the possible connection between the often fraught relationship that these participants had with their defence counsel and the rate at which Indigenous women plead guilty is deserving of further research and analysis. So too is the role that defence counsel may play in assuring that Indigenous women's circumstances as Aboriginal offenders are brought fully before the court at sentencing. Similarly, the impact that decisions surrounding prison release have on Indigenous women's rates of parole revocation should be

subjected to further scrutiny. These issues have received little attention from the academic community, which leaves a significant gap in our understanding of the causes and consequences of Indigenous women's heightened levels of engagement with the criminal justice system.

CHAPTER FIVE: CONCLUDING CHAPTER

5.1 Introduction

As I explained in the introduction to this thesis, I chose to research the personal experiences of criminalized Indigenous women because these have historically been both understudied and accorded little discursive space within governmental reports and academic works. Indeed, all too frequently the needs and realities of criminalized Aboriginal women are subsumed within the greater categories of “female offenders” and “Aboriginal offenders.” As a result, not enough is known about what it means to live at the intersection of these two labels. The purpose of this research project has been, more than anything else, to assist in the development of a more nuanced understanding of how and why Aboriginal women come into conflict with the Canadian criminal justice system in such record numbers, and what impact that conflict has on their lives. I have attempted to locate the real women behind the statistics that overwhelm legal and academic analyses of the Aboriginal over-incarceration crisis, and to carve out a space for their voices in a dialogue that is generally dominated by those of judges, academics and lawyers, such as myself.

Regardless of the extent to which this research project has accomplished its goal, undertaking it has had a significant impact on me personally. The participants taught me a great deal about what it means to be marginalized, criminalized and incarcerated, experiences with which I am almost entirely unfamiliar. In so doing, they also taught me how to be a better lawyer. They did so by letting me peak into the perceptions that accused people may have of the criminal justice system, including of the work that criminal defence lawyers like me do on their behalves. I am regularly reminded of the participants and their experiences when I defend my

own clients, both male and female, adult and young, Aboriginal and non-Aboriginal. These memories serve as a reminder of the importance of taking the time to listen to my clients, of truly hearing their stories, and of doing my utmost to bring the intricacies of their personal circumstances to the attention of the court. In this small and very personal sense, the conduct of this research project has been a great success.

I will begin this concluding chapter with a brief summary of the findings of my research, followed by my own assessment of their limitations. I will then provide suggestions for further research that might assist in the development of a broader knowledge base as to the experiences of Aboriginal women in conflict with the Canadian criminal justice system. Finally, I will discuss, however superficially, the impact that both the current political climate in Canada and recent reforms to the criminal justice system are likely to have on the rate of over-incarceration experienced by Indigenous Canadians as a whole.

5.2 Summary of the Research Findings

The strength of this work lies in its having created a small space for the stories of the ten women who participated in this research, each of whom is, in her own way, a true expert on the causes and consequences of the staggering over-representation of Indigenous women within Canada's penal system. As I explained in the introductory chapter, I chose to relay the stories of the participants one by one, instead of organizing them thematically, to create as much space as possible for the participants' lived experiences. Each of the women who participated in this research had a unique story as to how and why she came into conflict with the criminal justice system. Jessica and Ashley's stories demonstrated how inter-generational struggles with substance abuse can shape a family, and in turn increase the likelihood of a young woman

struggling with addiction and criminalization. Donna and Linda's stories both showed how the experiences of abuse and sexual assault can contribute to a woman taking the life of her abuser, while Kimberly, Tammy and Stephanie's accounts illustrated how early experiences of sexual violence can lead a young woman to drug dependency and a life of criminal involvement. Nicole's story showed the deep interconnection between abusive intimate relationships, addiction and prostitution, while Lisa and Lori's experiences demonstrated the particular struggles that may face Indigenous members of the LGBT community who find themselves in conflict with the law.

Nevertheless, certain themes tended to run through the participants' narratives. They had each experienced serious struggles with substance abuse, and they tended to identify addiction issues as a primary contributor to their criminalization. Seven of the ten participants had experienced sexual violence on one or more occasions, including childhood molestation and gruesome rape. These experiences were often identified as a catalyst for both their substance abuse and their conflict with the criminal justice system. Yet other themes tended to run through the participants' accounts of their pre-carceral life experiences, including family histories of substance abuse, domestic violence, financial and residential insecurity, early engagement with the criminal justice system, Children's Aid involvement and a lack of connection to a reserve community. In total, I identified eleven adverse factors across in the participants' pre-carceral life experiences, and found each participant to have been affected by a multiplicity of these factors.¹⁷⁴ The women also shared demographic similarities: all but one were mothers, they had generally had urban upbringings, and they were almost all single. While these factors may not have contributed directly to the participants' conflict with the criminal justice system, they did

¹⁷⁴ See Table 4.2 Reported Adverse Factors in the Pre-Carceral Lives of Participants, which indicates that the mean number of adverse factors experienced in the pre-carceral lives of the participants was 6.2 out of a possible 11.

serve to impact upon how they experienced both their incarceration and their release into the community.

Additionally, the participants' experiences illustrate the varying extents to which criminal justice interventions, including those conceived with the aim of addressing Indigenous over-incarceration, are responding to the needs and realities of criminalized Aboriginal women. Their accounts revealed that substance abuse corrective prison programming at FVI may be suffering from design and administrative flaws that serve to limit its ability to assist addicted Aboriginal women in overcoming their substance abuse problems. Specifically, many of the participants took issue with the fact that the programming was delivered by CSC staff, rather than by former addicts. This was said to contribute to the participants' overwhelming assessment that the substance abuse programming was unhelpful. Conversely, the participants generally held the Aboriginal cultural programming at FVI in high esteem, and credited it with helping them to heal and to reconnect with their cultural backgrounds. Their experiences of provincial prison, on the other hand, were marked by the very limited availability of programming within these institutions, which served to render their stays in provincial custody true "dead time."

The participants' experiences in other facets of the criminal justice system were equally probative of the efficacy of current corrections and judicial policy. Only one of the ten participants had ever served time at the OOHL, while only one more had ever even heard of the institution. This indicates a possible failure on the part of the CSC to adequately promote transfers to the OOHL for Indigenous female federal offenders. However, a higher number of participants had been sent to healing lodges while on conditional release, an experience that they tended to find both helpful and culturally relevant. Another issue that the participants raised was the sense of having been poorly represented by their defence counsel, who shared neither their

personal nor cultural backgrounds. In some instances, the participants had even felt pressured by their counsel to plead guilty; indeed, not a single one reported having taken a charge through to trial. Similarly, none of the participants recalled having had their circumstances as Aboriginal women addressed at sentencing, nor having a *Gladue* report prepared in advance of their sentencing hearings. They further reported feeling ill-prepared for their release into the community, and at times had poor and conflict-ridden relationships with their parole officers in the community.

5.3 Limitations of the Research Findings

Viewed as a whole, the participants' stories provide a strong overview of the pre-carceral life experiences that may play a role in the criminalization of such an alarming number of Indigenous women in Canada, as well as of the strengths and failings of the system with which they find themselves in conflict. However, the findings generated by this research project are subject to a number of limitations, which ought to be borne in mind. As I have tried to stress throughout this work, each of the stories that was shared herein is as unique as the woman who lived it. The results of this research cannot be extrapolated across criminalized Indigenous women as a monolithic whole. Rather, they must be viewed merely as examples of what can lead an Aboriginal woman to prison, and what might happen to her once she is there. Additionally, the relatively small number of research participants, combined with the project's focus on the participants' overall experiences of the criminal justice system rather than on a single component of the system, means that further and more specific qualitative research would need to be undertaken to determine whether the participants' reported experiences are consistent with those of other criminalized Aboriginal women in Canada.

Indeed, certain aspects of the project design may have contributed to a certain prejudice in its results. For example, the participants were all recruited via connections to women's groups in the Greater Vancouver area. Only three of the participants had ever been incarcerated outside of the province, which biases the results of the study towards the experiences of criminalized Indigenous women in British Columbia. Furthermore, the participants were exclusively urban Aboriginal Canadians, and thus their stories do not necessarily reflect the experiences of Indigenous women who lived on reserves or in more isolated communities prior to being incarcerated. All of the participants self-identified as being of First Nations heritage, except for Ashley who self-identified as Métis. The research thus does not reflect the experiences of Inuit women, and provides only a cursory representation of Métis experiences. These geographic and demographic limitations mean that the findings may have been different had the study been conducted in a different province or region of the country.

Additionally, it must be recognized that the information gathered throughout the interviews was inherently limited by the vagaries of memory. Because the study was conducted with women who had been released into the community, their recollections of their experiences in prison were not necessarily fresh. The passage of time, sometimes years, between the period of their incarceration and the interview, combined with the effects of substance abuse, meant that the participants could not recall all of the details of their experiences within the correctional facilities in which they had been incarcerated. This was particularly noticeable when the women were asked to describe their experiences in provincial institutions. Because many of them had served numerous short stints in provincial jails, often while detoxing from drugs or alcohol, they frequently struggled to recall the details of these periods of their lives.

Furthermore, the findings are limited by the extent to which the participants were truthful and accurate in their accounts of their experiences. With respect to accuracy, the participants, while incredibly knowledgeable about the workings of the criminal justice system, were occasionally confused about aspects of the judicial process, which may have led to slight inaccuracies in their accounts. For example, Linda told me about what happened at her trial, not realizing that the proceeding to which she was referring was in fact a preliminary inquiry. Additionally, none of the participants recalled having their Aboriginality addressed at sentencing. While this is entirely possible, it is also possible and quite understandable that they simply do not recall the entirety of the submissions that defence counsel made on their behalves. With respect to truthfulness, I have no reason to believe that the participants did not relay their experiences in an honest fashion. Where possible I have tried to seek corroboration of their criminal histories, specifically by searching their real names within the British Columbia Ministry of Justice's online provincial court database.¹⁷⁵ In each case, the presence or absence of entries in the database corresponded to the participants' accounts.

5.4 Suggested Avenues for Further Research

5.4.1 The Understudied Experiences of Aboriginal Women in Provincial Institutions

Over the course of this thesis, I have identified a number of potential avenues for future qualitative research with criminalized Aboriginal women in Canada. Central amongst these is qualitative research into the experiences of Indigenous women in provincial prisons and remand centres, which has been gravely understudied. There is no provincial equivalent to the *Creating Choices* and Arbour reports that has addressed the circumstances of women's incarceration in

¹⁷⁵ British Columbia Ministry of Justice, Court Services Online, online: <https://eservice.ag.gov.bc.ca/cso/esearch/criminal/partySearch.do>.

provincial jails.¹⁷⁶ There is equally no provincial equivalent to the Office of the Correctional Investigator or Statistics Canada, both of which provide useful information about women in prison, but which are focussed almost exclusively on the experiences of federal prisoners. For that matter, there is no informational provincial equivalent to the CSC, which can itself be a source of data on the realities of incarcerated women. These gaps are further compounded by the fact that the experiences of Indigenous women in the provincial institutions have also rarely been the subject of scholarly research, qualitative or otherwise. The end result is that even less is known about the needs and realities of criminalized Aboriginal women serving provincial sentences than federal ones.

This lacuna is a glaring one, particularly in light of the prominent role that provincial correctional facilities tend to play in shaping the experiences that Indigenous women have of the criminal justice system. Even women facing federal sentences for serious offences will have to spend time in a provincial remand centre as they await their trial or sentencing hearing. Many more will serve repeated but comparatively brief sentences in provincial prisons, as did, for example, Linda, Ashley, Stephanie, Kimberly, Tammy and Lisa. However, the near complete absence of statistical data as to the rate of women's incarceration in British Columbia, let alone the rate at which Indigenous women are represented within the provincial prison population, makes determining the number of Aboriginal women who are incarcerated in British Columbia every year nearly impossible. Nevertheless, my review of the available data demonstrates that in

¹⁷⁶ Creating Choices, *supra* note 33 and Arbour Report, *supra* note 44.

all likelihood, a much greater number of Aboriginal women serve provincial sentences of incarceration than federal ones.¹⁷⁷

The participants to my research project were all, at one time or another, incarcerated in a remand centre or provincial jail. Sometimes, prior to the establishment of FVI, they served federal sentences in provincial institutions, including the now closed BCCW. However, as I noted above, they were not always, for a variety of reasons, able to provide me with great detail as to their experiences in provincial correctional facilities. The result is that this study has produced only a limited amount of knowledge as to the experiences of Indigenous women within provincial correctional facilities. While a small number of academics have undertaken more comprehensive studies of Aboriginal women's experiences in these institutions, a great deal more research is required if we are to develop an adequate understanding of the challenges facing Indigenous women in provincial prison.¹⁷⁸ For example, to what extent have provincial

¹⁷⁷ I have attempted a rough calculation that supports my hypothesis, based on the best available data I can find: FVI has a rated capacity of eighty-six inmates, though current estimates suggest it may be housing something more in the vicinity of fifty-seven federally sentenced women (see Correctional Service of Canada, "Fraser Valley Institution for Women," online: Correctional Service of Canada <http://www.csc-scc.gc.ca/institutions/001002-5001-eng.shtml> and Ruth Elwood Martin et al, "The Scope of the Problem: The Health of Incarcerated Women in BC" (2012) 54 BC Medical Journal 502 at 502). If the 2010/11 national average for the representation of Aboriginal women within the federal female prison population is applied (33%, per Office of the Correctional Investigator, "Aboriginal Issues," online: Office of the Correctional Investigator <http://www.oci-bec.gc.ca/cnt/priorities-priorites/aboriginals-autochtones-eng.aspx>) there would be currently between eighteen and twenty eight Aboriginal women incarcerated at FVI. However, in 2011/12, on an average day, there were 2,634 individuals incarcerated in British Columbia's provincial correctional facilities (see Statistics Canada, "Adult Correctional Services, Average Counts of Offenders, by Province, Territory and Federal Programs," online: Statistics Canada <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/legal31-eng.htm>). Applying the 2004/05 national average that women constitute 6% of all provincial and territorial prisoners (see Statistics Canada, Kong & Aucoin *supra* note 117 at 1), on any given day there would approximately 158 women in provincial custody in British Columbia. If the national and gender neutral average that 27% of provincial and territorial prisoners are Indigenous was then applied (see Statistics Canada, Dauvergne *supra* note 1 at 11), that would mean that forty-three Aboriginal women are currently locked up in provincial prison in British Columbia. While this estimated figure does not on its face dramatically exceed my estimate of the number of Indigenous women incarcerated at FVI, one must bear in mind the significantly higher turn-over rate that exists in provincial institutions, where prisoners often serve very brief sentences. Arguably, that turn-over rate, coupled with my higher estimated actual number of Indigenous female prisoners, would mean that calculated annually, a much greater number of Aboriginal women serve provincial time than federal in British Columbia.

¹⁷⁸ See Brassard & Martel, *supra* note 112; Pine, *supra* note 113 and Parkes et al, *supra* note 114.

facilities adopted Aboriginal-centric prison programming? While some of the participants to this research, including Tammy, Jessica and Stephanie, spoke fondly of their engagement with Aboriginal cultural and spiritual ceremonies while serving provincial time, more in depth review remains essential.

5.4.2 *The Use of Gladue Reports and the Recognition of Aboriginality at Sentencing*

Another issue deserving of much further examination is the extent to which the circumstances of Aboriginal women are being put before the court at sentencing, whether in the form of a *Gladue* report or through submissions by their counsel. As was noted above, not a single one of the ten participants recalled having a *Gladue* report prepared nor her Aboriginality addressed. This assertion is, quite obviously, a worrying one. Indeed, a failure on the part of defence counsel to obtain such information and to put it before the court at sentencing could be a possible explanation for why s. 718.2(e) and the *Gladue* paradigm have not resulted in a reduction of the rate of Aboriginal over-incarceration in Canada. As was in Chapter 4, the extents to which *Gladue* reports are prepared and s. 718.2(e) arguments are made have been the subject of study in Manitoba.¹⁷⁹ However, a similar study is absolutely required in British Columbia. It would be equally compelling to consider how, and to what extent, the Supreme Court of Canada's 2012 decision in *Ipeelee*, which essentially admonished courts and counsel alike to give teeth to s. 718.2(e), has had an impact on the rate at which this provision is invoked.¹⁸⁰

¹⁷⁹ See Milward & Parkes, *supra* note 160 and McDonald, *supra* note 161.

¹⁸⁰ *Ipeelee*, *supra* note 86 at para. 60.

5.4.3 *The Decision to Plead Guilty*

A distinct but inter-related issue that was raised by the participants and which is deserving of more in depth consideration is the rate at which Indigenous women plead guilty. Indeed, despite the dozens of convictions that the participants had incurred between them, not a single one reported ever having had a trial. It has been posited elsewhere that Aboriginal people are more likely than non-Indigenous accused, for a range of reasons including intimidation of the court system, different cultural conceptions of the notions of guilt and innocence, and denial of bail, to plead guilty than non-Indigenous accused.¹⁸¹ This issue of how and why Aboriginal women choose to plead guilty, and the extent to which systemic factors may be disproportionately affecting their decision to do so, is deserving of more fulsome study. Additionally, the role that defence counsel (and more specifically the quality of available legal representation) may be playing in this decision-making process, ought to be subjected to further qualitative analysis.

5.4.4 *Aboriginal Women's Experiences of Release from Imprisonment*

A final issue that the participants' accounts raised that would be usefully subjected to much more thorough research would be the extent to which systemic issues within the criminal justice system may be inhibiting Indigenous women's prospects for successful reintegration into society upon release from incarceration. The participants' experiences illustrate that there is likely a great deal more that the penal system could be doing to prepare them for successful re-entry and reintegration into the community. The participants spoke of feeling abandoned, and of being left with no choice but to return to their historic means of supporting themselves, such as

¹⁸¹ Jonathan Rudin, "Aboriginal Peoples and the Criminal Justice System," online: Ontario Ministry of the Attorney General http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/Rudin.pdf at 51 – 56.

through prostitution or criminal activity. This issue speaks to the conclusions of Shoshana Pollack, who has found that the job skills training made available to women in prison does little to increase their abilities to support themselves upon release.¹⁸² Other participants experienced personal conflict with their parole officers, which they felt contributed to their parole revocation. In light of the fact that Indigenous people tend to experience higher rates of parole denial and revocation than non-Indigenous offenders, the specific experiences of Aboriginal women in this regard ought to be accorded more in depth study.¹⁸³

5.5 Aboriginal Over-Incarceration: A Deepening Crisis?

As I noted above, there are a significant number of aspects of Indigenous women's experiences within the criminal justice system that are deserving of further research and analysis. While there is arguably value in their identification alone, as well as in the process of providing a forum in which criminalized Aboriginal women's experiences can be heard and acknowledged, the underlying hope is always that work of this nature might result in the suggestion and implementation of reforms targeted at addressing the problems revealed by the research. Indeed, if I had undertaken this project ten years ago, I would have used this final section to suggest reforms that might serve to improve the efficacy of the criminal justice interventions aimed at reducing the over-incarceration of Aboriginal women in Canada. Unfortunately, the current federal government's attitude towards criminal justice and corrections policy is so focussed on a "tough on crime" ideology that it seems quite futile to suggest changes that are centred upon the rehabilitation and reintegration of offenders, principles that have fallen into legislative disfavour. In fact, the current climate is such that it seems more useful to dedicate this space to the

¹⁸² Pollack, *Can't Have It Both Ways*, *supra* note 106.

¹⁸³ See Welsh & Ogloff, *Full Parole and the Aboriginal Experience*, *supra* note 172.

identification and discussion of how recent amendments to Canadian criminal justice legislation are likely to impact on the rate at which Indigenous women, and in fact Indigenous people more broadly, are and will continue to be over-incarcerated in Canada.

As I will briefly demonstrate herein, the adoption by the Canadian federal government of an increasingly “tough on crime” approach to criminal justice bodes poorly for the prospects of a decrease in Indigenous representation within the country’s prison population. In fact, there are reasons to believe that the crisis will but continue to deepen in the coming years.¹⁸⁴ Recently, the federal government has enacted a series of amendments to the country’s criminal laws, the cumulative result of which will be the increased use and duration of incarceration. A key feature of these recent amendments, introduced through legislation including the *Truth in Sentencing Act* and the *Safe Streets and Communities Act*, has been the erosion of judicial discretion at sentencing.¹⁸⁵ Prior to the *Truth in Sentencing Act*’s amendments to s. 719(3) of the *Criminal Code*, judges were permitted to take into account any time that an offender had spent in pre-trial detention, and customarily awarded credit of two days for every one day spent in remand. In exceptional cases, judges would give credit for time served at even higher rates. For example, in the 2008 case of *R. v. Meawasige*, a judge of the Ontario Court of Justice gave an Aboriginal offender credit at a rate of three and a half days for every day spent in remand, in order to give effect to the *Gladue* principles.¹⁸⁶ Under the current regime, judges are now prohibited from giving more than one-for-one credit, unless the offender can demonstrate that the “circumstances justify” enhanced credit, which is legislatively capped at one and a half days’ credit for every

¹⁸⁴ See OCI, 2011/12 Report, *supra* note 84 at 36.

¹⁸⁵ *Truth in Sentencing Act*, SC 2009 c 29 and *Safe Streets and Communities Act*, SC 2012 c 1.

¹⁸⁶ *R. v. Meawasige*, 2008 ONCJ 122.

day in remand.¹⁸⁷ To date, the country's various appellate courts have developed diverse interpretations of precisely what type of circumstances can qualify an offender for enhanced credit, with the British Columbia Court of Appeal, in *R. v. Bradbury*, arguably taking the most restrictive approach.¹⁸⁸ Furthermore, credit above the rate of one-for-one is expressly prohibited by the new amendments if the offender was detained primarily due to a prior conviction and this reason is stated by the judge on the record, or if the offender was detained after a finding that there were reasonable grounds to believe that he or she had committed an indictable offence, had breached his or her terms of release or was about to breach those terms.¹⁸⁹ While the constitutionality of these express prohibitions on enhanced credit was recently successfully challenged before the Yukon Territorial Court as a violation of Aboriginal offenders' *Charter* rights as protected by ss. 7 and 15, it remains to be seen whether this interpretation will be adopted by other courts.¹⁹⁰

Judicial discretion at sentencing is being further limited by the ever-increasing number of mandatory minimum sentences within the *Criminal Code* and the *Controlled Drugs and Substances Act*.¹⁹¹ These minimum penalties apply to Aboriginal and non-Aboriginal offenders alike, regardless of the requirement at s. 718.2(e) of the *Criminal Code*. Accordingly, these too will serve to limit the ability of the judiciary to engage in the creative sentencing mandated by *Gladue* and *Ipeelee*, particularly in cases involving drugs and/or firearms.¹⁹² While the Supreme

¹⁸⁷ *Criminal Code*, *supra* note 5 at s. 719(3.1).

¹⁸⁸ See *R. v. Bradbury*, 2013 BCCA 280, as compared to *R. v. Carvery*, 2012 NSCA 107; *R. v. Stonefish*, 2012 MBCA 116; *R. v. Summers*, 2013 ONCA 147; *R. v. Morris*, 2013 ONCA 223 and *R. v. Johnson*, 2013 ABCA 190. *R. v. Carvery* is currently under appeal to the Supreme Court of Canada, [2012] SCCA No. 519.

¹⁸⁹ *Criminal Code*, *supra* note 5 at s. 719(3.1).

¹⁹⁰ See *R. v. Chambers*, 2013 YKTC 77.

¹⁹¹ *Controlled Drugs and Substances Act*, SC 1996, c 19 ["CDSA"].

¹⁹² For a summary of the new amendments to the CDSA, see the Department of Justice Canada, "Backgrounder: Penalties for Organized Drug Crime Act," online: Department of Justice Canada http://www.justice.gc.ca/eng/news-nouv/nr-cp/2010/doc_32508.html#annexa.

Court of Canada made clear in *Gladue* that “where there is no alternative to incarceration the length of the term must be carefully considered,” the increased use of mandatory minimum sentences will tie the hands of the judiciary and prevent the imposition of a shorter sentence than that which is statutorily-mandated.¹⁹³ Combined with the recent imposition of greater restrictions on parole eligibility, including the cancellation of the accelerated prison release program, the proliferation of mandatory minimum sentences will result in an increase in the length of actual prison time served by offenders, including Indigenous ones.¹⁹⁴

While these amendments apply equally to Aboriginal and non-Aboriginal offenders, there is reason to believe that they will have an especially negative impact on criminalized Indigenous peoples.¹⁹⁵ For one, the disproportionate involvement of Aboriginal peoples with the criminal justice system means that they are simply more likely than other groups to experience increased rates of incarceration as a result of these amendments. Additionally, the erosion of judicial discretion in these new provisions will frequently serve to prevent judges from imposing non-carceral or shorter sentences on Aboriginal offenders, even if, following a *Gladue* analysis, the judge finds it warranted in the circumstances.¹⁹⁶ As a result, the constitutionality of a range of mandatory minimum sentences has been challenged on the basis that they violate the rights of

¹⁹³ *Gladue*, *supra* note 5 at para 93. See also Debra Parkes, “*Ipeelee* and the Pursuit of Proportionality in a World of Mandatory Minimum Sentences” (2012) 33 *For The Defence* 22.

¹⁹⁴ National Parole Board of Canada, “Coming into force of Bill C-59 (Accelerated Parole Review)”, online: National Parole Board of Canada <http://www.pbc-clcc.gc.ca/media/newsrele/2011-04-08-eng.shtml>.

¹⁹⁵ For discussions of how mandatory minimum sentencing can disproportionately affect Aboriginal peoples, see Larry N. Chartrand, “Aboriginal Peoples and Mandatory Sentencing” (2001) 39 *Osgoode Hall LJ* 449; Pivot Legal Society, “Throwing Away the Keys : The Human and Social Cost of Mandatory Minimum Sentences,” online: Pivot Legal Society http://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/395/attachments/original/1372448744/Final_ThrowingAway_lo-res_-_v2.pdf?1372448744; Christopher Sewarattan, “Apples, Oranges, and Steel: The Effect of Mandatory Minimum Sentences for Drug Offences on the Equality Rights of Aboriginal Peoples” (2013) 46 *UBC Law Review* 121 and Elizabeth Sheehy, “The Discriminatory Effects of Bill C-15’s Mandatory Minimum Sentences” (2010) 70 *CR* (6th) 302.

¹⁹⁶ See *R. v. Brooks* 2012 ONCA 703, where the Court of Appeal for Ontario discusses how the existence of a mandatory minimum sentence imposes practical limitations on judges sentencing Aboriginal offenders.

Indigenous offenders under ss. 7, 12 and 15 of the *Charter*, though they have thus far been largely unsuccessful.¹⁹⁷ The logical result will be an increase in the number of Aboriginal people incarcerated within traditional prisons, as well as an increase in the duration of the time spent behind bars prior to release.

In addition to limiting judges' abilities to reduce Aboriginal offenders' sentences below the legislatively prescribed lengths, the application of mandatory minimum sentences also prohibits judges from imposing Conditional Sentence Orders ("CSOs"), which permit offenders to serve their jail sentences in the community under strict conditions, rather than in prison.¹⁹⁸ Created in 1996 as part of the same *Criminal Code* amendments that resulted in the enactment of s. 718.2(e), CSOs used to be available for a wide range of offences. Indeed, they were initially available in any situation where the judge would have otherwise imposed a sentence of less than two years' imprisonment, provided that the application of a CSO in the circumstances would neither offend the principles of sentencing nor endanger the community.¹⁹⁹ However, through a series of amendments, the Harper government has increasingly restricted the use of CSOs, such that they are now only available for relatively minor offences.²⁰⁰ Presently, CSOs are unavailable

¹⁹⁷ For an example of a case where the constitutionality of a mandatory minimum sentence was unsuccessfully challenged on the basis that it violated the ss. 7 and 15 *Charter* rights of Aboriginal offenders, see *R. v. T.M.B.* 2011 ONCJ 528, and its sentence appeal decision at 2013 ONSC 4019. Other examples of unsuccessful such challenges include *R. v. Bressette* [2010] 4 CNLR 202 and *R. v. Martin* 2005 MBQB 183. See also the successful challenge of *R. v. King* [2007] 4 CNLR 248. For a general discussion of the relationship between the *Charter* and mandatory minimum sentences, see Debra Parkes, "From *Smith* to *Smickle*: The *Charter's* Minimal Impact on Mandatory Minimum Sentences" (2012) 57 SCLR 149.

¹⁹⁸ *Criminal Code*, *supra* note 5 at s. 742.1.

¹⁹⁹ For discussions of the circumstances under which CSOs were initially available, as well as of the caselaw that developed surrounding their use, see Robin McKay, "Conditional Sentences" online: Parliamentary Information and Research Service, Parliament of Canada <http://www.parl.gc.ca/content/lop/researchpublications/prb0544-e.pdf> and and Julian V. Roberts & Thomas Gabor, "Living in the Shadow of Prison: Lessons from the Canadian Experience in Decarceration" (2004) 44 *Brit J Criminol* 92.

²⁰⁰ For discussions of the increased restrictions on CSO availability, see Michelle Booker, "The Incredible Shrinking CSO" (Paper presented to the Trial Lawyers' Association of BC Conference, The Art of Criminal Law: Issues and Opportunities, September 20, 2013) [unpublished] and Myles Frederick McLellan, "The Prospective Devitalization of Conditional Sentences" (2011) 57 CLQ 267.

for any offence that attracts a mandatory minimum sentence or any offence prosecuted by indictment to which a *maximum* penalty of fourteen years or more attaches.²⁰¹ Additionally, recent amendments have expressly excluded a list of offences from CSO availability, including any offence prosecuted by indictment and attracting a maximum penalty of ten years or more where bodily harm has been caused by the offender, as well as any occasion where an offender is convicted of sexual assault, theft over \$5,000 or breaking and entering.²⁰² These restrictions mean that whereas judges were previously able to use CSOs to divert Aboriginal offenders out of traditional correctional facilities and into more healing and culturally-based environments, including by sentencing them to stays in bush camps and to spiritual and cultural work with Elders, they will increasingly be statutorily-obliged to sentence Indigenous offenders to prison terms.²⁰³ By preventing judges from having the discretion to impose CSOs for a broad range of offences, these amendments will also arguably serve to prevent the judiciary from engaging in the creative and responsive sentencing process mandated by *Gladue* and *Ipeelee*.²⁰⁴ Indeed, while judges are required by s. 718.2(e) to consider all alternatives to incarceration that are reasonable in the circumstances when sentencing an Aboriginal offender, the near obliteration of the CSO means that their selection of available alternatives is becoming increasingly circumscribed.

These trends towards more punitive sentencing and less judicial discretion to impose community-based sanctions, will surely have extremely adverse effects for criminalized Indigenous women. Prior to the coming in to force of these amendments, Aboriginal women already represented the fastest growing segment of the Canadian federal prison population,

²⁰¹ *Criminal Code*, *supra* note 5 at s. 742.1.

²⁰² *Ibid* at s. 742.1(e).

²⁰³ For an analysis of the relationship between CSOs and the *Gladue* regime, see Kaiser-Derrick, *supra* note 165 at 37 – 47.

²⁰⁴ *Gladue*, *supra* note 5 at para. 93 and *Ipeelee*, *supra* note 86 at para. 60.

having increased in number by at least 86% between 2001-2002 and 2011-2012.²⁰⁵ Absent serious and concerted efforts across all levels of government and civil society to address both the underlying social and economic factors that contribute to the ongoing marginalization of Aboriginal women in Canada and the manners in which the criminal justice responds to and deals with Indigenous female offenders, it is unlikely that a reversal of this trend will be achieved in the near future. Indeed, the fact that it was not achieved in the wake of the enactment of s. 718.2(e) and the rendering of the *Gladue* decision, in an era of decreased reliance on the use of incarceration, it is hard to imagine how it will be achieved in the current climate of “tough on crime” policies and restricted judicial discretion

5.6 Conclusion

Aboriginal over-incarceration in Canada is a crisis of very real proportions. Over-incarceration robs both women and men of their freedom and their opportunities for a better life. It also robs children of their parents, communities of their leaders and in turn, parents of their children. In many ways, prisons have replaced residential schools as the new primary source of family disintegration and community fragmentation for Canada’s original peoples. But the question, so eloquently posed over twenty years ago by the authors of the Report of the Manitoba Justice Inquiry, remains: “Why, in a society where justice is supposed to be blind, are the inmates of our prisons selected so overwhelmingly from a single ethnic group?” There is no easy answer to that question, but the Report’s attempt to provide one bears repeating:

Two answers suggest themselves immediately: either Aboriginal people commit a disproportionate number of crimes, or they are the victims of a discriminatory justice

²⁰⁵ OCI, 2011/12 Report, *supra* note 84 at 33. Additionally, see Office of the Correctional Investigator, “Federally Sentenced Women,” online: Office of the Correctional Investigator <http://www.oci-bec.gc.ca/cnt/priorities-priorites/women-femmes-eng.aspx> which in fact pegs the growth in the Aboriginal women offender federal prison population at 109% over the same period.

system. We believe that both answers are correct, but not in the simplistic sense that some people might interpret them. We do not believe, for instance, that there is anything about Aboriginal people or their culture that predisposes them to criminal behaviour. Instead, we believe that the causes of Aboriginal criminal behaviour are rooted in a long history of discrimination and social inequality that has impoverished Aboriginal people and consigned them to the margins of Manitoban society.

Since racism exists throughout Manitoban and Canadian society, we have found that overt racism also exists in the administration of Manitoba's justice system. As in society generally, overt racism must be confronted and condemned when discovered. There is no room in the administration of justice for those who are racist, because the power that rests in the justice system is enormous.

However, for Aboriginal people a more serious problem exists. We find that a system that seeks to provide justice on the principle that all Canadians share common values and experiences cannot help but discriminate against Aboriginal people, who come to the system with cultural values and experiences that differ substantially from those of the dominant society.

Cultural oppression, social inequality, the loss of self-government and systemic discrimination, which are the legacy of the Canadian government's treatment of Aboriginal people, are intertwined and interdependent factors, and in very few cases is it possible to draw a simple and direct correlation between any one of them and the events which lead an individual Aboriginal person to commit a crime or to become incarcerated. We believe that the overall weight of the evidence makes it clear that these factors are crucial in explaining the reasons why Aboriginal people are over-represented in Manitoba's jails.²⁰⁶

Twenty years later, it is now widely, though by no means universally, accepted that the effects of colonialism and discrimination are largely to blame for the record rates at which Indigenous Canadians are incarcerated. However, as this thesis has shown, the criminal justice based responses that have been enacted with the aim of addressing this crisis have failed to achieve their goals. Indeed, rates of Aboriginal over-incarceration have only increased. In the federal penal system alone, over the course of the last ten years the number of incarcerated Aboriginal men has increased by 25%, while the Aboriginal female federal prisoner population

²⁰⁶ Manitoba Justice Inquiry, *supra* note 32.

has grown by a truly staggering 86%.²⁰⁷ In fact, all of the net new growth that has occurred in Canada's penitentiary populations over the course of the last five years is accounted for by increases in the number of Aboriginal and other visible minority group prisoners.²⁰⁸ As Howard Sapers, the Correctional Investigator of Canada, explained in his 2011/2012 Annual Report: "As the Office has previously reported and as performance results show, the gap between Aboriginal and non-Aboriginal correctional outcomes is widening over time. Based on current trends and outcomes that show no apparent sign of changing, there is every indication that the proportion of Aboriginal inmates will reach one-in-four in the near future."²⁰⁹ Shawn Atleo, the leader of the Assembly of First Nations, has argued that statistics like these mean that in Canada today a First Nations youth is more likely to go to jail than to graduate from high school.²¹⁰

However, as this thesis has attempted to illustrate, the crisis of Aboriginal over-incarceration goes so much deeper than mere statistics, however shocking, are capable of reflecting. While it is easy to use percentages to demonstrate the severity of Indigenous over-representation within Canada's inmate population, as I frequently have throughout this thesis, we really ought to be talking about people rather than figures. For example, Canada's female federal inmate population has just recently, and for the first time ever, surpassed 600 prisoners.²¹¹ Of those 600 women, 198 are Aboriginal.²¹² While each of these women is likely in prison for

²⁰⁷ OCI, 2011/2012 Report, *supra* note 84 at 33.

²⁰⁸ *Ibid* at 32.

²⁰⁹ *Ibid* at 36. Sadly, when the statistics for Aboriginal women are isolated, this dubious distinction has long since been achieved.

²¹⁰ Emile Therien, "The National Shame of Aboriginal Over-Incarceration", *The Globe and Mail* (July 20, 2011), online: The Globe and Mail <http://www.theglobeandmail.com/commentary/the-national-shame-of-aboriginal-incarceration/article587566/>.

²¹¹ OCI, 2011/12 Report, *supra* note 84 at 40.

²¹² Determined based upon the statistic that Indigenous women currently account for 33% of the women in federal custody: see OCI, Aboriginal Issues *supra* note 176. Note that if Aboriginal women's representation in penitentiaries was equal to their representation in Canadian society (4%, see Statistics Canada, Dauvergne, *supra* note 1), there would only be twenty-four Indigenous women in women's federal prisons.

having committed one or more serious offences, as this thesis has shown, there may be many factors in her pre-carceral life that can make it understandable how she came to commit the offences that she did. Furthermore, when an Indigenous woman, or any person for that matter, goes to prison, hers is not the only life trajectory that is affected. The trickle down effects of over-incarceration for criminalized and non-criminalized Indigenous Canadians are great. So too are the effects for Canadian society as a whole. The personal impacts of this crisis, including the experiences of the very people who live on its front lines, must be given the attention they deserve. Their experiences can teach us many things about our criminal justice system, including both its weaknesses and its strengths. If we do not take the time to stop, listen, learn and act, there is little hope that this grave injustice will simply continue unabated.

Bibliography

LEGISLATION

Controlled Drugs and Substances Act, RSC 1996, c 19.

Corrections and Conditional Release Act, RSC 1992, c 20.

Criminal Code, RSC 1985, c C-46.

Truth in Sentencing Act, SC 2009 c 29.

Safe Streets and Communities Act, SC 2012 c 1

JURISPRUDENCE

R. v. Bradbury 2013 BCCA 280

R. v. Bressette [2010] 4 CNLR 202

R. v. Brooks 2012 ONCA 703

R. v. Carvery 2012 NSCA 107

R. v. Carvery, 2012 SCCA 519

R. v. Chambers 2013 YKTC 77

R. v. Gladue [1999] 1 S.C.R. 688.

R. v. Gladue [1999] 2 C.N.L.R. 231.

R. v. Ipeelee 2012 SCC 13.

R. v. J.(C.) (1997), 119 C.C.C. (3d) 444.

R. v. Johnson 2013 ABCA 190

R. v. King [2007] 4 CNLR 202

R. v. McDonald (1997), 113 C.C.C. (3d) 418

R. v. Martin 2005 MBQB 185

R. v. Meawasige 2008 ONCJ 122

R. v. Morris 2013 ONCA 223

R. v. Stonefish 2012 MBCA 116

R. v. Summers 2013 ONCA 147

R. v. T.M.B. 2013 ONSC 4019

R. v. T.M.B. 2011 ONCJ 528

R. v. Wells [2000] 1 S.C.R. 207.

REPORTS (GOVERNMENTAL AND NON-GOVERNMENTAL)

Aboriginal Affairs and Northern Development Canada. *Aboriginal Women in Canada: A Statistical Profile from the 2006 Census* (Ottawa: Queen's Printer, 2012), online: Aboriginal Affairs and Northern Development Canada http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/ai_rs_pubs_ex_abwch_pdf_1333374752380_eng.pdf.

Aboriginal Justice Inquiry of Manitoba. *Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People*, vol 1 (Winnipeg: Queen's Printer, 1991).

Aboriginal Corrections Policy Unit, Public Safety Canada. *Marginalized: The Aboriginal Women's Experience in Federal Corrections* by M. Wesley (Ottawa: Public Safety Canada, 2012), online: Public Safety Canada <http://www.publicsafety.gc.ca/res/cor/apc/apc-33-eng.aspx>.

Canadian Corrections Association. *Indians and the Law* (Ottawa: Canadian Corrections Association, 1967).

Canadian Human Rights Commission. *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* (Ottawa: Canadian Human Rights Commission, 2003).

Commission of Inquiry into Certain Events at the Prison for Women in Kingston. *Report of the Commission of Inquiry into Certain Events at the Prison for Women in Kingston* (Commissioner: Arbour J.) (Ottawa: Public Works and Government Services Canada, 1996), online: Justice Behind the Walls http://www.justicebehindthewalls.net/resources/arbour_report/arbour_rpt.htm.

Correctional Service of Canada. *A Needs Assessment of Federal Aboriginal Women Offenders* (Ottawa: Correctional Service of Canada, 2004), online: Correctional Service of Canada http://www.csc-scc.gc.ca/text/rsrch/reports/r156/r156_e.pdf.

_____. *Commissioner's Directive 702: Aboriginal Offenders* (Ottawa: Correctional Service of Canada, June 2012), online: Correctional Service of Canada <http://www.csc-scc.gc.ca/text/plcy/cdshtm/702-cde-eng.shtml>.

_____. *Federally Sentenced Aboriginal Women in Maximum Security: What Happened to the Promise of Creating Choices?* by S. Morin (Ottawa: Correctional Service of Canada, 2002), online: <http://www.csc-scc.gc.ca/text/prgrm/fsw/skyblue/toce-eng.shtml>.

_____. *Report on Plans and Priorities (2011 – 2012)*, online: Government of Canada <http://publications.gc.ca/site/eng/397867/publication.html>.

_____. *Strategic Plan for Aboriginal Corrections: Innovation, Learning and Adjustment 2006-07 – 2010-11*, online: Correctional Service of Canada http://www.csc-scc.gc.ca/text/prgrm/abinit/documents/spac06_e.pdf.

Correctional Service of Canada Review Panel. *A Roadmap to Strengthening Public Safety* (Ottawa: Minister of Public Works and Government Services Canada, 2007), online: Public Safety Canada <http://www.publicsafety.gc.ca/csc-scc/cscrprprt-eng.pdf>.

Dell, Colleen Anne & Roger Boe. “Research Reports: An Examination of Aboriginal and Caucasian Women Offender Risk and Needs Factors” (December 2000), online: Research Branch, Correctional Service of Canada <http://www.cscscc.gc.ca/text/pblct/forum/e132/e132ind-eng.shtml>.

Fortin, Doris. *Program Strategy for Women Offenders* (Ottawa: Correctional Service of Canada, 2004), online: Correctional Service of Canada http://www.csc-scc.gc.ca/text/prgrm/fsw/fsw18/fsw18_e.pdf.

Hannah-Moffat, Kelly & Margaret Shaw. “Taking Risks: Incorporating Gender and Culture into the Classification and Assessment of Federally Sentenced Women in Canada” (Ottawa: Status of Women Canada, 2001), online: <http://www.publications.gc.ca/collections/Collection/SW21-66-2001E.pdf>.

Kenny, Carolyn et al. *A Holistic Framework for Aboriginal Policy Research* (Ottawa: Status of Women Canada, 2004), online: Government of Canada <http://publications.gc.ca/collections/Collection/SW21-114-2004E.pdf>.

LaPrairie, Carol. *Examining Aboriginal Corrections in Canada* (Ottawa: Ministry of the Solicitor General, 1996), online: Public Safety Canada <http://www.publicsafety.gc.ca/res/cor/apc/apc-14-eng.aspx>.

Nova Scotia. *The Royal Commission on the Donald Marshall Jr. Prosecution: Report* (Halifax: Queen’s Printer, 1989), online: Government of Nova Scotia http://www.gov.ns.ca/just/marshall_inquiry/_docs/Royal%20Commission%20on%20the%20Donald%20Marshall%20Jr%20Prosecution_findings.pdf.

Office of the Correction Investigator. *Annual Report of the Office of the Correctional Investigator 2011-2012* (Ottawa: Office of the Correctional Investigator, 2012), online: Office of the Correctional Investigator <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20112012-eng.aspx>.

_____. *Spirit Matters: Aboriginal People and the Corrections and Conditional Release Act* (Ottawa, Office of the Correctional Investigator, 2012), online: Office of the Correctional Investigator <http://www.oci-bec.gc.ca/cnt/rpt/pdf/oth-aut/oth-aut20121022-eng.pdf>.

Pivot Legal Society. "Throwing Away the Keys: The Human and Social Cost of Mandatory Minimum Sentences," online: Pivot Legal Society http://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/395/attachments/original/1372448744/Final_ThrowingAway_lo-res_-_v2.pdf?1372448744.

Royal Commission on Aboriginal Peoples. *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Canada Communication Group Publishing, 1996).

Rudin, Jonathan. "Aboriginal Peoples and the Criminal Justice System," online: Ontario Ministry of the Attorney General http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/pdf/Rudin.pdf.

Schmeiser, DA et al. *The Native Offender and the Law* (Ottawa: Law Reform Commission of Canada, 1974).

The Task Force on Federally Sentenced Women. "Creating Choices: The Report of the Task Force on Federally Sentenced Women" (April 1990), online: Correctional Service of Canada <http://www.csc-scc.gc.ca/text/prgrm/fsw/choices/toce-eng.shtml>.

OTHER GOVERNMENT SOURCES: STATISTICS AND MINUTES

Canada, House of Commons Standing Committee on Justice and Legal Affairs. Minutes of Proceedings and Evidence, No. 62 (17 November 1994).

Office of the Correctional Investigator. "Backgrounder - Aboriginal Offenders: A Critical Situation", online: Office of the Correctional Investigator <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20121022info-eng.aspx>.

Statistics Canada. "Adult Correctional Services, Average Counts of Offenders, by Province, Territory and Federal Programs," online: Statistics Canada <http://www.statcan.gc.ca/tables-tableaux/sum-som/101/cst01/legal311-eng.htm>.

_____. *First Nations, Métis and Inuit Women* by V. O'Donnell and S. Wallace (Ottawa: Minister of Industry, 2011), online: Statistics Canada http://www.oaith.ca/assets/files/Publications/Government%20Documents/Women_In_Canada_6thReport/WmCanada_AborigWm.pdf.

_____. *Women in Canada: A Gender-Based Statistical Report: Women and the Criminal Justice System* by T. Hotton Mahony (Ottawa: Minister of Industry, 2011), online: Statistics Canada <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11416-eng.htm>.

Statistics Canada: Canadian Centre for Justice Statistics. *Adult Correctional Statistics in Canada, 2010/2011* by M. Dauvergne (Ottawa: Minister of Industry, 2012), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2012001/article/11715-eng.htm#a7>.

Statistics Canada: Juristat. *Adult Correctional Services in Canada 2008/2009* by D. Calverley (Ottawa: Minister of Industry, 2010), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2010003/article/11353-eng.htm#a7>.

_____. *Female Offenders in Canada*, by R. Kong & K. AuCoin (Ottawa: Minister of Industry, 2008), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/85-002-x2008001-eng.pdf>

_____. *The Incarceration of Aboriginal People in Adult Correctional Services* by S. Perreault (Ottawa: Minister of Industry, 2009), online: Statistics Canada <http://www76.statcan.gc.ca/stcsr/query.html?style=emp&qt=perreault&charset=iso-8859-1&qm=1&oq= &rq= 1 &la=en>.

_____. *Violent Victimization of Aboriginal Women in the Canadian Provinces, 2009* by S. Brennan (Ottawa: Minister of Industry, 2011), online: Statistics Canada <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11439-eng.htm>.

SECONDARY SOURCES: JOURNAL ARTICLES

Acker, S. "In/out/side: Positioning the Researcher in Feminist Qualitative Research" (2000) 28 *Resources for Feminist Research* 153.

Allspach, Anke. "Landscapes of (neo)-Liberal Control: The Transcarceral Spaces of Federally Sentenced Women in Canada" (2010) 17 *Gender, Place and Culture* 705.

Balfour, Gillian. "Do Law Reforms Matter? Exploring the Victimization-Criminalization Continuum in the Sentencing of Aboriginal Women in Canada" (2013) 19 *International Review of Victimology* 85.

_____. "Falling Between the Cracks of Retributive and Restorative Justice: The Victimization and Punishment of Aboriginal Women" (2008) 3:2 *Feminist Criminology* 101.

Bedard, Kelly & Eric Helland. "The Location of Women's Prisons and the Deterrence Effect of "Harder" Time" (2004) 24 *International Review of Law and Economics* 147.

Brassard, Renée & Joane Martel. "Trajectoires Sociocarcérales des Femmes Autochtones au Québec : Effets de l'Incarcération sur l'Exclusion Sociale" (2009) 42 *Criminologie* 121.

Brownbridge, Douglas A. "Understanding the Elevated Risk of Partner Violence Against Aboriginal Women: A Comparison of Two Nationally Representative Surveys of Canada," (2008) 23 *J Fam Viol* 353.

Chartrand, Larry N. "Aboriginal Peoples and Mandatory Sentencing" (2001) 39 *Osgoode Hall LJ* 449.

Dell, Colleen & Jennifer Kilty. "The Creation of the Expected Aboriginal Woman Drug Offender in Canada: Exploring Relations between Victimization, Punishment and Cultural Identity" (2013) 19 *International Review of Victimology* 51.

Dell, Colleen Anne, Catherine J. Fillmore & Jennifer M. Kilty. "Looking Back 10 Years after the Arbour Inquiry: Ideology, Policy, Practice, and the Federal Female Prisoner" (2009) 89 *The Prison Journal* 286.

Dowden, Craig & Ralph Serin. "Assessing the Needs of Aboriginal Women Offenders on Conditional Release" (2000) 12 *Forum on Corrections Research* 57.

Edwards, Rosalind. "Connecting Method and Epistemology: A White Woman Interviewing Black Women" (1990) 13 *Women's Studies Int Forum* 477.

Elwood Martin, Ruth et al. "The Scope of the Problem: The Health of Incarcerated Women in BC" (2012) 54 *BC Medical Journal* 502.

Green, Norma. "Okimaw Ohci Healing Lodge: A Federally Sentenced Women's Initiative" (2000) 12 *Forum on Corrections Research* 48.

Hannah-Moffat, Kelly. "Creating Choices or Repeating History: Canadian Female Offenders and Correctional Reform" (1991) 18 *Social Justice* 184.

_____. "Criminogenic Needs and the Transformative Risk Subject" (2005) 7:1 *Punishment & Society* 29.

_____. "Gendering Risk at What Cost: Negotiations of Gender and Risk in Canadian Women's Prisons" (2004) 14 *Feminism & Psychology* 243.

_____. "Moral Agent or Actuarial Subject: Risk and Canadian Women's Imprisonment" (1999) 3 *Theoretical Criminology* 71.

_____. "Pandora's Box: Risk/Need and Gender-Responsive Corrections" (2006) 5 *Criminology & Public Policy* 183.

Hannah-Moffat, Kelly & Paula Maurutto. "Re-contextualizing Pre-sentence Reports: Risk and Race" (2010) 12 *Punishment & Society* 262.

Heckbert, Doug & Douglas Turkington. "Turning Points: Factors Related to the Successful Reintegration of Aboriginal Offenders" (2002) 14 *Forum on Correctional Research* 55.

Jackson, Margaret A. "Canadian Aboriginal Women and Their 'Criminality': The Cycle of

- Violence in the Context of Difference” (1999) 32 *Austl. Crim. & N.Z.J.* 197.
- Jackson, Michael. “*Locking Up Natives in Canada*” (1989) 23 *UBC L Rev* 215.
- Klein, Alana. “*Gladue in Quebec*” (2009) 54 *CLQ* 506.
- Knazan, Brent. “Time for Justice: One Approach to *R. v. Gladue*” (2009) 54 *CLQ* 431.
- LaPrairie, Carol. “Native Women and Crime: A Theoretical Model” (1987) 7 *Canadian Journal of Native Studies* 121.
- _____. “Reconstructing Theory: Explaining Aboriginal Over-Representation in the Criminal Justice System in Canada” (1997) 30 *Austl Crim & NZJ* 39.
- Loppie, Charlotte. “Learning from the Grandmothers: Incorporating Indigenous Principles into Qualitative Research” (2007) 17 *Qualitative Health Research* 276.
- McLellan, Myles Frederick. “The Prospective Devitalization of Conditional Sentences” (2011) 57 *CLQ* 267.
- Martel, Joane. “Telling the Story: A Study in the Segregation of Women Prisoners” (2001) 28 *Social Justice* 196.
- Martel, Joane et al. “When Two Worlds Collide : Aboriginal Risk Management in Canadian Corrections” (2011) 51 *Brit J Crimino* 235.
- Martel, Joane and Renée Brassard. “Painting the Prison ‘Red’: Constructing and Experiencing Aboriginal Identities in Prison” (2008) 38 *British Journal of Social Work* 340.
- McGill, Jena. “An Institutional Suicide Machine: Discrimination Against Federally Sentenced Aboriginal Women in Canada” 2 *Race/Ethnicity: Multidisciplinary Global Contexts* 89.
- Milward, David. “Sweating it Out: Facilitating Corrections and Parole in Canada Through Aboriginal Spiritual Healing” (2011) 29 *Windsor YB Access Just* 27.
- Milward, David & Debra Parkes. “*Gladue: Beyond Myth and Towards Implementation in Manitoba*” (2011) 35 *Man. LJ* 84.
- Moore, Dawn. “Feminist Criminology: Gain, Loss and Backlash” (2008) 2 *Sociology Compass* 48.
- Monture-Angus, Patricia. “The Lived Experience of Discrimination: Aboriginal Women Who Are Federally Sentenced” (2002), online: Elizabeth Fry Society <http://www.elizabethfry.ca/submissn/aborigin/1.htm>.
- _____. “Women and Risk: Aboriginal Women, Colonialism, and Correctional Practice” (1999) 9 *Canadian Woman Studies*, online: York University <http://pi.library.yorku.ca/ojs/index.php/cws/article/viewFile/8068/7248>.

Monster, Miranda & Anthony Micucci. "Meeting Rehabilitative Needs at a Canadian Women's Correctional Centre" (2005) 85 *The Prison Journal* 168.

Nowlin, Christopher. "Taking Aboriginal Justice Beyond *Gladue*: Canadian Criminal Law in Conflict with Human Rights" (2004) 67 *Sask L Rev* 59.

Parkes, Debra. "From *Smith* to *Smickle*: The Charter's Minimal Impact on Mandatory Minimum Sentences" (2012) 57 *SCLR* 149.

_____. "Ipeelee and the Pursuit of Proportionality in a World of Mandatory Minimum Sentences" (2012) 33 *For The Defence* 22.

Parkes, Debra et al. "Listening to their Voices: Women Prisoners and Access to Justice in Manitoba" (2008) 26 *Windsor YB Access Just* 85.

Pelletier, Renée. "The Nullification of Section 718.2(e): Aggravating Aboriginal Over-Representation in Canadian Prisons" (2001) 39 *Osgoode Hall LJ* 469.

Pfefferle, Brian R. "*Gladue* Sentencing: Uneasy Answers to the Hard Problem of Aboriginal Over-Incarceration" (2008) 32 *Man LJ* 113.

Pine, Cheryl-Anne. "Gender Sensitive Corrections in the Northwest Territories: Adopting Federal Lessons while Listening to Local Needs" (2012) 31 *WRLSI* 101.

Pollack, Shoshana. "'I'm Just Not Good in Relationships': Victimization Discourses and the Gendered Regulation of Criminalized Women" (2007) 2 *Feminist Criminology* 158.

_____. "You Can't Have it Both Ways: Punishment and Treatment of Imprisoned Women" (2009) 20 *Journal of Progressive Human Services* 112.

Rigney, Lester-Irabinna, "Internationalization of an Indigenous Anticolonial Cultural Critique of Research Methodologies (1999) 14 *Wicazo Sa Review* 109.

Roach, Kent. "One Step Forward, Two Steps Back: *Gladue* at Ten and in the Courts of Appeal" (2009) 54 *Crim LQ* 470.

Roach, Kent & Jonathan Rudin. "*R. v. Gladue*: The Judicial and Political Reception of a Promising Decision" (2000) 42 *Can J Crim* 355.

Roberts, Julian V. & Thomas Gabor. "Living in the Shadow of Prison: Lessons from the Canadian Experience in Decarceration" (2004) 44 *Brit J Criminol* 92.

Roberts, Julian V. & Philip Stenning. "The Sentencing of Aboriginal Offenders in Canada: A Rejoinder" (2002) 65 *Sask L Rev* 75.

Roberts, Julian V. & Ronald Melchers. "The Incarceration of Aboriginal Offenders: Trends from 1978 to 2001" (2001) 45 *Canadian Journal of Criminology and Criminal Justice* 211.

Rudin, Jonathan. "Aboriginal Over-representation and *R. v. Gladue*: Where We Were, Where We Are and Where We Might Be Going" (2008) 40 SCLR 687.

_____. "Assessing Aboriginal Over-representation post-*Gladue*: A Realistic Assessment of How Social Change Occurs" (2009) 54 Crim LQ 447.

_____. "Looking Backward, Looking Forward: The Supreme Court of Canada's Decision in *R. v. Ipeelee*" (2012) 57 SCLR 375.

Rudin, Jonathan & Kent Roach. "Broken Promises: A Response to Stenning and Roberts' Empty Promises" (2002). 65 Sask L Rev 3.

Schiendein, Lee Anne. "The Aboriginal Healing Lodge: A First Step" (1992) 56 Sask L Rev 427.

Sewarattan, Christopher. "Apples, Oranges, and Steel: The Effect of Mandatory Minimum Sentences for Drug Offences on the Equality Rights of Aboriginal Peoples" (2013) 46 UBC L Rev 121.

Shantz, Laura, Jennifer M. Kilty & Sylvie Frigon. "Echoes of Imprisonment: Women's Experiences of 'Successful (Re)integration'" (2009) 24 CJLS 85.

Sheehy, Elizabeth. "The Discriminatory Effects of Bill C-15's Mandatory Minimum Sentences" (2010) 70 CR (6th) 302.

Sparling, Lori. "A Suitable Place: Positive Change for Federally Sentenced Aboriginal Women in Canada (1999) 19 Canadian Woman Studies 116.

Stenning, Philip & Julian V. Roberts. "Empty Promises: Parliament, The Supreme Court, and the Sentencing of Aboriginal Offenders" (2001) 64 Sask L Rev 137.

Sugar, Fran & Lana Fox. "Nistum Peyako Séht'wawin Iskwewak: Breaking Chains" (1989) 3 CJWL 465.

Turpel-Lafond, M. E. "Sentencing within a Restorative Justice Paradigm: The Procedural Implications of *R. v. Gladue*" (1999) 43 CLQ 34.

Webster, Cheryl Marie & Anthony Doob. "Classification without Validity or Equity: An Empirical Examination of the Custody Rating Scale for Federally Sentenced Women Offenders in Canada" (2004) 46 CJCCJ 395.

Welsh, Andrew & James RP Ogloff. "Full Parole and the Aboriginal experience: Accounting for the Racial Discrepancies in Release Rates" (2000) 42 Canadian J. Criminology 469.

Williams, Toni. "Punishing Women: The Promise and Perils of Contextualized Sentencing for Aboriginal Women in Canada" (2007) 55 Clev St L Rev 269.

Yuen, Felice. "Leisure as Context for Justice: Experiences of Ceremony for Aboriginal Women in Prison" (2009) 41 Journal of Leisure Research 547.

SECONDARY SOURCES: BOOKS (AND ESSAYS WITHIN)

Ackerly, Brooke & Jacqui True. *Doing Feminist Research in Political and Social Science* (London: Palgrave Macmillan, 2010).

Adelberg, Ellen & Claudia Currie. "In Their Own Words: Seven Women's Stories" in Ellen Adelberg & Claudia Currie, eds, *In Conflict with the Law: Women and the Canadian Criminal Justice System* (Vancouver: Press Gang Publishers, 1993).

Adelberg, Ellen & the Native Women's Association of Canada. "Aboriginal Women and Prison Reform," in Ellen Adelberg & Claudia Currie, eds, *In Conflict with the Law: Women and the Canadian Criminal Justice System* (Vancouver: Press Gang Publishers, 1993).

Balfour, Gillian & Elizabeth Comack, eds. *Criminalizing Women* (Winnipeg, Fernwood Publishing, 2006).

Boritch, Helen. *Fallen Women: Female Crime and Criminal Justice in Canada* (Toronto: Nelson, 1997).

Cameron, Angela. "R. v. Gladue: Sentencing and the Gendered Impact of Colonialism" in John D. Whyte, ed, *Moving Toward Justice: Legal Traditions and Aboriginal Justice* (Saskatoon: Purich Publishing, 2008).

Chesney-Lind, Meda & Lisa Pasko, eds. *The Female Offender: Girls, Women and Crime*, 3d ed, (London: Sage Publications, 2012).

Dell, Colleen Anne. "The Criminalization of Aboriginal Women: Commentary by a Community Activist" in Wendy Chan & Kiran Mirchandani, eds. *Crimes of Colour: Racialization and the Criminal Justice System in Canada* (Toronto: Broadview Press, 2002).

Faith, Karlene. *Unruly Women: The Politics of Confinement and Resistance* (Vancouver: Press Gang Publishers, 1993).

Hayman, Stephanie. *Imprisoning our Sisters: The New Federal Women's Prisons in Canada* (Montreal: McGill-Queen's University Press, 2006).

_____. "Prison Reform and Incorporation: Lessons from Britain and Canada," in Kelly Hannah-Moffat and Margaret Shaw, eds, *An Ideal Prison? Critical Essays on Women's Imprisonment in Canada* (Halifax: Fernwood Publishing, 2000).

Hesse-Biber, Sharlene Nagy & Michelle L. Yaiser. "Difference Matters: Studying Across Race, Class, Gender, and Sexuality," in Sharlene Nagy Hesse-Biber and Michelle L. Yaiser, eds, *Feminist Perspectives on Social Research* (New York: Oxford University Press, 2004).

Kirsch, Gesa E. *Ethical Dilemmas in Feminist Research: The Politics of Location*,

Interpretation, and Publication (Albany: State University of New York Press, 1999).

Naples, Nancy A. "The Outsider Phenomenon," in Sharlene Nagy Hesse-Biber & Michelle L. Yaiser, eds, *Feminist Perspectives on Social Research* (New York: Oxford University Press, 2004).

Shaw, Margaret. "Reforming Women's Federal Imprisonment," in Ellen Adelberg & Claudia Currie, eds, *In Conflict with the Law: Women and the Canadian Criminal Justice System* (Vancouver: Press Gang Publishers, 1993).

Tuhiwai Smith, Linda. *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books Ltd., 1999).

_____. "On Tricky Ground: Researching the Native in the Age of Uncertainty," in Norman K. Denzin and Yvonna S. Lincoln, eds., *The Sage Handbook of Qualitative Research*, 3d ed., (London: Sage Publications, 2005).

Williams, Toni. "Intersectionality Analysis in the Sentencing of Aboriginal Women in Canada: What Difference Does it Make?," in Emily Graham et al, eds., *Intersectionality and Beyond: Law, Power and the Politics of Location* (New York: Routledge-Cavendish, 2009).

OTHER MATERIALS: INTERNET SOURCES

Atira Women's Resource Society, online: Atira Women's Resource Society <http://www.atira.bc.ca/>.

British Columbia Ministry of Justice, Court Services Online, online: <https://eservice.ag.gov.bc.ca/cso/esearch/criminal/partySearch.do>.

Correctional Service of Canada, "Fraser Valley Institution for Women," online: Correctional Service of Canada <http://www.csc-scc.gc.ca/institutions/001002-5001-eng.shtml>.

_____, "Healing Lodges for Aboriginal Offenders," online: Correctional Service of Canada <http://www.csc-scc.gc.ca/text/prgrm/abinit/challenge/11-eng.shtml>.

_____, "Institutional Profiles," online: Correctional Service of Canada <http://www.csc-scc.gc.ca/institutions/index-eng.shtml>.

Department of Justice Canada, "Backgrounder: Penalties for Organized Drug Crime Act," online: Department of Justice Canada http://www.justice.gc.ca/eng/news-nouv/nr-cp/2010/doc_32508.html#annexa.

Elizabeth Fry Society of Greater Vancouver, online: Elizabeth Fry Society of Greater Vancouver <http://www.elizabethfry.com/>.

McKay, Robin. "Conditional Sentences," online: Parliamentary Information and Research Service, Parliament of Canada <http://www.parl.gc.ca/content/lop/researchpublications/prb0544-e.pdf>.

National Parole Board of Canada. "Coming into Force of Bill C-59 (Accelerated Parole Review)," online: National Parole Board of Canada <http://www.pbc-clcc.gc.ca/media/newsrele/2011-04-08-eng.shtml>.

Native Courtworker and Counselling Association of BC, online: Native Courtworker and Counselling Association of BC <http://www.nccabc.ca/>.

Office of the Correctional Investigator, "Federally Sentenced Women," online: Office of the Correctional Investigator <http://www.oci-bec.gc.ca/cnt/priorities-priorites/women-femmes-eng.aspx>.

_____. "Aboriginal Issues," online: Office of the Correctional Investigator <http://www.oci-bec.gc.ca/cnt/priorities-priorites/aboriginals-autochtones-eng.aspx>.

Therien, Emile. "The National Shame of Aboriginal Over-Incarceration," *The Globe and Mail* (July 20, 2011), online: The Globe and Mail <http://www.theglobeandmail.com/commentary/the-national-shame-of-aboriginal-incarceration/article587566/>.

Watari Research Association, online: Watari Research Association www.watari.ca.

OTHER MATERIALS: THESES AND UNPUBLISHED ARTICLES

Booker, Michelle, "The Incredible Shrinking CSO" (Paper presented to the Trial Lawyers' Association of BC Conference, The Art of Criminal Law: Issues and Opportunities, September 20, 2013) [unpublished].

Kaiser-Derrick, Elspeth, *Listening to What the Criminal Justice System Hears and the Stories It Tells: Judicial Sentencing Discourses About the Victimization and Criminalization of Aboriginal Women* (L.L.M. Thesis, The University of British Columbia, 2012) [unpublished].

McDonald, Rana, *The Discord Between Policy and Practice: Defence Lawyers' Use of s. 718.2(e) and Gladue*, (M.A. Thesis, The University of Manitoba, 2008) [unpublished].

Appendix A – Sample Letter

[UBC LETTERHEAD]

[DATE]

[CONTACT NAME, IF AVAILABLE]
 [ORGANIZATION NAME]
 [ADDRESS]

RE: THE UNIVERSITY OF BRITISH COLUMBIA – RECRUITMENT FOR SUBJECTS TO PARTICIPATE IN A RESEARCH STUDY

Dear [NAME],

My name is Jenny Dyck. I am currently enrolled in the Masters of Law program at the University of British Columbia (“UBC”). I am writing my graduate thesis, titled *Of Lives, Loss and Lock-up: Realities of the Over-Incarceration of Aboriginal Women in Canada*, on the disconnect that exists between the factors and experiences that tend to bring aboriginal women into contact with the criminal justice system at such disproportionate rates, and the policies and procedures that have been adopted by the criminal justice system to reduce their over-incarceration.

I have long been conscious of the wrongs that have been inflicted on the aboriginal peoples of Canada through colonialism. However, I am an outsider to these issues; I am not an aboriginal woman myself. My knowledge of these matters, like that of most lawyers, judges and legal academics in Canada, is limited by the fact that I have never experienced imprisonment, nor what it means to be an indigenous person navigating through a colonial justice system.

Through this research project, I hope to enhance both my and other legal academics’ understandings of the true causes and consequences of the over-incarceration of aboriginal women and the effectiveness of the justice system’s responses to this crisis. Hopefully, I will accomplish this by incorporating the voices and personal experiences of aboriginal women who have actually experienced incarceration into the scholarly dialogue. Accordingly, I am hoping to conduct one-on-one interviews with aboriginal women who have been imprisoned in Canada.

I am writing to you to request your and [ORGANIZATION NAME’s] assistance in two key ways. Firstly, I am looking for women who self-identify as aboriginal and who have served a prison term in Canada who might be willing to discuss their experiences with me on a confidential basis. I would hope to conduct a two hour interview with each woman (at a place and time convenient to and chosen by the participating woman herself), during which we would

discuss the reasons why she feels she ended up in contact with the criminal justice system, and then how she feels the system dealt with these background factors (whether at sentencing, through programming in prison or otherwise). Each participant will be offered an honourarium of \$50.00, as a token of thanks for sharing her time and expertise with me. All participation be on an entirely voluntary basis, and the participants would be free to refuse to answer any questions and to stop the interview entirely for any reason they so choose.

I am deeply committed to conducting these interviews in a respectful manner that will minimize the discomfort that the participating women would feel in sharing such personal experiences with a stranger, particularly one who does not share her cultural background. During my studies at the University of Ottawa, I worked as a caseworker in the Women's Division of the University of Ottawa Community Law Clinic, where I represented female victims of violence before the Criminal Injuries Compensation Board ("CICB"). Over the course of this work I gained considerable experience in interviewing marginalized and often traumatized women about highly personal and sensitive subjects, includes their experiences of abuse, violence and addiction. I will put the training that I gained at the Law Clinic to practice as I undertake this research.

If you or others in your organization are aware of any women in the Greater Vancouver area who fit this description and who you think might be willing to speak with me, I would greatly appreciate it if you provide them with my contact information, and/or provide me with theirs. Alternatively, I have prepared a poster advertising my study, a copy of which is enclosed with this letter. I would appreciate it immensely if you would consider displaying the poster in your office or other space, in the hopes that interested women might see it and contact me.

I am also writing to request another sort of assistance for my research project. Given [ORGANIZATION NAME]'s involvement in [SPECIFIC DETAILS OF ORGANIZATION'S WORK], I was wondering if you or someone else from your organization might be willing to be interviewed as part of my research. Should you be willing to make the time, I feel that your knowledge and expertise could be of great assistance to this project.

I propose to conduct an hour long interview, at a time and place that is convenient to you. I would like to hear your opinions and experiences on the underlying or background factors that bring aboriginal women into conflict with the criminal justice system, and on how effective the criminal justice system's responses to aboriginal women's experiences have been.

If you or anyone else at [ORGANIZATION NAME] thinks that you might either know of criminalized aboriginal women in the Greater Vancouver area who might willing to participate in my study, or if you may be willing to be interviewed yourself, please contact me by email at jennyadyck@gmail.com or by telephone at 604 355 0423. I would be happy to discuss this project with you in further detail, whether by email, telephone or in person. Please also feel free to contact Dr. Emma Cunliffe (tel: 604 822 1849, email: cunliffe@law.ubc.ca), who is the UBC Faculty of Law professor under whose supervision this research project is being conducted.

I thank you greatly for taking the time to read this letter and for any consideration that you may give to my proposal. I hope very much to hear from you.

Yours very truly,

Jennifer Dyck

Appendix B – Recruitment Flyer

ABORIGINAL WOMEN in the CRIMINAL JUSTICE SYSTEM

INTERVIEW PARTICIPANTS NEEDED!

Aboriginal women are 3% of the women of Canada, but make up 37% of the women jailed in Canadian prisons. However, most of the research on this over-representation is based on statistics, not on the real stories and experiences of the actual women who have experienced this over-incarceration.

If you self-identify as an Aboriginal woman, have personally experienced incarceration and are willing to share your experiences of the criminal justice system on a confidential basis, consider making your voice heard by being interviewed by Jenny Dyck, who is conducting a study on this subject as part of her Masters in Law Degree at the University of British Columbia.

This study hopes to create a deeper understanding in the legal community of the causes and consequences of the over-incarceration of aboriginal women in Canada by hearing directly from the women who have been personally affected.

Willing participants would be asked to meet with Jenny at a place and time convenient to them for a two hour long private interview. Participants will receive \$50, in compensation for sharing their experiences and expertise, but are free to refuse to answer questions or to stop the interview at any time.

For more information, please contact Jenny by email at jennyadyck@gmail.com
or by telephone at 604 355 0423.

Appendix C – Consent Form

[UBC LETTERHEAD]

INFORMED CONSENT BY SUBJECTS TO PARTICIPATE IN A RESEARCH PROJECT

Of Lives, Loss and Lock-Up: Realities of the Over-Incarceration of Aboriginal Women in Canada

The University of British Columbia and the researchers involved in this study are committed to conducting research in ethical and respectful ways. We want to make sure that you, as a research participant, understand how and why this research is being undertaken and that you feel as comfortable as possible throughout the process.

Researcher and Contact Information:

This study is being conducted by Jennifer Dyck and Emma Cunliffe. Jennifer is a Masters in Law (LL.M.) student in the Faculty of Law at the University of British Columbia (“UBC”). Jennifer can be reached by telephone at 604 355 0423, as well as by email at jennyadyck@gmail.com

Jennifer will be conducting this study under the supervision of Dr. Emma Cunliffe, Assistant Professor at the UBC Faculty of Law. Emma can be reached by telephone at 604 822 1849, as well as by email at cunliffe@law.ubc.ca

Please feel free to contact either Jennifer or Emma with any questions that you may have about the study.

Description of Study:

The purpose of this study is to contribute to a better understanding (particularly in the legal and academic communities, but also more broadly) of how aboriginal women in Canada experience their involvement with the criminal justice system and incarceration. At the heart of this research is the belief that we can only understand how the system treats and deals with aboriginal women if we hear from the women themselves.

In order to accomplish this goal, Jennifer will conduct interviews with aboriginal women who have previously served sentences in prisons or penitentiaries in Canada. Participants in the study will be asked to share their experiences of incarceration, including why they believe they were incarcerated and how the criminal justice and penal system responded to the underlying issues that resulted in their imprisonment. Other interviews will also be conducted with staff members from various Vancouver-area charitable and non-governmental groups and organizations that have experience in working with criminalized aboriginal women.

The participants' stories will be drawn upon to see what their experiences can tell us about how the criminal justice system treats aboriginal women, and how effective various criminal justice programs and initiatives aimed at indigenous women may be. Specifically, the information gathered from the interviews will be used to assess how criminal sentencing practices and prison programming might be modified to better meet the needs of criminalized aboriginal women.

The hope is that the findings of this research can be distributed, both within legal and academic communities and to the public, in a way that increases awareness and understanding of the realities of the over-incarceration of aboriginal women in Canada.

Participant Selection Process:

You were selected for participation in this research project because you meet three requirements: 1) to self-identify as being of aboriginal descent; 2) to self-identify as female; and 3) to have served a custodial sentence in a Canadian prison or penitentiary.

Participants' Involvement in the Study:

You will be asked to attend an interview with Jennifer. The place and time of the interview can be decided between you and Jennifer, and can be held in a way that is convenient to you.

The initial interview will last for approximately two hours. If you are willing, and you and Jennifer deem it necessary, follow-up interviews might be held. All interviews will be held at places and times that are convenient to you.

Confidentiality and Dissemination of Research Findings:

All information gathered in the study, including recordings, transcripts, notes and contact information will be safely stored at the UBC Faculty of Law and will not be disclosed or distributed to anyone other than Jennifer, Emma and yourself.

All statements made by you will be maintained on a strictly confidential basis, except where disclosure to third parties is required by law (i.e., if you disclose a real intention to hurt a specific person or abuse a child, or if you disclose that a child in your care has been abused).

In order to protect your confidentiality, while quotes and/or summaries of what you said may be included in reports or other texts written on the topic of this study, you will at no point be identified in any way, whether by name or by the revelation of identifying personal characteristics. Pseudonyms will be used to protect your anonymity.

The results of this study will form the basis of Jennifer's Masters in Law thesis, which will be submitted to the UBC Faculty of Law. Jennifer may also include these research findings in articles that she may write and/or publish, such as in an academic legal article. Additionally, these findings may be used in presentations given by Jennifer at academic conferences and other talks. In each case, strict confidentiality will be carefully maintained.

Participants' Rights

If at any point during the interview you feel that you do not wish to continue, you may refuse to answer any question put to you, for any reason whatsoever – you do not need to explain or justify this choice. You also have the right to demand that the interview stop.

Before the findings of this study are finalized, you will be given a copy of the transcript of your interview(s), if you wish. You will have the chance to review the transcript at your convenience, by yourself if you choose, or with Jennifer. You will have the chance to clarify or modify comments that you made. You will also have the right to demand that any portion of the transcript be deleted.

If you have any concerns about your rights as a research subject and/or your experiences while participating in this study, you may contact the Research Subject Information Line in the UBC Office of Research Services at 604-822-8598 or if long distance e-mail RSIL@ors.ubc.ca or call toll free 1-877-822-8598.

Known Risks and Benefits Associated with Participation in the Study

The known risks associated with participating in this study relate mainly to the negative emotional consequences that you might feel as a result of discussing painful and personal matters with Jennifer and Emma. These discussions, and specifically the act of reliving times of pain and suffering, might cause emotional distress. For example, you will be asked personal questions about your experiences of life in prison and the factors that brought you there. Accompanying this letter is a sheet that supplies the names and contact information of some organizations in the Vancouver area that offer counseling and other services that might be helpful to you.

There are also several benefits that may come from participating. You will be making a meaningful and important contribution to the understanding of why and how the Canadian criminal justice system imprisons aboriginal women at such high rates. Knowledge on this subject can help to promote the adoption of better laws and policies. The stories of people like yourself are essential to building a better understanding of the causes and consequences of aboriginal over-incarceration.

Recognition of your Contribution

We are very grateful that you are considering participating in this study. Without people like yourself, this study cannot proceed.

If you participate in this study you will be given \$50.00. This payment will be made in thanks and appreciation for your time and expertise that you shared with Jennifer in your interview.

Time to Consider Whether to Participate

You are urged to take your time to decide if you want to participate in this study. We ask that you notify Jennifer of your decision within 1 month of having received this letter of consent. If an extension of time is required, please feel free to contact Jennifer to make arrangements.

Permission to Record the Interview:

Permission to digitally record the interview is requested. Jennifer will use these recordings to produce transcripts of your interview(s). Any recording(s) produced shall be stored safely, in a way that protects your confidentiality.

If you agree that your interview may be recorded and transcribed, please complete the following:

Name	Date	Signature
------	------	-----------

Consent to Participate in the Study:

If you agree to participate in this study, please complete the following:

Name	Date	Signature
------	------	-----------

Appendix D – Schedule of Interview Questions

TOPIC	QUESTIONS
INTRODUCTORY QUESTIONS	
Participant's Rights	<ul style="list-style-type: none"> • <i>Before we get started, I would just like to remind you of what your rights are during this interview. You do not have to answer any question you don't want to, and you can stop the interview at any time.</i> • <i>This interview is about you sharing your expertise with me. You get to control the interview and what we discuss. If you ever feel at all uncomfortable or upset, please just let me know and we will stop the interview, or take a break.</i>
Safety Issues	<ul style="list-style-type: none"> • Issues might arise that are difficult to discuss • Make a plan – what are we going to do if this conversation is upsetting to you? • Do you feel safe in this environment?
Basic Information about participant	<ul style="list-style-type: none"> • Name • Age • Marital Status • Children / age of any children • Employment status
THE PARTICIPANT'S CHARGING, TRIAL AND SENTENCING	
Transition	<ul style="list-style-type: none"> • <i>If it's alright with you, I would like to move on to discuss your conviction and your trial.</i> • [obtain consent before proceeding]
Details of Offence	<ul style="list-style-type: none"> • What offence or offences were you convicted of? • Can you please describe for me the events that led to your arrest? <p><i>***If the participant has been incarcerated on more than one occasion, repeat for each incident***</i></p>
Legal Representation	<ul style="list-style-type: none"> • Did you have a lawyer at trial? • How did you feel about your lawyer?
Pre-Trial Detention	<ul style="list-style-type: none"> • Were you granted bail in advance of trial? • If not, where were you held?
Trial / Guilty Plea	<ul style="list-style-type: none"> • Did your case go to trial?

TOPIC	QUESTIONS
	<ul style="list-style-type: none"> • If yes, please describe how you think the trial went. • If not, how was the matter resolved? • If you pleaded guilty, why did you choose to do that?
Sentencing	<ul style="list-style-type: none"> • How long were you sentenced for? • Do you remember if your aboriginal heritage was ever raised as an issue during sentencing? • If so, do you remember in what way it was brought up?
Aboriginal Court Workers	<ul style="list-style-type: none"> • Did you ever have access to aboriginal court workers or counselors during this process?
Overall Experience – Was your voice heard	<ul style="list-style-type: none"> • Did you feel like your story was told during the trial and/or sentencing?
THE PARTICIPANT'S EXPERIENCE OF INCARCERATION	
<i>Transition</i>	<ul style="list-style-type: none"> • <i>If I have your permission, I would like to move on to discuss your experiences when you were in prison. I know that this might be very difficult for you to discuss, so please remember that you can stop me at any time.</i> • [obtain consent before proceeding]
Specific Prison / Penitentiary	<ul style="list-style-type: none"> • Where were you incarcerated? • How would you describe this institution?
Geographic Location	<ul style="list-style-type: none"> • How did the geographic location of the prison impact upon your experience of incarceration? • Did the location have an impact on your visitation with or ability to contact your friends and family? • Were there any programs available to you that helped you to cope with the distance?
Counseling	<ul style="list-style-type: none"> • Was any form of counseling available to you in prison? • What issues were dealt with? • Did you find the counseling effective?
Aboriginal Programming	<ul style="list-style-type: none"> • Were there any available programs that were directed towards aboriginal inmates? <ul style="list-style-type: none"> ○ If so, please describe. • Were the programs offered by the prison itself, or by other

TOPIC	QUESTIONS
	<p>groups?</p> <ul style="list-style-type: none"> • Was the Native Sisterhood present in the prison? • How did you feel about this programming? • How do you think this programming affected your experiences in prison? • Did it affect your life after prison?
Healing Lodge	<ul style="list-style-type: none"> • Did you ever consider requesting a transfer to the Okimaw Ohci Healing Lodge in Saskatchewan? • Why or why not? • How do you think serving time in a facility like that might have affected you?
Work in Prison	<ul style="list-style-type: none"> • Were you given the opportunity to work when you were in prison? • How did this affect you?
Education	<ul style="list-style-type: none"> • Were you given any opportunity to obtain education or training while you were in prison? • If so, what? • How do you think this affected your experiences in prison?
Other Programs and Services	<ul style="list-style-type: none"> • Can you tell me about any other programs and services that were offered to you?
THE PARTICIPANT'S RISK FACTORS AND THE SYSTEM'S RESPONSE	
Transition	<ul style="list-style-type: none"> • <i>If I have your permission, I would like to move on to discuss those experiences and factors in your life that you think led you to prison. Again, I know that this is very personal and it may be upsetting to discuss, so please don't feel like you have to answer any of these questions.</i> • [obtain consent before proceeding]
Personal Risk Factors	<ul style="list-style-type: none"> • What do you think were the factors in your life that led you towards involvement with the criminal justice system?
The System's Response	<ul style="list-style-type: none"> • Do you think that the way the court understood the underlying reasons why you became involved with the criminal justice system? • What about your lawyer? • Do you think that the services made available to you in prison helped you to deal with the struggles that brought you to prison? • How did the system help to prepare you for life outside of prison?

TOPIC	QUESTIONS
THE PARTICIPANT'S ABORIGINAL ANCESTRY	
<i>Transition</i>	<ul style="list-style-type: none"> • <i>I was wondering if you might be comfortable discussing some details of your aboriginal heritage with me, as well as your relationship with your culture? I know that this a personal matter, and so please do not feel obliged to discuss it with me.</i> • <i>If so, please remember that you can of course stop the discussion or choose not to answer any question that you want.</i>
Participant's aboriginal ancestry	<ul style="list-style-type: none"> • What First Nation and/or community do you belong to? • Where are your community's lands located? • How would you describe your personal connection to your aboriginal ancestry? • Has your relationship with your aboriginal heritage changed over the years? If so, how? • Do you feel that your experience of incarceration impacted upon your relationship with your aboriginal ancestry? If so, how?
THE PARTICIPANT'S FINAL THOUGHTS	
Anything Overlooked?	<ul style="list-style-type: none"> • Was there anything that we missed that you might like to address? • If anything else comes to mind later, we can schedule a follow-up interview at your convenience
THANKS AND NEXT STEPS	
	<ul style="list-style-type: none"> • Thank you very much for participating in this interview and sharing your expertise with me today. • [payment of \$50 honorarium] • I am very grateful that you have shared such personal information with me, which I am sure cannot have been easy for you. In case you feel like you want to talk to someone about the issues and any feelings that this interview may have brought up, I would like to provide you with a list of organizations in the local area that might be able to help you. I am not a counselor, so I cannot offer that help to you, but the people at these organizations should be able to. • [provide resource sheet] • The next step will be for me to produce a transcript of this interview – I will let you know when it's ready, so that you can read it and make any changes to it that you might want. If you want, I would be happy to meet with you again once the transcript is ready, so that we could go through it together. • If you have any questions or concerns about any part of today's

TOPIC	QUESTIONS
	interview, please do not hesitate to contact Emma or myself. <ul style="list-style-type: none"><li data-bbox="592 275 1122 312">• [provide contact information again]