

Echoes of Injustice: Regulating Indigenous Masculinity through Canadian Legal and
Colonial Systems

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Abstract

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This dissertation, titled “*Echoes of Injustice: Regulating Indigenous Masculinity through Canadian Legal and Colonial Systems*,” examines how the Canadian criminal justice system—through its denial of colonial violence and its regulation of Indigenous masculinity—has contributed to the ongoing criminalization and marginalization of Indigenous men. By critically engaging with both historical and contemporary legal frameworks, including the Indian Act, restorative justice practices, and landmark cases such as *R. v. Gladue* and *Blackwater v. Plint*, this research traces how colonial narratives remain embedded in Canadian jurisprudence. These narratives often portray Indigenous men as inherently violent, deviant, and in need of regulation.

The central research question guiding this work is: How has the Canadian criminal justice system, through its denial of colonial violence and its regulation of Indigenous masculinity, contributed to the continued criminalization and marginalization of Indigenous men? Grounded in the theoretical frameworks of Frantz Fanon and Michel Foucault, this dissertation argues that the legal system not only fails to address the structural impacts of settler colonialism but also actively reproduces colonial violence by projecting it back onto Indigenous male bodies. In doing so, it reinforces pathologizing narratives and obstructs opportunities for meaningful healing and justice.

Each chapter applies this theoretical lens to specific legal cases and state policies, demonstrating how Indigenous men are constructed as threats to colonial order and denied recognition as victims of systemic trauma. Using a counter-narrative methodology, this dissertation challenges dominant legal and academic discourses, revealing how they obscure the lived realities of Indigenous men and sustain one-dimensional portrayals that rationalize state control. The counter-narrative approach is not merely a tool for alternative interpretation; it is a necessary act of decolonial resistance—one that disrupts colonial knowledge production and reclaims interpretive authority. By centring Indigenous voices and rejecting pathologizing settler narratives, this methodology contributes to the broader project of Indigenous resurgence: the revitalization of Indigenous masculinities, sovereignties, and justice systems on Indigenous terms.

Ultimately, this work calls for a fundamental reimagining of justice—one that dismantles colonial legal foundations and embraces decolonial frameworks rooted in healing, accountability, and the resurgence of Indigenous masculinities.

Keywords

Indigenous Masculinity, Colonialism, Criminalization, Indian Act, Gladue Principles, Restorative Justice, Counter-Narrative Analysis, Foucault, Fanon, Colonial Violence

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Definitions of Key Terms

The **Canadian state** refers to the formal institutions and apparatuses of government—Parliament, the judiciary, correctional systems, and policy enforcement bodies. In this dissertation, the state is not viewed as neutral, but as a colonial authority that actively shapes and controls Indigenous lives through legal, administrative, and symbolic means.

Colonialism refers to the structures and ideologies by which a foreign power dominates and exploits another people's land, governance, and ways of life. In the Canadian context, colonialism is ongoing and institutional, enacted through laws like the Indian Act and the criminal justice system, which continue to regulate Indigenous identity, land access, and autonomy.

Criminalization is the process through which individuals and communities are constructed as threats to public order through law, policy, and discourse. This dissertation explores how Indigenous men are criminalized not solely through their actions but through the enduring colonial narratives that shape how they are perceived and treated within the legal system.

Emasculation refers to the processes—symbolic, legal, and systemic—by which Indigenous men are stripped of power, autonomy, and legitimacy. Within colonial legal discourse, emasculation operates as a mechanism for control, framing Indigenous men as failed subjects in need of regulation, punishment, or exclusion.

In this dissertation, the term Indigenous is used in keeping with current scholarly and community-based practices that emphasize respect, inclusivity, and self-identification.

This term collectively refers to First Nations, Inuit, and Métis peoples. Terms such as

Aboriginal and Indian appear only when required by historical or legal contexts, such as references to the Constitution Act or the Indian Act.

Masculinity, as used here, refers to socially and historically constructed ideas about what it means to be male. This dissertation examines explicitly how Indigenous masculinity has been pathologized through colonial systems that portray Indigenous men as inherently violent or deviant, contributing to their over-policing and criminalization.

Chapter One: Introduction — Situating the Indigenous Male Subject in Canadian Law

The Canadian criminal justice system does not merely respond to violence—it is complicit in its reproduction. From courtrooms to commissions, Indigenous men are rendered simultaneously hyper-visible and voiceless, their identities shaped and constrained by a colonial lens that frames them as inherently dangerous and disposable.

Since 1989, a series of high-profile commissions and inquiries have investigated the systemic inequities experienced by Indigenous peoples in the Canadian legal system. These include the Royal Commission on the Donald Marshall Jr. Prosecution (Nova Scotia, 1989), the Aboriginal Justice Inquiry of Manitoba (1991), the Cawsey Commission (Alberta, 1991), the Commission on Systemic Racism in the Ontario Criminal Justice System (1995), the Royal Commission on Aboriginal Peoples (1996), the Stonechild Inquiry (Saskatchewan, 2004), the Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform (2004), the Ipperwash Inquiry (Ontario, 2007), the Iacobucci Report (2013), the Truth and Reconciliation Commission of Canada (2015), and the National Inquiry into Missing and Murdered Indigenous Women and Girls (2019). These inquiries consistently acknowledged the overrepresentation of Indigenous peoples within the Canadian justice system, and issued numerous reform recommendations, yet few directly confronted the foundational colonial structures embedded within Canadian legal and political systems. Instead, overrepresentation has become the dominant framework through which Indigenous peoples experiences with the justice system are understood in both legal and academic discourse. This focus on statistical excess often obscures the deeper issue—the systemic and ongoing

criminalization of Indigenous men. By framing the problem quantitatively, rather than structurally, the legal and/or academic discourse risks masking the colonial mechanisms that produce and sustain these outcomes.

Within the context of persistent inquiry with limited structural or fundamental change, Parliament introduced section 718.2(e) into the *Criminal Code* of Canada in 1995. This provision directed sentencing judges to consider "all available sanctions other than imprisonment that are reasonable in the circumstances" (*Criminal Code* 1985, s 718.2(e)), for all offenders, with particular attention to the circumstances of Aboriginal offenders. Initially regarded as a meaningful step toward reducing Indigenous overrepresentation in prisons, the implementation of section 718.2(e)—especially through restorative justice frameworks—has often reproduced the very injustices these measures purport to address. Restorative justice frameworks frequently require Indigenous offenders to plead guilty, express remorse, and take personal responsibility for harms rooted in broader histories of colonial violence. In doing so, such frameworks obscure the structural nature of colonial harm and shift the burden of reconciliation onto Indigenous individuals.

Building upon this critique, this dissertation investigates how the Canadian criminal justice system's refusal to meaningfully engage with colonial violence—both historic and ongoing—sustains the criminalization of Indigenous men. Through legislative instruments, judicial interpretations, and evidentiary doctrines, the system upholds colonial legacies, normalizes institutional bias, and reinforces stereotypical representations of Indigenous masculinity. These mechanisms collectively portray Indigenous men as inherently violent and unworthy of rehabilitation, rationalizing their

surveillance, punishment, and incarceration. Rather than offering pathways to healing, the justice system projects its own violence onto Indigenous bodies, thereby perpetuating cycles of harm.

The central problem this dissertation addresses is the persistence of colonial assumptions within legal frameworks that claim to be neutral, progressive, or rehabilitative. Despite decades of legal reform and public inquiry, Indigenous men continue to be criminalized through state practices that mask structural violence as individual failure. This criminalization is not incidental—it is structured into the very logic of the legal system.

This dissertation argues that the Canadian criminal justice system actively constructs Indigenous men as violent legal subjects through its colonial architecture and interpretive practices. Rather than dismantling inequality, the system recasts it as a personal pathology, demanding expressions of guilt and remorse while denying collective and structural accountability. These mechanisms function to preserve colonial authority and deflect systemic responsibility, ensuring the continued marginalization and incarceration of Indigenous men.

By foregrounding the role of legal structures—such as the Indian Act, evidentiary doctrines like the crumbling skull rule (examined in Chapter 3), and sentencing reforms like section 718.2(e)—this research contributes to critical legal and Indigenous studies by reframing Indigenous overrepresentation in the criminal justice system not merely as a numerical crisis, but as a structural outcome embedded in the colonial design of Canada's legal system. While individual judges or policymakers may not intend these outcomes, the deeply ingrained colonial assumptions within these legal frameworks inevitably

produce and reproduce systemic injustice. Ultimately, this analysis seeks to destabilize dominant narratives of justice and calls for a reimagining of legal accountability—one that centers colonial harm, amplifies Indigenous critique, and disrupts the ongoing reproduction of state violence.

This dissertation therefore shifts the discourse away from the dominant concern with overrepresentation and reframes the issue as one of systemic over-criminalization. Through a counter-narrative approach that reads against the grain of legal decisions and academic texts, it challenges assumptions embedded within Canadian legal frameworks and exposes how Indigenous men are discursively and structurally produced as criminalized subjects. Each chapter builds on this analysis through engagement with foundational legislation and case law, including the Indian Act, *R. v. Gladue*, and *Blackwater v. Plint*, as well as critical scholarship in Indigenous studies, legal theory, and feminist and gender-based analyses that, at times, reinforced the construction of Indigenous men as inherently violent. These sources grounded the examination of distinct sites of legal and discursive production—from the legislative constructions of the Indian Act to the evidentiary logic of civil judgments, to the limitations of restorative justice. Together, these chapters reveal that the criminalization of Indigenous men is not incidental but is essential to the maintenance of colonial legal authority in Canada.

Overview of the Literature

This dissertation engages with an interdisciplinary body of literature across critical legal studies, Indigenous studies, postcolonial theory, and restorative justice scholarship. While the introductory chapter provides an overview, each subsequent chapter integrates a focused discussion of scholarly conversations, legal discourse, and case law specific to

that chapter's analysis. This approach aligns with the thematic organization of the dissertation, which examines distinct legal sites—from the Indian Act and historical inquiries to criminal sentencing and restorative justice—each situated within its own unique scholarly context.

In the broader academic discourse, extensive scholarship addresses the overrepresentation of Indigenous peoples in the Canadian criminal justice system, highlighting systemic racism, socioeconomic marginalization, and colonial policies as central to disproportionate rates of policing, charging, and incarceration (Rudin, 2008; Monture, 1999; Green, 2012). Indigenous scholar Patricia Monture (1999), legal scholar Jonathan Rudin (2008), and criminologists Carol LaPrairie (2002), Carmella Murdocca (2013), and Chris Cunneen (2019) have examined the systemic roots of Indigenous overrepresentation in the criminal justice system. Their work explores the legacies of colonial policy, the chronic underfunding of social services, and the racial biases embedded in policing and sentencing practices. Murdocca critiques restorative justice, arguing that its symbolic and procedural limitations often perpetuate structural harm, while Cunneen highlights how reforms intended to support Indigenous peoples frequently fall short because they remain embedded in colonial legal logic. While these contributions are essential in documenting institutional inequity, they often stop short of interrogating how Indigenous masculinity itself is constructed and regulated through these same legal and academic frameworks.

At the same time, a smaller but growing body of work has begun to critically examine how Indigenous identities are constructed within legal and academic discourse. While significant attention has been paid to Indigenous women and the gendered nature

of criminalization (Razack, 2002; Deer, 2015; Thobani, 2007), fewer studies have specifically examined how Indigenous masculinity has been constructed as inherently violent, dangerous, or criminal within Canadian law. Scholars such as legal theorist Sherene Razack and sociologist Sunera Thobani have traced how colonial institutions sustain narratives of Indigenous violence, though their focus remains largely on Indigenous women. Indigenous legal scholar Sarah Deer similarly situates gendered violence within broader colonial structures. This dissertation builds upon and extends these conversations by explicitly examining how Indigenous masculinity has been rendered as inherently threatening and criminalized within Canadian legal contexts. It addresses this critical gap by analyzing how Indigenous men are constructed as fixed legal subjects—figures of danger, risk, and disorder—within judicial narratives.

Rather than reproducing a broad and generalized literature review here, this introductory chapter offers a conceptual framing of the central debates and theoretical conversations that shape the dissertation as a whole. The choice to embed detailed literature reviews within each subsequent chapter facilitates more precise and contextually appropriate engagement with scholarly debates as they relate directly to specific legal mechanisms and historical moments. This structure aligns effectively with the dissertation's counter-narrative methodology, allowing analysis to emerge in direct response to particular texts, cases, and discursive patterns, thereby deepening the critique of dominant narratives and amplifying otherwise marginalized perspectives.

Theoretical Framework and Methodology

This dissertation is grounded in a critical theoretical and methodological framework that draws from postcolonial theory, critical legal studies, anti-colonial scholarship, and counter-narrative analysis. Its central aim is to interrogate how Indigenous masculinity has been constructed, disciplined, and criminalized within Canadian legal and academic discourses. Particular attention is paid to how these discourses function through specific colonial legal mechanisms—including the Indian Act, judicial interpretation, evidentiary doctrine, and sentencing reform—which, I argue, collectively render Indigenous men as inherently violent and pre-eminently suspect.

The theoretical foundation of this study draws on the work of Michel Foucault (1977, 1980a), Frantz Fanon (1963), Herbert Marcuse (2013), Glen Coulthard (2014), Sherene Razack (2000, 2015), and Sunera Thobani (2007). These scholars, coming from diverse intellectual and disciplinary traditions—including philosophy, political theory, Indigenous studies, and critical race feminism—are not employed as static authorities but engaged dialogically. Foucault's analyses of biopower, discipline, and surveillance frame the justice system as a site of institutional regulation over Indigenous bodies. Fanon's work on colonial violence and internalized pathology offers insight into how Indigenous men become legible to the law as pathological or criminal subjects. Marcuse's critique of liberalism helps illuminate how legal reforms can conceal repression under the guise of inclusion. Indigenous political theorist Glen Coulthard contributes a theory of settler colonialism grounded in land, recognition, and refusal, offering a framework for understanding the structural persistence of colonial power. Thobani and Razack further

reveal how gendered and racialized violence is embedded in institutional discourse, providing key insights into how state power frames Indigenous subjects.

Theoretical frameworks in this dissertation are not employed as rigid templates but as interpretive tools that shape the analysis of legal texts, case law, policy documents, and academic literature. Rather than imposing a singular lens, these frameworks help reveal the structural, rhetorical, and institutional patterns through which Indigenous masculinity is constructed and criminalized. They guide the central questions of the dissertation and shape how its findings are interpreted and presented.

Methodologically, this dissertation takes a qualitative, interpretive approach, rooted in counter-narrative and critical discourse analysis. These methods align with critical Indigenous and postcolonial research traditions, emphasizing the importance of relational and context-sensitive readings. Counter-narrative analysis, as developed by Delgado and Stefancic (2001), challenges dominant legal discourse by foregrounding perspectives that are erased, marginalized, or distorted. In this dissertation, counter-narrative is used to interrogate how Indigenous men are constructed as criminal subjects—not only through what legal and academic texts say, but through what they omit or strategically frame. The counter-narrative approach is not merely a tool for alternative interpretation; it is a necessary act of decolonial resistance—one that confronts colonial knowledge production and reclaims space for Indigenous voices and worldviews.

Critical discourse analysis, as developed by linguist Norman Fairclough (2003) and discourse scholar Teun A. van Dijk (2015), enables a detailed examination of how law operates as a discursive field—how citation practices, language structures, and rhetorical patterns construct Indigenous men as inherently deviant. Their work provides

tools for uncovering how language both reflects and reproduces power relations within institutional settings. This dissertation is also informed by literary theorist and postcolonial scholar Edward Said's (1979) method of reading "against the grain," which emphasizes the importance of examining not only what is said, but what is left unsaid—and how such silences work to sustain colonial authority.

Framing Indigenous Masculinity in this Study

This dissertation does not explore Indigenous masculinity as it is practiced through cultural resurgence, spirituality, or traditional knowledge. Instead, it critically examines how Indigenous masculinity has been constructed through the mechanisms of colonial law—particularly through the Indian Act, which imposed legal definitions of Indigeneity and produced rigid classifications of identity. These imposed identities have materially shaped how Indigenous men are governed, portrayed, and punished.

The focus is therefore not on reclaiming or revitalizing Indigenous masculinities, but on exposing how the Canadian legal system has constructed Indigenous men as threats to the social and legal order. This study traces how colonial law has functioned to discipline Indigenous masculinity—framing Indigenous men as inherently violent, deviant, or incapable of self-regulation—and how this framing continues to influence judicial decisions, sentencing practices, and academic discourse.

While there exists substantial scholarship on the gendered impacts of colonialism on Indigenous women, far less attention has been given to how colonial law and discourse have specifically constructed Indigenous masculinity. This dissertation does not seek to compare the experiences of Indigenous men and women, nor to analyze settler notions of Indigenous femininity alongside masculinity. Instead, it centers the relatively

underexplored question of how colonial structures regulated and criminalized Indigenous masculinity, illuminating the particular mechanisms through which Indigenous men have been targeted, marginalized, and persistently rendered as threats to the colonial order.

Positionality Statement

My position in this research is grounded in lived experience and years of direct engagement with Indigenous men in conflict with the justice system. During my master's research, I interviewed incarcerated Indigenous men to help make visible voices that are routinely silenced within legal and institutional systems. I have worked as an advocate, supporting Indigenous men in exercising their rights to cultural and spiritual practice within federal correctional facilities across Canada.

This included a particularly critical period at Millhaven Institution, a maximum-security prison, where 53 stabbings occurred over 51 days. Correctional Service Canada brought me in to interview both those who had been stabbed and those who had carried out the stabbings, which highlighted the urgent need for programming responsive to the realities faced by Indigenous men. In 2004, I was commissioned to develop the High-Intensity Family Violence Program, a national initiative specifically tailored to federally incarcerated Indigenous men and implemented across all federal institutions.

I also spent five years under contract with Correctional Service Canada in Ontario, assisting in community corrections and the reintegration of Indigenous men upon their release—support that ranged from navigating parole conditions to reconnecting with cultural and community resources.

These experiences inform how I read the law—not at arm's length but as someone who has witnessed the profound gap between legal principles and lived realities. I

approach this work with a commitment to accountability, to honouring the complexities of Indigenous men's lives, and to naming the structures that obscure the systemic roots of their criminalization. This work is not neutral. It is shaped by the recognition that colonial law and legal reform often reproduce the very harms they claim to address. My goal is not only to critique, but to contribute to a reimagining of justice—one that refuses the criminalization of Indigenous masculinity and challenges the legal and academic narratives that continue to define Indigenous men by the violence imposed upon them.

Significance of the Study

This dissertation makes a critical contribution to the fields of Indigenous legal studies, critical race theory, and postcolonial legal scholarship by addressing a persistent gap in the literature: the colonial construction of Indigenous masculinity within Canadian law. While overrepresentation has been widely documented and discussed as a statistical phenomenon, this study moves beyond the numbers to interrogate the legal, discursive, and institutional frameworks that produce Indigenous men as inherently violent and criminal subjects.

By focusing on how Indigenous masculinity is regulated through legal texts, policies, and academic narratives, this research challenges the assumption that the justice system is merely flawed or broken. Instead, it argues that the system operates exactly as designed—to manage, contain, and criminalize those who are rendered threats to the colonial order. This focus on law as an active agent of colonial governance offers a necessary counterpoint to dominant legal and academic discourses that frame Indigenous male offenders as products of individual pathology or social failure.

Furthermore, this dissertation provides a methodological and conceptual framework for others engaged in critical legal research. It demonstrates how counter-narrative analysis and discourse analysis can be used not only to critique existing knowledge but to expose the ideological work performed by legal and scholarly texts. It is my hope that this work will contribute to a more nuanced and accountable conversation about justice—one that centers Indigenous voices, reveals the operation of colonial power, and refuses the continued erasure of Indigenous men.

Chapter Overview

The central focus of this dissertation is on how the Canadian criminal justice system, through its denial of colonial violence and its regulation of Indigenous masculinity, has contributed to the continued criminalization and marginalization of Indigenous men. The research critically examines how colonial legal frameworks, historical policies, and contemporary court practices construct Indigenous men as inherently violent.

Chapter 2: Re-Imagining the Indian Subject — Legislating and Regulating Indigenous Masculinity Under the Indian Act

This chapter investigates how, in the decades immediately following its enactment in 1876, the Indian Act functioned not only as a regime of racial governance but as a foundational framework for constructing Indigenous masculinity as a site of colonial threat. Rather than simply targeting Indigenous men, the Act actively produced a legal and political identity that rendered them as inherently unstable, subordinate, and in need of control. Through mechanisms such as the imposition of status, the regulation of leadership roles, and the discretionary powers granted to Indian agents, the Act positioned Indigenous men as subjects to be surveilled, disciplined, and domesticated.

Drawing on Frantz Fanon's theory of colonial dehumanization, in which the colonized and the colonizer are co-constitutively produced through a dynamic that denies subjecthood in to the colonized and elevates the colonizer as sovereign (Fanon, 1963, p. 39-42) –this chapter argues that the Indian Act legislated Indigenous men into roles of dependency and infantilization, while simultaneously reinforcing settler masculinity as authoritative and just. It also criminalized any expressions of Indigenous resistance as evidence of inherent violence.

Indigenous masculinity was thus constructed not through cultural terms, but through the legal and administrative machinery of the colonial state—a machinery that conflated settler governance with control, and Indigenous resistance with inherent criminality, exemplifying Fanon's insight that colonialism shapes both colonizer and colonized (Fanon, 1963, p. 36-38).

Historical events, such as the Yellow Calf incident (1922, Poundmaker Reserve, Saskatchewan) and the prosecution of leaders following the Frog Lake uprising (1885, Frog Lake, Alberta), serve as case studies illustrating how Indigenous male leadership was demonized and dismantled. Within the chapter, these examples are explored in depth to demonstrate how public executions, mass incarceration, and the suppression of political dissent functioned not merely as reactive measures but as deliberate acts of emasculation, establishing precedents for colonial perceptions and treatment of Indigenous men.

This analysis also turns to the efforts of Frederick Ogilvie Loft, a Mohawk veteran and founder of the League of Indians of Canada, whose attempts to advocate for Indigenous rights were met not with partnership but with targeted surveillance and

bureaucratic obstruction. Loft's treatment by the Canadian state highlights how even non-violent political activism by Indigenous men was pathologized and curtailed, underscoring the broader colonial project of defining acceptable Indigenous masculinity—and criminalizing or marginalizing anything that fell outside these imposed boundaries.

By tracing these patterns, the chapter demonstrates that the Indian Act did not merely regulate who was legally considered Indian; it defined what kinds of Indigenous masculinity were permissible, and what forms of leadership, resistance, and autonomy would be punished. These foundational constructions of the “Indian male subject” as deviant and ungovernable laid the groundwork for the ongoing criminalization and marginalization of Indigenous men in contemporary legal discourse.

Chapter 3: Pathologizing Indigenous Masculinity — The Crumbling Skull Defence in *Blackwater v. Plint*

This chapter examines how legal doctrines such as the crumbling skull defence function as tools of colonial reasoning that pathologize Indigenous masculinity. Focusing on the civil case *Blackwater v. Plint* (2003), the chapter explores how the court minimized the impact of residential school abuse by asserting that the Indigenous male plaintiffs were already psychologically and socially “damaged” prior to the abuse. This notion of an “original position”—a baseline of dysfunction—enabled the court to reduce institutional liability by framing the harm as inevitable rather than inflicted.

Drawing on Michel Foucault's concept of biopower introduced in *The History of Sexuality Volume 1* (1978, p.135-145) as the modern shift from sovereign power to the reregulation of life through norms, institutions, and expert knowledge, the chapter argues that the legal system exerts disciplinary control by medically and morally categorizing

Indigenous men as unfit, broken, or beyond repair. The crumbling skull defence is not simply a technical legal argument; it is a powerful discursive tool that frames Indigenous men as inherently unstable subjects whose suffering is not fully legible or compensable within Canadian law.

By reading against the grain of the judgment, this chapter shows how the legal system mobilizes pathologizing narratives to absolve itself of colonial responsibility. The trauma of sexual and institutional abuse is reinterpreted not as a product of colonial violence, but as a tragic consequence of pre-existing conditions. In doing so, the court sustains a deeply racialized and gendered image of Indigenous men as dangerous, self-destructive, and undeserving of full legal recognition or restitution. This chapter challenges such portrayals and insists on a reframing of legal responsibility that acknowledges the full humanity—and historic suffering—of Indigenous men.

Chapter 4: Locating Reuben Beaver — Unveiling Indigenous Masculinities in the Legal Landscape

This chapter critically examines the portrayal of Reuben Beaver in both the legal record and subsequent academic literature, using the case of *R v. Gladue* (1995) as a focal point for understanding how Indigenous masculinity is constructed posthumously through colonial narratives. Although Beaver was not on trial—having been killed prior to the proceedings—he became central to the legal and scholarly framing of the case. This chapter demonstrates how agreed-upon facts between the Crown and the defence shaped the court's understanding of Beaver not as a victim, but as a violent, morally deficient man.

These agreed-upon facts, which were never tested through cross-examination or substantiated by physical evidence, allowed hearsay and unverified claims—particularly

those made by the defendant—to stand uncontested. The chapter pays close attention to one of the most damaging of these claims: the assertion that Beaver raped Jamie Gladue’s sister, Tara Chalifoux. Despite the absence of medical evidence, charges, or even a clear statement from Chalifoux herself, this claim entered both legal and academic discourse as though it were fact. Its uncritical repetition by scholars such as Carmella Murdocca, Gillian Balfour, and Elizabeth Sheehy further solidified Beaver’s posthumous criminalization, transforming him into a symbol of Indigenous male violence.

Using a counter-narrative approach, this chapter interrogates the legal construction of Beaver’s identity and the willingness of academic literature to perpetuate unverified claims without addressing the implications of representing a deceased Indigenous man through a one-dimensional, criminalizing lens. It exposes how the court’s reliance on agreed-upon facts not only silenced Beaver’s voice but allowed the broader settler-colonial framework to dictate who he was and how he would be remembered.

This chapter argues that the portrayal of Reuben Beaver reflects a broader systemic pattern in Canadian law and academic scholarship—one that denies Indigenous men their humanity, complexity, and historical context. Rather than addressing the colonial conditions that shaped his life, the legal and scholarly narratives reduce Beaver to a one-dimensional cautionary tale. In doing so, the system sustains itself by reinforcing stereotypes that obscure the lived realities of Indigenous men. By challenging these portrayals, this chapter calls for a critical re-examination of how Indigenous men are represented in criminal law, particularly in cases where they are no longer able to speak for themselves.

Chapter 5: Restorative Justice in Colonial Contexts — The Over-Criminalization of Indigenous Men

This chapter critically interrogates restorative justice in Canada as a system that continues to over-criminalize Indigenous men under the guise of reform. While often positioned as an alternative to incarceration and a response to the overrepresentation of Indigenous peoples in prison, restorative justice programs remain embedded in the same colonial legal framework that produced the problem. The chapter argues that the issue is not overrepresentation—it is the systemic and deliberate over-criminalization of Indigenous men, who are constructed as inherently deviant and in constant need of regulation.

Restorative justice programs require Indigenous men to plead guilty, accept blame, and express remorse to qualify for participation. These requirements are not neutral—they are mechanisms through which colonial power is reasserted. Drawing on Michel Foucault’s theory of governmentality—developed in his later lectures as the art of governing beyond the state, through the regulation of conduct by institutions, norms, and expert discourses (Foucault, 2007, p. 108)—the chapter shows how these programs operate as technologies of governance that monitor, discipline, and modify Indigenous behaviour. Far from offering meaningful alternatives, they extend the reach of the state into Indigenous lives under a therapeutic and reconciliatory veneer.

The legal foundation for this logic can be traced to section 718.2(e) of the *Criminal Code* and the Supreme Court’s interpretation of it in *R v. Gladue*. Although this section was intended to mitigate incarceration rates, it has become a framework for conditional compassion—one that continues to criminalize Indigenous men unless they comply with settler expectations of guilt, responsibility, and reformability. In this way, restorative justice echoes the colonial structure of the Indian Act, which regulated

Indigenous identity through legal status and administrative control. Both systems function to determine who is legible, who is redeemable, and who must be monitored.

Rather than offering space for decolonial healing or community-defined justice, restorative justice programs reinforce the colonial narrative that Indigenous men are naturally criminal and must be corrected. This chapter calls for a radical shift in the discourse—one that abandons the language of overrepresentation and acknowledges the structural production of Indigenous men as criminalized subjects. A truly restorative system cannot emerge from colonial foundations. What is needed is an Indigenous-led reimagining of justice—one that refuses the state's terms and affirms Indigenous men's full humanity, complexity, and right to define their own paths toward healing.

Chapter 6: Conclusion — Reclaiming Indigenous Masculinity and Challenging Colonial Narratives

The concluding chapter synthesizes the findings of this dissertation, highlighting how Canadian legal systems—past and present—have actively constructed Indigenous men as criminalized subjects. Drawing from a detailed analysis of the Indian Act, key legal cases, and the rhetoric of restorative justice, the chapter demonstrates that over-criminalization, not mere overrepresentation, lies at the heart of Canada's ongoing legal relationship with Indigenous masculinity.

This dissertation has shown that Indigenous men are not simply overrepresented in prison statistics—they are produced through colonial legal narratives as inherently violent, dangerous, and in need of regulation. Through agreed-upon facts, sentencing frameworks, and legal doctrines like the crumbling skull defence, the justice system criminalizes Indigenous men even in death, denying them complexity and voice. These

legal tools, alongside the Indian Act, have sustained a racialized and gendered architecture of surveillance and punishment that pathologizes Indigenous masculinity.

The conclusion reflects on the interdisciplinary lens that enabled this analysis—particularly the theories of Fanon, Foucault, and critical Indigenous scholars—to interrogate how power, discipline, and identity are constructed through law. The use of counter-narrative as a methodological approach proved crucial in disrupting dominant legal and academic portrayals and recovering space for alternative understandings of Indigenous men’s lives.

Looking forward, the chapter calls for a critical shift in discourse—from the language of overrepresentation to a framework that recognizes the structural production of criminality. It argues that future research must prioritize Indigenous-led approaches, particularly in the fields of Indigenous law, decolonization, and justice transformation. It also urges a radical rethinking of restorative justice, not as a soft alternative, but as a system that must be decoupled from state control and restructured to reflect Indigenous worldviews, values, and authority.

Ultimately, this dissertation calls for more than reform. It calls for an end to the legal and discursive logics that continue to render Indigenous men disposable—and for the reclamation of Indigenous masculinity beyond the confines of criminality, towards sovereignty, accountability, and self-determined justice.

Chapter Two: Re-Imagining the Indian Male Subject: Legislating and Regulating Indigenous Masculinity Under the Indian Act

This chapter offers a new understanding of the impacts of the Indian Act on Indigenous men through an examination of the Act's governance and membership provisions as tools of colonial regulation. The central argument is that these provisions were not solely administrative or reflective of traditional notions of privilege and patriarchy but were instead mechanisms of colonial power designed to suppress Indigenous resistance and reshape Indigenous masculinity.

First introduced in 1876, the Indian Act has undergone many amendments, but its central function has remained the same: to regulate Indigenous life according to the priorities of the Canadian state. Although often framed as a tool of administration, the Act has served as a system of surveillance and control that extends into governance, identity, and daily living. Its provisions gave Indian agents significant authority over communities, fundamentally altering leadership, land use, and legal standing. Understanding the Act's broader role in restructuring Indigenous political and social systems is essential to analyzing the specific provisions discussed below.

The specific provisions I will examine here are the governance provision, those dealing with "Indian status" and "enfranchisement" or Canadian citizenship. Governance provisions within the Indian Act were applied by the federal government to elevate certain Indigenous men to positions of authority, while simultaneously undermining their autonomy through the discretionary powers granted to Indian agents. This dual impact—misrepresenting colonial dominance as privilege and disempowering Indigenous men—highlights how the Indian Act facilitated the erosion of traditional leadership structures. The implementation of judicial authority by Indian agents, coupled with their control over

resources, criminalized resistance and perpetuated the construction of Indigenous men as inherently violent, even when their actions were responses to colonial oppression.

The Indian Act's "status" and "enfranchisement" provisions reshaped Indigenous identity and masculinity by legislating who qualified as an "Indian" and under what conditions that identity—and its community ties—could be lost. These regulations excluded Indigenous men from their own communities undermining traditional roles and responsibilities, while simultaneously positioning them as subordinate within settler society. In doing so, the Indian Act not only fractured kinship structures but also constructed Indigenous masculinity as dependant, infantilized, and perpetually subject to colonial authority.

This chapter integrates Foucauldian analysis, Fanonian critique, and a counter-narrative approach. Foucault's theories on biopower and governance will be used to analyze how the Indian Act functioned as a tool of systemic control over Indigenous bodies, identities, and communities through mechanisms such as surveillance, judicial authority, and resource allocation. Fanon's insights into colonialism and identity will provide a lens for understanding the psychological and social impacts of these provisions, particularly the internalization of colonial narratives and the resulting construction of Indigenous masculinity as inherently violent or subordinate. Together, these frameworks will reveal how the Indian Act not only regulated Indigenous masculinity but also produced specific representations of it—forms of masculinity that were framed as threatening, deficient, or deviant.

These constructed forms were, in turn, used to justify the very regulations imposed by the Act. In other words, the forms of Indigenous masculinity posited in and

through the Act were precisely those required to sustain and legitimize the ongoing regulation and control of Indigenous men that the Act itself propagated. The counter narrative approach will challenge dominant colonial accounts by centering Indigenous resistance and agency. Through this perspective, this chapter will emphasize the ways in which Indigenous men navigated and resisted the constraints imposed by the Indian Act. This approach not only critiques the colonial framework, but also highlights alternative understandings of Indigenous masculinity that have been obscured by colonial narratives.

To ground the analysis, this chapter employs three case studies: the Yellow Calf Incident, (1922) the Frog Lake Massacre (1985), and Fred Loft's leadership of the League of Indians of Canada (1919-1934). These examples illustrate the practical impacts of legislative changes under the Indian Act, including the ways in which Indigenous resistance was criminalized and suppressed. They also highlight the colonial state's dual strategy of emasculating Indigenous men while, through Indian agents, selectively recognizing or supporting certain Indigenous leaders who would help enforce colonial policies and maintain control over communities.

This chapter begins with an overview of the development of Indian policy, focusing on the Indian Act of 1876 while also considering earlier policy and legislative precedents. It will examine the structure of the Indian Affairs department to illustrate the roles of civil servants and politicians within this framework. Particular attention will be given to the hierarchical dynamics within Indian Affairs, highlighting how Indian agents, while seemingly disempowered in the bureaucratic order, wielded significant influence and authority in their local communities. This irreducibly dual position—subordinate within the state but dominant within Indigenous communities—represents a unique form

of power that operated through coercive control and punishment, directly shaping and regulating Indigenous masculinity.

Historical Legislation

Colonial Legislation (1850)

To understand the Indian Act, it is essential to examine the legislative precedents that laid its foundation. The first significant piece of legislation was enacted in 1850 by the Province of Canada. This law aimed to protect Indigenous lands and property from trespass (s. 10-12), secure Indigenous property from seizure due to non-payment of debts, and exempt Indigenous people from taxation (s. 4). These provisions were based on the understanding that reserve land was Crown land held in trust for Indigenous people (Province of Canada, Statutes 13-14, Vic., c. 74).

While these measures were initially framed as protective, they became the cornerstone for policies that both shielded Indigenous peoples and directed social change. Historian John Milloy notes that these early laws were designed to ensure both protection and assimilation (Milloy, 1983, p. 37-38). Sociologist Hugh Shewell further elaborates that this “assimilation policy was linked to the idea of protecting Indians from the corrupting influences of commercial society,” while also preparing them for eventual integration into broader Canadian society (Shewell, 2004, p. 9). Over time, this ideology of protection became a tool for marginalization. As Shewell observes, “this protective legislation was a way to subdue Indigenous populations and minimize potential conflicts” (Shewell, 2004, p. 9).

Gradual Civilization (1857)

Building on the 1850 legislation, the Act to Encourage the Gradual Civilization of the Indian Tribes in the Province and Amend the Laws Respecting Indians (1857) was passed. This Act expressly sought to “remove all legal distinctions between Indigenous people and other Canadians, integrating them into Canadian society as part of the larger program of Indian civilization” (Leslie, 1999, p. 39). The policy of gradual civilization introduced during this pre-Confederation period was later adopted by the Dominion government in 1867 and applied, with variations, across First Nations communities in Canada for decades.

Confederation and Post-Colonial Legislation (1869)

Following Confederation, the first legislation introduced was the Act for the Gradual Enfranchisement of Indians for the Better Management of Indian Affairs (1869). By this time, according to historian John Tobias, the principles of Canada’s Indian policy were well established. However, the emphasis shifted after Confederation to prioritize assimilation (Tobias, 1983, p. 43). While earlier legislation focused on protecting Indigenous lands and peoples, assimilation efforts intensified post-Confederation, particularly through efforts to define who qualified as an "Indian." The 1869 Act introduced a blood quantum requirement, stipulating that only individuals with one-quarter or more Indigenous blood would be classified as Indian (Tobias, 1983, p. 43; Dickason, 1992, p. 251).

Despite previous legislative efforts, the policy of enfranchisement had largely failed by this point. In 1863, a government agent admitted that the objectives of the 1857 Act had become a “dead letter” (Milloy, 1983, p. 61; Tobias, 1983, p. 55). When

introducing the 1869 Act, the Hon. H. Langevin emphasized the updated enfranchisement provisions of 1857 that aimed to provide Indigenous people with the “benefits of municipal government” (cited in Milloy, 1983, p. 62). However, as Milloy points out, this municipal structure not only replaced traditional forms of Indigenous governance but also served to expand the government’s control over Indigenous communities at the local level (Milloy, 1983, p.62).

Indian Act of 1876

As the Dominion of Canada structured Indian administration in its new provinces and territories, the government recognized the need for a consistent legislative approach to govern Indigenous peoples. This need culminated in the Indian Act of 1876, which consolidated earlier laws and created a uniform application across the country (Tittley, 1992, p. 11). The Act was pivotal in shaping the legal framework for managing Indigenous communities. It introduced formal definitions for terms such as "band," "irregular band," "non-treaty Indian," "enfranchised Indian," "reserve," and "Indian lands" (Leslie, 2002, p. 4). Among the most significant was the definition of "Indian," which stipulated:

1. Any male person of Indian blood reputed to belong to a particular band.
2. Any child of such a person.
3. Any woman who is or was lawfully married to such a person (Canada, SC 1876, c 18, s.3(3)).

This definition firmly tied Indian status to band membership and "Indian blood," granting the Department of Indian Affairs considerable control over the lives and identities of Indigenous peoples through the provisions within the Act.

The Act formalized the election of chiefs and councils, but participation was limited to male band members over the age of 21. The power of these elected officials, however, was largely symbolic. The Superintendent General of Indian Affairs dictated the time, place, and manner of elections, and the Governor retained the authority to remove chiefs and council members for reasons such as “dishonesty, intemperance, or immorality” (Milloy, 1983, p. 62). This oversight ensured that Indigenous leadership remained constrained by colonial authority, with real power residing in Indian agents and the federal government.

The Act further delineated governance structures within Indigenous communities prescribing procedures for electing chiefs, managing reserve lands, and regulating public order. Although chiefs could establish rules on local matters such as public health and infrastructure, these decisions required approval from the Governor in Council (Milloy, 1983). This system rendered Indigenous governance highly controlled, reducing elected leaders to mere extensions of colonial oversight.

Gender and the Indian Act of 1876

The gendered nature of the Indian Act of 1876 has been widely critiqued for its devastating impact on Indigenous women and men. The Act’s provisions on enfranchisement disproportionately affected women, who were automatically enfranchised if their husbands became eligible—regardless of their own wishes. This meant that upon a man’s enfranchisement, his wife and children lost their Indian status and the associated rights. Feminist scholars Ena Dua and Angela Robertson (1999) argue that this provision “reinforced patriarchal norms, treating a wife and her children as the husband’s property—his chattel” (Dua & Robertson, 1999, p. 63).

However, this patriarchal focus must be situated within the broader context of colonial rule, which imposed a form of colonial patriarchy foreign to many Indigenous communities. Importantly, those who emphasize gendered oppression without accounting for the colonial imposition of these gender roles risk overlooking how colonial power simultaneously restructured Indigenous masculinity. Before colonization, Indigenous societies often upheld more egalitarian structures where men and women had distinct but equally valued roles (Anderson, 1993; Allen, 1992). The Indian Act disrupted these systems, forcibly shifting power dynamics and undermining the roles of both Indigenous men and women.

Colonial law positioned Indigenous men as subordinate to colonial authority, stripping them of traditional roles in governance and decision-making and placing them under the control of Indian agents. Indigenous men were forced into a colonial framework of masculinity, where their authority was defined and limited by the state. Traditional roles as protectors, providers, and leaders were reinterpreted through colonial systems of control, rendering them tokenistic and subject to the whims of the federal government (Allen, 1992).

The Indian Act also stripped Indigenous women of autonomy, particularly through its marriage provisions. Women who married non-Indigenous men automatically lost their status, while women married to Indigenous men retained theirs—unless their husbands were enfranchised. This inequity created legal and social precarity for Indigenous women, further destabilizing Indigenous communities.

For Indigenous men, enfranchisement became a weapon of colonialism, used to control them by threatening their status and rights. The 1922 amendments to the Indian

Act introduced compulsory enfranchisement (Indian Act, R.S.C. 1927, c.98 s. 110), allowing the government to strip Indigenous men of their legal Indian status without their consent. This was not a neutral bureaucratic measure but a deliberate act of colonial violence: by removing status, the state severed individuals from their communities, cultural identity, and treaty rights. It functioned as a punitive tool—used to discipline those who resisted colonial authority or failed to conform to imposed norms. The threat or act of forced enfranchisement worked to suppress resistance and enforce compliance, ensuring that Indigenous men’s roles, authority, and identities were dictated entirely by colonial powers. In doing so, these amendments deepened the state’s control over Indigenous life, particularly by targeting men who might otherwise assume leadership roles or mobilize resistance. The violence enacted was not only physical but a calculated and insidious form of colonial structural dispossession, masked as neutral policy.

Methodology

This research builds on that foundation by examining how colonial patriarchy operated as a dual mechanism—emasculating Indigenous men while co-opting their roles within a framework of colonial dominance. For example, although Barker’s (2008) analysis of male entitlement under the Indian Act sheds light on the patriarchal structures imposed on Indigenous communities, it overlooks how Indigenous men were simultaneously subordinated through tokenistic governance roles and the constant threat of forced enfranchisement. The mechanisms of colonial oppression are gendered—meaning Indigenous men and women were oppressed through different, though interconnected, strategies. The violence enacted was not only physical but a calculated and insidious form of colonial structural dispossession, masked as neutral policy.

Indigenous masculinity has received less scholarly attention compared to the focus on Indigenous women's experiences under the Indian Act. Indigenous scholars Robert Innes and Kim Anderson (2015) critique the tendency to blame violence within Indigenous communities solely on internalized patriarchy, and instead situate this violence within the broader context of colonial oppression. They argue that "white supremacist heteronormative patriarchy imposed by colonialism" constructed Indigenous men as inherently violent, absolving the state of responsibility for the systemic conditions that produced dysfunction (2015, p. 47). While their work is crucial in challenging stereotypes of Indigenous male violence, it does not fully explore how colonial legal frameworks actively constructed Indigenous masculinity as inherently violent.

This aims to fill that gap by investigating how the Indian Act systematically redefined Indigenous men's roles, imposing a colonial model of masculinity that served to regulate and control Indigenous communities. By examining the Act's implementation through Indian agents, it will demonstrate how the legislation used governance structures, surveillance, and coercive enfranchisement to erode Indigenous men's authority while reinforcing their criminalization.

The scarcity of research on Indigenous masculinity under the Indian Act underscores the need for a nuanced analysis. This chapter contributes to the growing body of scholarship by focusing on the intersection of colonial patriarchy and governance, exploring how the Indian Act's provisions on status, enfranchisement, and governance reshaped Indigenous male identities. By integrating Foucauldian analysis and Fanonian critique, this work will unpack the Indian Act as a disciplinary tool, showing how it weaponized masculinity to further the colonial project.

Literature Review

Scholarship on the Indian Act has extensively explored its gendered impacts, particularly its disproportionate disadvantage to Indigenous women. Indigenous scholars like Bonita Lawrence (2003) and Joanne Barker (2008) have highlighted how the Act entrenched colonial patriarchy, codifying identity in ways that undermined Indigenous women's roles and autonomy. Lawrence argues that the regulation of "Indianness" served settler anxieties about racial and cultural control, particularly through provisions governing intermarriage, which marginalized Indigenous women and their descendants (2003, p. 7-8). Barker extends this analysis, showing how the Act's amendments reinforced patrilineality, empowering Indigenous men with nominal authority in governance while simultaneously entrenching sexist colonial ideologies (2008, p. 259).

While these critiques are vital in understanding the gendered dispossession faced by Indigenous women, they often neglect the ways colonial policies also constructed and regulated Indigenous masculinity.

This research builds on this foundation by examining how colonial patriarchy operated as a dual mechanism—emasculating Indigenous men while co-opting their roles within a framework of colonial dominance. For example, Barker's analysis of male entitlement under the Indian Act overlooks how Indigenous men were simultaneously subordinated through tokenistic governance roles and the constant threat of enfranchisement.

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Colonial Enforcement and Indigenous Resistance

In the late 1870s, the catastrophic decline of the buffalo in Canada—driven by aggressive overhunting by white sport hunters, deliberate slaughter encouraged Canadian and American government policies, settler encroachment on the plains, and compounded by harsh winters—devastated Indigenous communities across the west. For many First Nations, the buffalo was more than a source of food; it was foundational to their systems of governance, spirituality, economy, and cultural identity. Its sudden disappearance plunged entire nations into crisis, leading to widespread starvation, disease, and death. As buffalo herds were intentionally exterminated to clear the way for railway construction and settler expansion—central pillars of Prime Minister John A. Macdonald’s nation-building strategy—First Nations were increasingly forced onto reserves, disrupting their traditional territories and ways of life. Communities that had once stewarded vast landscapes now found themselves confined and competing for dwindling resources, underscoring how the destruction of the buffalo was not only an ecological catastrophe but also a calculated tool of colonial domination (Carter, 2019; Daschuk, 2013).

In response, Macdonald appointed Edgar Dewdney, a long-time Conservative Party supporter and friend, as the first Commissioner of Indian Affairs for the Northwest Territories (NWT)—a vast area that included present-day NWT, Nunavut, Yukon, Alberta, Saskatchewan, Manitoba, northern Ontario, and northern Quebec. Dewdney, who was appointed on May 30, 1879, was given a mandate to “prevent starvation by the distribution of relief, encourage Indigenous people to settle on reserves and take up

agriculture, and persuade the Sioux refugees, led by Sitting Bull, to leave Canada” (Titley, 2009, p. 90). Dewdney's task was not merely administrative but deeply rooted in facilitating expansion and preventing resistance among First Nations.

The 1881 amendments to the Indian Act extended the Canadian justice system to reserves, granting Indian agents the power of ‘ex-officio’ justices of the peace. From 1881 to 1886, these agents were empowered to hear “any matters affecting Indians,” which significantly expanded their authority. By 1884, their power grew further with legislation stating that “every Indian agent shall be ex officio a justice of the peace, for the purpose of this Act, and shall have the power and authority of two justices of the peace,” allowing them to hold trials for infractions of the Act wherever they deemed appropriate (R.S.C. 1885, c. 43, s. 117). This deputization of Indian agents gave them sweeping powers to enforce Indian policy. Legal scholar Michael Jackson (1988) emphasizes that Indian agents came to embody Canadian law within Indigenous communities, wielding unchecked authority as they laid charges, investigated offenses, examined evidence, and pronounced verdicts—all without the appearance of impartiality (Jackson, 1988, p. 244; Brownlie, 2003, p. 1104). The legal system, in effect, became a means to regulate Indigenous masculinity through the colonial law that constructed the power dynamics between Indigenous men and the Indian agents.

As Indian agents' powers expanded, so too did resistance among Indigenous people, particularly in the NWT. Historian James Daschuk (2013) notes that “Indian protests against ill-treatment by government officials became increasingly frequent” after 1880 (Daschuk, 2013, p. 114). Promises made during treaty negotiations, such as those in Treaty 6 in 1876, were not being upheld. Commissioner Morris had promised at the

Treaty 6 signing that during a national famine or general sickness, “they [Indigenous people] would not be allowed to die like dogs.” The Cree, however, were clear that they were not seeking continuous free food but assistance in times of hardship (Daschuk, 2013, p. 98). The breach of these treaty promises, coupled with government neglect, fueled further unrest.

The hardships deepened in the fall of 1883, when early frost devastated crops across the country, a blow to Indigenous communities attempting to sustain themselves through agriculture. However, Prime Minister Macdonald, who was also the Deputy Superintendent-General of Indian Affairs, prioritized the appearance of policy success over the realities of Indigenous suffering. On October 1, 1883, just ten days after the frost, Macdonald requested that Dewdney submit a report that exaggerated the success of Indigenous settlement on reserves, particularly in terms of crop yields and the reduction of government costs (Daschuk, 2013). Despite warnings from both Dewdney and Assistant Commissioner Hayter Reed of growing unrest, Macdonald was more concerned with managing debates in Parliament (Daschuk, 2013, p. 136).

In his response to Macdonald, Dewdney claimed that “the progress of the Indians is generally very satisfying” and boasted that the Department had “been able to reduce considerably the rations of flour issued to them on reserves” (Daschuk, 2013, p. 136). Such assurances not only masked the dire conditions on reserves but also contributed to government cutbacks in funding and staffing. This, despite repeated warnings from Dewdney and Reed that the NWT was teetering on the edge of rebellion.

These economic measures further alienated the Cree in areas such as Fort Pitt, Edmonton, and the Crooked Lake regions (Tobias, 1983, p. 533). The government's

response was to continue a policy of coercion through rations, wielded by Indian agents to maintain control over Indigenous people. Dewdney did not hesitate to use rations as a tool to quash resistance, reinforcing the government's power through starvation (Daschuk, 2013, p. 111). Prime Minister Macdonald punctuated this brutal strategy when he said, “we cannot allow them to die for want of food. [We] are doing all we can, by refusing food until the Indians are on the verge of starvation, reducing the expense” (cited in Daschuk, 2013, p. 123). This starvation policy, enacted at the discretion of Indian agents, became a key mechanism of colonial control.

The growing unrest and resistance in the NWT during the late 1800s can, in part, be attributed to these policies and the discretionary powers of Indian agents. As they increased control over Indigenous people and their territories, Indigenous men who resisted these colonial impositions were often incarcerated or executed. Figures such as Pītikwahanpiwīyin (Poundmaker) and Mistahimaskwa (Big Bear) were arrested and imprisoned for their resistance, while Wandering Spirit, Itka, and Man Without Blood were hanged for their involvement in the 1885 uprising. These men did not die of starvation, as so many of their people did, but died for their acts of resistance—portrayed by the colonial state as violent rebels. Their death served to for their involvement in uprisings. They would not die of starvation; instead, they would die for their resistance, cast as violent rebels. Their deaths served to punish dissent and reinforce colonial control, undermining Indigenous sovereignty and masculinity.

These colonial strategies of rationing, surveillance, and punitive justice highlight the systemic efforts to suppress Indigenous autonomy while regulating Indigenous masculinity. The discretionary powers granted to Indian agents turned colonial policies

into instruments of coercion, targeting Indigenous men as both symbols of resistance and objects of control. The Yellow Calf Incident exemplifies these dynamics, shedding light on how colonial enforcement sought to criminalize and emasculate Indigenous men through legal and social mechanisms. Importantly, these same mechanisms also regulated and exploited Indigenous women; rationing became a tool not only for controlling food supplies but for leveraging sexual coercion and assault, as Indian agents abused their power over women seeking essential resources (Daschuk, 2013, p. 123-125)

The Implementation of Policy and Indigenous Resistance: Three Case Studies

The Yellow Calf Incident, 1884

In December 1884, the dismissal of James Setter, the farm instructor at the Sakimay (Yellow Calf) Reserve, triggered a chain of events that underscored the tensions between colonial authority and Indigenous resistance. Setter had been removed for his “laxity” in following departmental policies, particularly regarding the distribution of rations. His replacement, Hilton Keith, strictly enforced the harsh new rationing guidelines set by Assistant Commissioner Hayter Reed. These policies drastically reduced food supplies for Indigenous communities, aiming to push them toward agricultural dependence and submission to colonial control. This enforcement would provoke what became known as the Yellow Calf Incident.

Rationing policies were not solely about controlling food supplies—they were designed to regulate Indigenous masculinity by undermining men’s traditional roles as providers, protectors, and leaders within their communities. By limiting access to food, colonial authorities directly targeted Indigenous men’s capacity to care for their families, emasculating them and disrupting their traditional cultural roles. These policies turned

basic survival into a mechanism of colonial domination, where withholding rations became a means of enforcing compliance and submission.

The breaking point came in February 1884, when twenty-five armed Indigenous men, led by Yellow Calf, confronted Hilton Keith to demand food for their starving families. Representing four different reserves, these men embodied the widespread desperation caused by starvation policies. Keith's refusal to provide food forced the men to enter the warehouse and take flour and bacon—an act not of theft but of survival and resistance against an oppressive colonial system.

Keith's response to the incident further reflects the dynamics of colonial authority. He reported being “swarmed like bees into a hive” and claimed to have been slashed with a knife. However, Hudson Bay trader McKenzie downplayed Keith's account, suggesting that Keith's epilepsy and loss of control during the confrontation had led him to dramatize the encounter (Andrews, 1975, p. 51). Keith's report was less about truth and more about salvaging his authority. His reaction symbolizes the fragile nature of colonial power, where even minor resistance by Indigenous people threatened the legitimacy of colonial agents.

The colonial response to the incident, spearheaded by the North-West Mounted Police (NWMP), further highlights the use of law as a weapon of control. Assistant Commissioner Reed's instructions to avoid bloodshed were driven by fears of escalating unrest in the region, as Indigenous communities increasingly resisted the government's starvation policies. The armed men awaiting the NWMP's arrival signaled that this was not merely a plea for food—it was an assertion of dignity and resistance against systemic oppression.

O'Soup, the group's spokesperson, justified their actions by emphasizing that their families were starving (Andrews, 1975 p.47). For O'Soup and the men, the rations stored on the reserve were a rightful resource meant to sustain their people. However, for colonial authorities, rations were a tool for enforcing compliance. Reed's subsequent decision to drop charges of armed resistance in exchange for guilty pleas and reparations framed the incident as a matter of theft rather than resistance. In his report to Ottawa, Reed emphasized the supposed threat posed by Indigenous aggression, stating, "[In] terms of understanding the Indian character... they knew their power; they knew that the first gunshot would imperil the safety of every isolated settler throughout the whole North-West. They knew that the white man's iron horse is useless when the rails on which it travels have been torn up" (Andrews, 1975, p. 47). This narrative erased the desperation that drove the men to action, and instead framed them as violent threats to colonial order.

The Yellow Calf Incident exemplifies how colonial law was weaponized to regulate Indigenous masculinity. Indian agents and farm instructors like Keith, under the broader direction of figures such as Sir John A. MacDonald, wielded discretionary power over life-sustaining resources, enforcing policies that criminalized Indigenous men for attempting to fulfill their roles as providers and protectors. Resistance was reframed as rebellion, reinforcing colonial stereotypes of Indigenous men as inherently violent and in need of suppression. These policies did more than undermine Indigenous autonomy—they required Indigenous men to become heteronomous, governed by the authority of the colonial state rather than by their own laws, customs, and responsibilities. In this way, rationing and punitive measures systematically dismantled Indigenous self-determination

and reconstructed Indigenous masculinity within a framework of dependency and subserviency.

Through this lens, the Yellow Calf Incident is not merely a historical episode but a microcosm of the broader colonial project. It highlights how Indigenous men's resistance to starvation policies was reframed as criminality, further justifying their subjugation under colonial law. The incident serves as a powerful example of how colonial systems, through policies like rationing, disrupted Indigenous lives, emasculated Indigenous men, and perpetuated narratives that erased the structural violence of colonialism.

Frog Lake Massacre

While deaths caused by starvation—directly resulting from colonial policies—were largely excluded from historical narratives, those attributed to acts of Indigenous resistance were amplified. The executions of Big Bear's followers after the Frog Lake Massacre became central to colonial accounts, portraying Indigenous men as violent and criminal. This selective framing criminalized resistance while erasing the systemic violence inflicted by the state, including the starvation policies that precipitated such uprisings.

The North-West had witnessed ongoing resistance from Indigenous leaders, none more prominent than Mistahimaskwa or Big Bear, a traditional Cree leader who openly opposed the oppressive measures of government officials (Dempsey, 1984, p. 40). In 1879, Big Bear encountered surveyors marking off reserve lands near his hunting territory—an incursion he saw as an affront to his people's autonomy. Despite his

peaceful approach, colonial narratives cast him as a “rebellious, dangerous man,” transforming a defender of rights into a threat (Dempsey, 1984, p. 89).

In 1876, both Big Bear and Minahikosis or Little Pine, another Cree leader, refused to sign Treaty 6, objecting to its terms and the binding nature of Canadian law. Big Bear’s warnings to Commissioner Morris revealed his resistance to colonial control. His fear was encapsulated in the imagery of the "rope around the neck," a symbol of the loss of freedom under colonial rule. Tragically, this symbol became reality not only for Big Bear but also for Indigenous men hanged in the aftermath of the Frog Lake Massacre.

As the government continued to withhold rations from Indigenous communities that had not signed treaties or settled on reserves, Big Bear was eventually forced to sign Treaty 6 in 1882, driven by the desperation for food among his people. Although Big Bear negotiated the right to choose the location of his reserve, this promise was never fulfilled, and unrest simmered across the prairies as the starvation policy continued. This unease posed a direct threat to government authority.

Recognizing Big Bear’s growing influence and attempts to unite the Cree, Edgar Dewdney designed his policies to eliminate political gatherings that could challenge colonial control. Dewdney sought an expansion of the NWMP to arrest Cree leaders and suppress resistance, believing that incarceration was the key to controlling Indigenous leadership (Tobias, 1983, p. 544). He called for judges who understood “Indian nature” and could act decisively to keep them under control (Tobias, 1983, p. 544). Dewdney’s push for the arrest of Cree leaders received full support in Ottawa, though Prime Minister John A. Macdonald cautioned him to ensure there was sufficient evidence to justify charges of inciting insurrection (Tobias, 1983, p. 542).

By 1884, Dewdney knew that Big Bear and other Cree leaders were planning to bring their grievances over broken treaty promises to Ottawa. However, the Frog Lake Massacre would soon shatter any hope of negotiations. Following the massacre and concurrent uprisings in the West, Dewdney successfully lobbied for expanded legal powers for Indian agents. His request for Indian agents to have the authority of two justices of the peace within any jurisdiction was granted, significantly increasing their control over Indigenous people (R.S.C., 1886, c. 43, s. 117).

The Frog Lake Massacre, which took place on April 2, 1885, is often discussed as an isolated, tragic event. However, as Indigenous scholar Blair Stonechild and historian Bill Waiser (1997) argue, the violence committed by the Cree at Frog Lake was “not an open rebellion but a series of isolated and sporadic events” (Stonechild & Waiser, 1997, p. 4). This massacre, while part of the larger unrest in the North-West, was driven by specific acts of colonial abuse and the unchecked discretionary powers wielded by Indian agents. The abuse of these powers by figures such as Thomas Quinn, the Indian agent at Frog Lake, became a critical factor leading up to the deaths of nine white settler men (Daschuk, 2013, p. 152).

Confrontations over rations between starving Indigenous peoples and colonial officials were common across the North-West. What made Frog Lake distinct was its connection to the North-West Rebellion, which had erupted to the east. While the Frog Lake Massacre and the North-West Rebellion were separate uprisings, they were treated as a unified threat by colonial authorities and ultimately tried as one rebellion (Stonechild & Waiser, 1997, p. 4).

At the heart of the massacre was Thomas Quinn, notorious for his abusive control over Indigenous people. Known as “the dog agent” or “the bully,” Quinn’s tactics included public humiliations and withholding rations to coerce compliance. His cruelty extended to mocking starving families—once calling a meeting to announce that promised food was an April Fool’s prank, leaving Indigenous families to return empty-handed (Goodwill & Sluman, 1982, p. 54-55). As frustrations mounted, Wandering Spirit and Imasees, Big Bear’s son, began organizing men in Frog Lake. Wandering Spirit warned Quinn to leave with the other white settlers for their own safety, but Quinn arrogantly refused.

The execution of Thomas Quinn marked the beginning of the massacre. Quinn was shot in the head by Wandering Spirit after refusing to join the hostages at Big Bear’s camp. The gunfire that followed claimed the lives of eight more settlers. Later interpretations, such as those by Stonechild and Waiser (1997), suggested that the drunken state of the warriors contributed to the massacre, but settler accounts at the time did not place blame on alcohol. The “drunken Indian” stereotype obscured the genuine grievances fueling the violence, including hunger, broken treaty promises, and abuses of power.

The Indigenous men involved, once honored as warriors and protectors of their communities, were now portrayed as criminals. Their emasculation was made complete as many were sentenced to death, fulfilling the very “rope around the neck” that Big Bear had feared. The trials at Battleford were highly informal; the accused Indigenous men were provided with little to no legal counsel (Stark, 2016, p. 3). The goal of these trials was not justice but retribution, intended to send a clear and brutal message to all

Indigenous populations: those who resisted or defied colonial rule would pay the ultimate price. As John A. Macdonald chillingly stated, these executions would “convince the redman that the white man governs” (2016, p. 3).

To make the message even clearer, large audiences were gathered to witness the executions, including Indigenous students from the Battleford Industrial School and Indigenous peoples from surrounding reserves (Stark, 2016, p. 3; Daschuk, 2013, p. 155–157). This was not merely an execution; it was a public spectacle designed to assert colonial dominance over Indigenous bodies. By forcing communities to witness these events, the state sought to instill fear and reinforce submission, embedding trauma into the social fabric of Indigenous communities long after the men had been executed. While such coercive displays of power were effective in the short term, the broader goal of colonial governance extended beyond momentary control. The state aimed to produce subjects who would no longer need to be coerced, but who would internalize submission as natural—who would, in effect, submit willingly to the structures of colonial rule.

The Frog Lake Massacre cannot be fully understood without addressing the long-standing unrest in the west. Starvation, disease, and the lack of reserve lands exacerbated tensions. While the deaths of nine settlers were deeply felt, the violence arose from systemic oppression and desperation. Yet, in the eyes of colonial authorities, responsibility rested entirely on the Indigenous men, erasing the role of starvation policies and abuse of power by Indian agents. Indigenous resistance was criminalized, and their executions symbolized the ultimate emasculation—the literal hanging of their bodies became a representation of the death of Indigenous masculinity.

The erasure of colonial violence in the narrative surrounding the Frog Lake Massacre is glaring. The state successfully shifted the blame onto Indigenous men while obscuring the systemic violence that drove their actions. Indigenous men, once celebrated as warriors, were reframed as savage criminals. Their resistance was dehumanized, and their deaths turned into a spectacle, reinforcing colonial power through fear and humiliation. This witnessing perpetuated cycles of trauma, ensuring that the violence of colonialism endured long after the men were gone.

Scott and the Technology of Control: Enfranchisement as Emasculation

In the aftermath of the rebellion, colonial policies shifted from overt acts of violence, such as public executions, to subtler forms of systemic control. The introduction of compulsory enfranchisement under Duncan Campbell Scott exemplified this evolution. Like Dewdney's rationing policies, Scott's approach sought to regulate and erase Indigenous identity, targeting Indigenous men's roles within their communities. This shift marked a new phase in the colonial project: the bureaucratization of control, where identity, autonomy, and masculinity were systematically dismantled through legislative tools.

In the years following the North-West Rebellion and the Frog Lake Massacre, the Department of Indian Affairs pursued a policy of closer supervision, reduced rations, and aid toward self-support for Indigenous people in the West (Lesley & McGuire, 1978, p. 95). By 1906, the Indian Act, with all its amendments since 1876, had become cumbersome for Indian agents and judicial officers. As a result, a new consolidated Indian Act was introduced in the Revised Statutes of 1906. It changed the wording of certain passages due to the provincial status granted to Saskatchewan and Alberta in 1905

and reordered the sections under the 1886 format. This reorganization reflected a shift in the Department's policies and legislation since 1876. Notably, twenty-six sections now dealt with offences and penalties, and sixteen sections focused on enfranchisement (R.S.C, 1906, c. 81).

When Duncan Campbell Scott was appointed Deputy Superintendent General in 1913, he would hold this position until his retirement in 1939. One of Scott's long-term goals was to end Indigenous peoples' "special status" and thereby eliminate their perceived dependency on the federal government. To Scott, enfranchisement was the solution. But for Scott, enfranchisement was not merely a tool for integration; it was a new technology of control. Like the rationing policies of Dewdney, enfranchisement became an instrument to regulate, control, and erase Indigenous identity. This erasure was not gender-neutral—it disproportionately targeted Indigenous men by undermining their legal status, cultural authority, and leadership roles within their communities. Through compulsory enfranchisement and the redefinition of male governance roles under colonial structures, the state sought to dismantle Indigenous masculinity and replace it with a subjugated version molded to serve colonial interests.

Enfranchisement, as it stood, was a cumbersome process. Regulations outlining this procedure had been framed as early as 1857, then again in 1869, and incorporated into the Indian Act in 1876. These processes remained unchanged, and few Indigenous people had voluntarily taken advantage of them. Scott believed that the Department should initiate the procedure rather than wait for Indigenous people to apply. According to Scott, many Indigenous people were “fully qualified for citizenship” but were allowed to "cling to benefits and protection upon their wardship." He argued, “it is neither just nor

reasonable that the state should continue to bear expense and responsibility on behalf of those who are quite capable of conducting their own affairs” (Titley, 1992, p. 28). Scott’s use of terms like “just” and “reasonable” is deeply telling—not simply ironic, but indicative of how colonial governance deployed such language as discursive instruments of control. These terms reframe coercive state action as benevolent and rational, positioning assimilation not as violence, but as fairness. In this way, the language of justice was co-opted to mask dispossession, recasting structural domination as moral responsibility.

Amendments made in 1918 (s. 122) simplified the enfranchisement process in line with Scott’s desires. The new provision enabled any Indigenous person who held no land on the reserve and did not follow the ‘Indian mode of life’ to apply for enfranchisement (Titley, 1992, p. 48). Scott advocated for even more coercive measures, stating, “I think it would be in the interest of good administration that the provisions regarding enfranchisement were further extended to enable the Department to enfranchise individual Indians without the necessity of obtaining their consent, especially in cases where it was found upon investigation that the continuance of wardship was no longer in the interest of the public or Indian” (Titley, 1992, p. 48).

An amendment to the Indian Act incorporating Scott's vision was drawn up and introduced to Parliament in March 1920 as Bill 14, allowing the Department to forcibly enfranchise Indigenous people following an investigation by a department-appointed official. The Indigenous response to Bill 14 was hostile, and in the spring of 1920, Indigenous representatives were invited to testify before a committee in the House of Commons (Titley, 1992, p. 114). Scott, fearful that the Bill might be dismissed, argued

that consultation from Indigenous groups was unnecessary, claiming that those who opposed the Bill would likely be opposed to any government measures unless there was financial gain involved (Titley, 1992, p. 48).

The committee held seventeen meetings and heard evidence from thirty-five Indigenous representatives, including legal counsel from Six Nations and the Allied Tribes of British Columbia. As Titley notes, the controversy surrounding Bill 14, which became law on 1 July 1920, “illustrated the deterioration of relations between the council and the Department” (Titley, 1992, p. 114). Despite Scott's attempts to frame the amendment as a necessity for governance, many Indigenous witnesses were outraged. Scott himself admitted that the amendment introduced compulsion, but he argued that it was vital for achieving the Department’s long-term goals. Scott concluded his testimony with the now infamous words: “I want to rid the Indian problem. I do not think that, as a matter of fact, this country ought to continuously protect a class of people who were able to stand alone. This is my whole point. Our objective is to continue until there is not a single Indian in Canada that is not absorbed into the body politic, and there is no Indian question. No Indian department and that is the whole object of this Bill” (Titley, 1992, p. 49).

Scott’s vision of compulsory enfranchisement was not simply an administrative measure; it was a calculated attempt to erase Indigenous identity and eliminate the “Indian problem” as defined by the state. Historians have long debated whether enfranchisement was successful as a tool of assimilation (Milloy, 1983, p. 61). The addition of a compulsory component was intended to accelerate this process. However, rather than achieving integration, it became a new technology of control. Like Dewdney’s

rationing policy, Scott used enfranchisement as a tool to strip Indigenous men of their roles as community leaders and protectors.

For Indigenous men, this policy further emasculated them. The loss of status and community through enforced enfranchisement meant that Indigenous men were stripped of their legal and cultural identity. Although enfranchisement was promoted as a path to equality within settler society, in practice it left Indigenous men legally severed from their community, yet still subject to pervasive racism and exclusion (Tobias, 1983; RCAP, 1996). They occupied a liminal space: no longer recognized as status Indians with collective rights, yet never fully accepted as equals within settler society. This policy, like Dewdney's rations, was designed not simply to erase Indigenous masculinity, but to place it under erasure—to make it visible only in its subordinated, domesticated form. In this way, Indigenous men were not removed entirely from the colonial order. However, they were contained within it, stripped of their power, redefined through colonial logic, and recast as manageable subjects. Their visibility became a function of their containment.

F.O. Loft and the League of Indians of Canada

The following case study of F.O. Loft illustrates how Scott's policy of enfranchisement was wielded as a weapon against Indigenous men who resisted colonial policies. Whereas the prosecution following Frog Lake (1885) deployed overt state violence—executions and imprisonment—to discipline Indigenous masculinity, the targeting of Loft reveals a more insidious strategy: assimilation through legislative coercion. Together, these cases expose a continuum of colonialism that sought to regulate and dismantle Indigenous authority, shifting from direct punitive force to bureaucratic erosion of status and identity.

On December 20, 1918, during a Grand Council of Ontario meeting held on the territory of Six Nations of the Thames, it was decided to form the League of Indians of Canada, with the aim of advocating for Indigenous people's rights (Kulchyski, 1988). Fred Loft, born in 1862 on Six Nations Reserve, was a charismatic speaker and influential writer. His secondary education, status as a war veteran, and striking physical appearance positioned him well for leadership. Loft was elected president of the League of Indians of Canada, a role in which he would challenge colonial power.

Duncan Campbell Scott viewed the League with irritation and hostility. Loft's proposals often directly opposed departmental policy, which sought to maintain control over Indigenous people. As Loft organized to protect Indigenous rights, Scott saw this movement as an impediment to the efficient government administration of Indigenous peoples, whom he sought to further integrate and control.

Throughout the 1920s, the Indian Act underwent numerous amendments, many aimed at increasing the department's power. One of Scott's key strategies was to undermine Indigenous organizations like the League of Indians of Canada by introducing legislation that limited their ability to raise funds for legal challenges. In April 1924, Scott wrote to the Deputy Minister of Justice, proposing an amendment to the Indian Act that would prevent lawyers and "agitators" from collecting money from Indigenous communities without departmental approval (Titley, 1986, p. 51). This amendment was a direct response to the opposition groups, including the Allied Indian Tribe of British Columbia, the Six Nations Council, and the League of Indians of Canada, all of which had previously opposed the compulsory enfranchisement Bill (Titley, 1986, p. 51).

Section 114 of the Indian Act became a new weapon of control, restricting the ability of Indigenous people to obtain legal representation without the permission of the Superintendent-General (R.S.C. 1927, c. 98). This amendment made it nearly impossible for Indigenous groups to challenge the department's policies, giving the state even greater power to suppress resistance.

Indian agents and the NWMP kept close watch on Loft's movements, fearing that the League was either an attempt to defraud Indigenous communities or to embarrass the government by stirring up discontent (Kulchyski, 1988, p. 104). When Scott learned that a large meeting was planned for Manitoba in June 1920, he instructed officials to have someone present at the meeting, ensuring that the department remained informed of the League's activities. This surveillance culminated in Scott's targeted use of the enfranchisement amendment. Scott believed that if Loft were forcibly enfranchised, he would lose his status and therefore "lose all credibility as a spokesperson," effectively dismantling his movement (Kulchyski, 1988, p. 104).

Scott began gathering information on Loft, focusing on his employment history and livelihood, which would be used as evidence of his qualification for enfranchisement. Scott argued that Loft had been employed in the Ontario civil service and was thus capable of supporting himself, making him a prime candidate for forced enfranchisement. In early 1921, Loft was informed by J.D. Mclean, the department clerk, that the department was contemplating his compulsory enfranchisement (Kulchyski, 1988, p. 107).

However, Loft's wife fell ill, forcing him to step back from his leadership role within the League to care for her. With Loft's withdrawal, Scott relaxed his pursuit of

compulsory enfranchisement and Loft ultimately avoided losing his status. Despite this outcome, the episode illustrates how the Department of Indian Affairs wielded enfranchisement as a tool of repression, using it to target those deemed “troublemakers”—those who threatened the smooth operation of colonial administration.

The case of Fred Loft exemplifies how enfranchisement was used not merely as a means of integration but as a weapon of control. The government, under the direction of Duncan Campbell Scott, sought to emasculate and erase Indigenous men who posed a threat to the department’s aims. Loft’s leadership of the League of Indians of Canada represented a direct challenge to the colonial system—one that Scott attempted to neutralize through forced enfranchisement. By targeting Loft’s status as an Indigenous leader, the government aimed not only to silence him but also to discredit the legitimacy of his political movement.

Although Loft was never officially enfranchised, the policy itself potentially placed him in an impossible position: stripped of the full protections and recognition of his legal identity as a status Indian, yet never fully accepted within settler society. He was forced to navigate both worlds, constantly questioned and undermined. In this way, enfranchisement worked as a colonial tool—not through formal implementation alone, but through the pressure it exerted. It undermined his authority, rendering him suspect to the very people he sought to represent and ineffective in the eyes of colonial power—an Indigenous man made to serve two masters, belonging wholly to neither.

This strategy echoes earlier policies used by colonial administrators like Dewdney, who employed rationing as a form of coercion. In Scott’s case, enfranchisement became the new form of social and political control, allowing the

government to remove Indigenous men from their communities, strip them of their identity, and deny them the ability to lead or resist. The use of surveillance, legal restrictions, and forced enfranchisement shows the lengths to which the government was willing to go to maintain control over Indigenous people, furthering the emasculation of Indigenous men by stripping them of their communal roles.

This calculated attack on Loft mirrors Scott's broader policy goals, in which enfranchisement and legislative changes were wielded to suppress Indigenous resistance and neutralize threats to colonial power. In both Loft's case and the overarching policy framework, enfranchisement served as a tool to emasculate Indigenous men and erase their autonomy, ensuring that their voices were muted in the colonial project's march toward assimilation.

Conclusion: Colonial Law, Judicial Power, and the Emasculation of Indigenous Masculinity

This chapter has explored how colonial law and the ex officio powers granted to Indian agents under the Indian Act served as critical instruments in the emasculation and control of Indigenous men. By positioning Indian agents as local enforcers of colonial law, with both administrative and judicial authority, the Canadian state ensured that Indigenous men were not only stripped of their traditional roles as leaders and protectors but were also criminalized and disempowered. The price for their dubious recognition under Canadian law was steep: they were expected to relinquish their political authority, cultural identity, and communal bonds in exchange for a legal status that rendered them subordinate, surveilled, and perpetually marginal within the settler state.

Using Foucault's concept of biopower, the Indian Act can be seen as a tool designed to regulate and discipline Indigenous life at every level—physically, socially,

and symbolically. Biopower, as Foucault argues, is a mode of power that works not only through repression but by producing norms, managing populations, and shaping what forms of life are deemed legitimate, in this way, the Indian Act operated as a technology of colonial governance: it defined who was legally “Indian,” who could hold authority, and how communities were organized, embedding control into the very structures of everyday existence. The amendments to the Indian Act, particularly those that allowed Indian agents to act as judicial authorities, granted these agents unprecedented power to surveil, judge, and punish Indigenous men at will. The case studies of the Yellow Calf Incident (1922) and the Frog Lake Massacre (1885) reveal how these powers were used to criminalize resistance, framing Indigenous men as inherently violent even in situations where their actions were responses to colonial policies of starvation and broken treaty promises. These mechanisms of control ensured that Indigenous masculinity was constructed as a constant threat to the colonial order, justifying ongoing surveillance and punishment.

Fanon asserts in *Black Skin, White Masks* (1952) and further develops in *The Wretched of the Earth* (1963) that colonial violence is not merely physical—it is psychological and symbolic, operating through internalized narratives that dehumanize and destabilize the colonized subject’s sense of self. This violence he argues is not incidental, but foundational to the colonial project. As Fanon writes, “the truth is that colonialism in its essence was already taking on the aspect of fertile purveyor for psychiatric hospitals (1963, p. 249) illustrating how colonial domination embedded itself within the minds of the colonized, producing profound mental distress. The Indian Act though often framed as an administrative or bureaucratic measure, functioned precisely as

such a mechanism: a legal architecture designed to suppress and regulate Indigenous identity, and in particular, Indigenous masculinity. It enabled the government to construct Indigenous men as inherently dangerous regardless of their actions, perpetuating a narrative that positioned them as constant threats to colonial order. This framing justified internalized surveillance and disciplinary control, embedding colonial dominance within legal and social institutions. In this way, the law became a refined instrument of coercion, presenting itself as neutral or benevolent while enacting deeply racialized and gendered forms of violence. The Indian Act thus mirrors what Fanon describes as the colonial state's strategy of masking domination beneath the façade of civilization, order and public good.

The public executions following the Frog Lake Massacre (1885) exemplify how the colonial state made a spectacle of its power, not just punishing the men involved but using their deaths to instill fear and submission in Indigenous communities. The hangings became both a symbolic and literal emasculation, reducing Indigenous men from warriors to criminals, their bodies publicly displayed as warnings to others who might resist. This public spectacle, where Indigenous communities and children from residential schools were brought to witness, further entrenched the message that colonial domination would be maintained through the control and erasure of Indigenous men.

In the case of Fred Loft, the colonial state used enfranchisement as a weapon of erasure, seeking to strip Loft of his Indigenous status and, in doing so, discredit him as a leader. Fanon's insights into the colonized psyche provide a lens to understand the lasting impact of such tactics. By linking enfranchisement to forced assimilation, Duncan Campbell Scott aimed to dismantle Indigenous autonomy, ensuring that men like Loft

could no longer act with authority either within their own communities or in settler society. To be autonomous, one had to fully belong to one system or the other; by forcibly placing Indigenous men outside both, the state imposed a condition of heteronomy—a state of dependence shaped by external control. This tactic of legal erasure mirrored earlier forms of colonial domination, such as rationing policies and public executions, illustrating how the legal system evolved from overt violence to more sophisticated forms of control aimed at regulating and neutralizing Indigenous masculinity.

At its core, the Indian Act—and the discretionary powers it gave to Indian agents—was designed to regulate and erase Indigenous identity, targeting men in particular because of their roles as leaders within their communities. Whether through criminalization, public punishment, or forced assimilation, the colonial state sought to emasculate Indigenous men, reducing their capacity to resist or assert autonomy. These legal frameworks ensured that Indigenous men were always seen as potential threats to the colonial order, justifying their continual surveillance, punishment, and subjugation.

The gendered oppression enshrined in the Indian Act must be understood as a broader colonial strategy aimed at controlling and regulating Indigenous peoples. For Indigenous men, the Act emasculated them by stripping them of power and autonomy, reducing their roles to those dictated by colonial authority. For Indigenous women, it imposed patriarchal norms that disenfranchised them and treated them as dependents.

The Indian Act reinforced a colonial patriarchy that broke down Indigenous communities by simultaneously emasculating men and subordinating women. This dual strategy served the colonial goal of dispossession and control, ensuring that Indigenous peoples could neither resist nor thrive within the structures imposed upon them. By

reshaping governance, identity, and gender relations, the Indian Act became a critical tool in the systematic dismantling of Indigenous societies.

For Indigenous men, enfranchisement became a weapon of colonialism, used to control them by threatening their status and rights. The 1922 amendments, which introduced compulsory enfranchisement, empowering the government to strip Indigenous men of their legal status without their consent. This was not a neutral bureaucratic measure but a deliberate act of colonial violence: by removing status, the state severed individuals from their communities, cultural identity, and treaty rights. It functioned as a punitive tool—used to discipline those who resisted colonial authority or failed to conform to imposed norms. The threat or act of forced enfranchisement worked to suppress resistance and enforce compliance, ensuring that Indigenous men's roles, authority, and identities were dictated entirely by colonial powers. In doing so, these amendments deepened the state's control over Indigenous life, particularly by targeting men who might otherwise assume leadership roles or mobilize resistance. While many important critiques rightly focus on the gendered dispossession faced by Indigenous women, they often neglect how colonial policies also constructed and regulated Indigenous masculinity.

In conclusion, the use of colonial law and the expansion of judicial powers within the Indian Act were not merely administrative actions but deliberate strategies of colonial domination. The state's goal was to dismantle Indigenous masculinity and, in doing so, eliminate Indigenous resistance. Through this process, Indigenous men were systematically disempowered, stripped of their roles as leaders, and reduced to objects of colonial control. These actions, rooted in the colonial construction of Indigenous men as

inherently violent, laid the groundwork for their continued surveillance and criminalization. Today, the disproportionate incarceration and criminalization of Indigenous men are not anomalies, but symptoms of a deeper structural and discursive logic. The quantitative realities reflect a qualitative legacy: the historical emasculation of Indigenous men through law continues to shape their contemporary experiences of marginalization, exclusion, and state violence.

Foucault's notion of subjectification underscores how the Indian Act not only regulated but actively produced the identity of the violent Indigenous man. Through laws that criminalized resistance and framed Indigenous men as inherently dangerous, the colonial state constructed a subject who had to be continually surveilled, punished, and erased. This narrative obscured the colonial violence that necessitated resistance in the first place, perpetuating a cycle where Indigenous men were always seen as threats.

The erasure of colonial violence through the construction of Indigenous masculinity as inherently violent has had lasting detrimental effects. Indigenous men continue to be viewed as violent, and the discussion of the impacts of colonialism remains absent. It is my hope that this research can contribute to the discussions surrounding Indigenous masculinity and the perception of the violent Indigenous man, while also creating a space for Indigenous men to speak openly about the impacts of colonial violence on their identities.

As Daniel Justice poignantly asks, "...when your body, the only way your maleness is or should be rendered is through violence, through harm, through corrupted power...how do you imagine that the male body is only capable of wounding? It's crippling to the soul to imagine your only function in life is to hurt people" (Justice,

2014, p. 144). This chapter concludes by asking: What does it reveal about Canadian law and scholarship that Indigenous men are consistently reduced to perpetrators—read through a patriarchal lens they never authored, and denied the possibility of complexity, context, or pain? As the next chapter will show, when Indigenous masculinity is framed only through violence, there is no space left for vulnerability, for victimhood, or for healing.

Chapter three: Pathologizing Indigenous Masculinity: The Crumbling Skull Defence in *Blackwater v. Plint*

The *Blackwater v. Plint*, 2005 SCC 58 [2005] 3 SCR 3, decision transcends tort law; it is a striking example of how the Canadian legal system has historically minimized institutional accountability for colonial violence while reinforcing harmful stereotypes of Indigenous masculinity. Although the court acknowledged the sexual abuse inflicted on Indigenous boys at Alberni Indian Residential School (AIRS), it ultimately protected the federal government of Canada (the state) and the United Church from full liability by deploying legal and rhetorical strategies that pathologized Indigenous male survivors. Rather than recognizing their suffering as the direct result of systemic violence, the court reframed it as an inevitable condition, deeply embedded in their racial identity rather than inflicted by residential schools and colonial policies.

At the center of this ruling was the crumbling skull defence, a doctrine in tort law that distinguishes between pre-existing vulnerabilities and new injuries caused by a defendant. Courts have used two related but distinct principles—the thin skull rule and the crumbling skull defence—to assess pre-existing conditions (*Athey v. Leonati*, 1996). Under the thin skull rule, a defendant is fully liable for the harm they cause, even if the plaintiff is more vulnerable to injury than an average person. The crumbling skull defence, in contrast, allows courts to reduce damages if a plaintiff was already predisposed to similar harm, effectively minimizing the role of the defendant's actions (*Blackwater v. Plint*, 2001 BCSC [2001] 997, para. 360-397).

The case law precedent for this legal assessment was established in the Supreme Court of Canada's decision in *Athey v. Leonati*, 1996 SCC. [1996] 3 SCR 458, Justice John C. Major addressed the issue of causation in tort law, particularly whether a

defendant's negligence materially contributed to a plaintiff's injury when the plaintiff had a pre-existing condition. Notably, Justice John C. Major refrained from using the traditional language of the "thin skull" or "crumbling skull" doctrines. Instead, he situated the issue within the broader framework of the plaintiff's "original position"—a foundational concept in tort law used to determine the appropriate scope of damages. He explained:

The crumbling skull doctrine is an awkward label for a fairly simple idea... The defendant need not put the plaintiff in a position better than his or her original position. The defendant is liable for the injuries caused, even if they are extreme, but need not compensate the plaintiff for any debilitating effects of the pre-existing condition which the plaintiff would have experienced anyway (*Athey v. Leonati*, paras. 34–35).

Although Justice Major avoided the doctrinal terminology, his reasoning effectively preserved the logic of the crumbling skull principle by embedding it within the more seemingly neutral language of "original position." This framework became central in *Blackwater v. Plint*, where the court relied on *Athey* to determine causation and assess damages for residential school survivors who had endured severe sexual and physical abuse.

However, as legal, and political anthropologist Carole Blackburn (2012) argues, the application of the "original position" in *Blackwater* was far from neutral. Rather than grounding each plaintiff's baseline in their individual circumstances prior to the abuse, the court constructed this position through colonial narratives of dysfunction—marked by alcoholism, instability, and criminality. These traits were not treated as the result of historical and systemic colonial violence but were framed as inherent to Indigenous

identity itself. As such, the legal invocation of the “original position” did not merely reflect pre-existing conditions; it reinscribed racialized assumptions that cast Indigenous lives as already broken. The law, in effect, normalized colonial harm and reduced the liability of state and church actors by positioning plaintiffs as already damaged before the abuse ever occurred.

In this way, the *Athey v. Leonati* framework—originally intended to ensure fairness by apportioning liability according to pre-existing conditions—was mobilized to justify reducing damages. The Indigenous plaintiffs were not understood as having been harmed from a stable or normative baseline, but from an already “damaged” state. Their lives were interpreted through a lens that pathologized Indigenous identity itself, treating prior suffering not as the product of systemic colonial violence, but as an inherent trait. As Blackburn (2012, p. 301) observes, the Indigenous plaintiffs’ experiences were reframed not as distinct injuries, but as predictable outcomes of a broader racial pathology. The principle of returning plaintiffs to their “original position” thus functioned as a legal mechanism for reinscribing colonial ideologies: it cast Indigenous suffering as inevitable—if not natural—thereby obscuring Canada’s and the Church’s role in producing and sustaining that harm. In effect, the law ascribed to these men a selfhood already marked by deficiency, where the harm they endured was rendered not only foreseeable but perversely self-inflicted—not through agency, but through the racialized logic that defined them as broken from the start.

The principle of “original position” became crucial in *Blackwater v. Plint*, where the court used it not as a neutral legal standard, but as a racialized colonial framework (Blackburn, 2012, p. 294). Rather than assessing the plaintiffs’ original position based on

their individual pre-abuse circumstances, the court constructed it through assumptions of Indigenous dysfunction, alcoholism, and criminality—reinforcing the idea that Indigenous suffering was inevitable. As Blackburn highlights, the plaintiffs’ experiences were not treated as instances of individual harm, but as manifestations of a broader pathology presumed to be inherent to Indigenous life.

At the heart of this ruling was the pathologization of Indigenous masculinity—a deeply ingrained colonial discourse that frames Indigenous men as inherently violent, dysfunctional, and incapable of victimhood. As Blackburn (2012, p. 297) observes, courts often require Indigenous plaintiffs to prove both their cultural authenticity and their injury, a paradox that ensures claims of Indigenous suffering are always filtered through colonial assumptions. Justice Brenner’s decision reflected this pattern by relying on psychiatric assessments that interpreted the plaintiffs’ suffering as stemming from pre-existing instability rather than acknowledging the direct and devastating impact of sexual abuse.

This racialized reasoning raises critical questions: Why was the crumbling skull defence so easily justified in *Blackwater v. Plint*? How did the legal reasoning in this case reflect broader colonial strategies for minimizing institutional liability while reinforcing racialized narratives of Indigenous dysfunction? These questions frame the analysis of how the legal system operates as an extension of colonial governance, dictating not only who is eligible for compensation but also whose suffering is recognized as real and legitimate.

Justice Brenner explicitly relied on this reasoning when assessing damages, stating: “It is probable that [the plaintiff], in all likelihood, would have experienced

significant psychological difficulties in any event” (*Blackwater v. Plint*, 2005, para. 517). This statement reveals how the crumbling skull defence was used to mitigate institutional liability, positioning sexual violence as merely one hardship among many that Indigenous men were expected to endure. Rather than interrogating the state and Church’s role in producing these conditions, the court framed the plaintiffs’ trauma as part of a preordained decline. Brenner extended this logic further, writing: “...in the case at bar there is considerable evidence of traumatic events in the lives of these plaintiffs, which were unrelated to the sexual assaults” (*Blackwater v. Plint*, 2005, para. 397).

By invoking the crumbling skull defence alongside a distorted interpretation of the “original position,” Justice Brenner justified the limitation of damages by asserting that the survivors’ hardships predated the abuse and would have persisted regardless. This reasoning effectively claimed that, even if the sexual violence were removed from their life histories, these men would have still experienced significant dysfunction—therefore, the abuse was seen as having caused little additional harm. In this way, the damage became not only compensable in a profoundly reduced manner, but also morally and legally diminished, as though the survivors’ lives were already too compromised to be meaningfully worsened.

Drawing on the works of anthropologist Carole Blackburn (2012), legal scholar Sherene Razack (2015), legal scholar Kent Roach (2019), and other scholars, this chapter examines how legal frameworks surrounding tort law, trauma, and Indigenous masculinity have been manipulated to erase Indigenous male victimhood. Rather than treating sexual violence as a primary cause of harm, the ruling reframed it as a minor factor within an already broken life trajectory, thus limiting compensation, and denying

the full legal recognition of Indigenous male trauma. *Blackwater v. Plint* is not just a legal case; it is an example of how the legal system functions to protect state and Church institutions from full accountability, ensuring that Indigenous suffering remains individualized rather than tied to the broader structures of settler colonialism.

In this way, tort law becomes not merely a mechanism for assessing harm, but a colonial instrument for determining whose pain is legible, whose suffering is compensable, and whose trauma can be dismissed as inevitable. The portrayal of Indigenous men as already damaged before the abuse occurred allows the law to sidestep institutional responsibility, reinforcing the colonial fantasy that Indigenous dysfunction is a fact of nature rather than a product of human institutions.

Literature Review

This section situates *Blackwater v. Plint* within broader legal and theoretical discourses on colonial violence, Indigenous masculinity, and the pathologization of Indigenous trauma. By drawing on scholarship from legal studies, Indigenous studies, and critical theory, this review highlights how the case reinforces systemic narratives of dysfunction while absolving colonial institutions of responsibility.

Among the most contested aspects of the case is the trial court's use of the crumbling skull doctrine—a legal maneuver that Kent Roach (2014), a constitutional and criminal law scholar, identifies as a form of “victim-blaming.” Rather than locating the primary source of harm in the sexual abuse endured at AIRS, the ruling emphasized survivors' pre-existing trauma, dysfunctional home environments, and even unrelated or statute-barred harms to justify reducing damages (p. 566). Roach argues that this strategy not only diminished state and Church liability but also entrenched a judicial narrative in

which Indigenous men's suffering was seen as inevitable detached from the colonial violence that produced it. He further contends that this pattern of partial recognition without full compensation serves to shield Canadian institutions from meaningful accountability while legitimizing ongoing legal denial (p. 589).

Building on this critique, Bruce Feldthusen (2018), a leading scholar in Canadian tort law, challenges the Supreme Court's endorsement of the trial judge's reduction of damages. He argues that Chief Justice McLachlin upheld the trial decision despite the judge's speculative assumption that prior abuse—though unproven—must have contributed to the plaintiffs' injuries. For Feldthusen, this reasoning set a dangerous precedent: it allowed courts to minimize institutional liability by imputing trauma without evidentiary support, thereby reinforcing colonial narratives that normalize Indigenous suffering and fracture legal recognition of state-inflicted harm.

Thomas McMahon (2017), writing from the perspective of residential school litigation, extends these concerns by contextualizing *Blackwater v. Plint* within a broader judicial pattern that consistently restricts state liability. He demonstrates how procedural and evidentiary doctrines—such as limitation periods and narrow definitions of actionable harm—are disproportionately applied to disadvantage Indigenous plaintiffs. McMahon contends that decisions like *Blackwater* divert attention away from the structural causes of trauma, containing Indigenous pain within individualized legal categories that serve the logic of settler colonial governance (pp. 34–35).

Scholarship on Indigenous masculinity has consistently demonstrated how legal and medical discourses have constructed Indigenous men as inherently violent, dysfunctional, and predisposed to criminality (Morgensen, 2015, p. 42-43; 55). Colonial

legal frameworks, including the Indian Act, have historically regulated Indigenous male bodies by positioning them as threats to social order (Milloy, 2017). In *Blackwater v. Plint*, this narrative was reinforced through selective testimony and findings that portrayed Indigenous plaintiffs as already damaged by their familial and social environments before their abuse at AIRS. For instance, Justice Brenner emphasized Mr. Barneys exposure to violence in his home life (2005 SCC 58 para. 395), using this to partially attribute his later struggles to personal and cultural dysfunction. This aligns with broader colonial patterns of rendering Indigenous men as deviant subjects rather than victims of systemic oppression (Razack, 2015, p. 132)).

Carole Blackburn (2012) examines how *Blackwater v. Plint* constructed Indigenous dysfunction not as a consequence of residential school abuses, but as an inherent trait. While the plaintiffs sought to present their pre-abuse selves as normative, the legal defence relied on the image of “the dysfunctional, inherently injured Indian” to limit liability and deflect blame. This legal strategy reframed the plaintiffs’ suffering as inevitable—not as the outcome of deliberate, systemic violence, but as the natural unfolding of already broken lives. In doing so, the law cast colonial harm as a matter of fate rather than policy, obscuring the fact that the institutions responsible were not forces of nature, but human creations. Colonialism is not inevitable—it is imposed. And what is imposed can be dismantled.

Indigenous scholars Robert Innes and Kim Anderson (2015) build on this critique by illustrating how colonial legal systems have long constructed Indigenous men in contradictory and limiting ways—as either violent threats to social order or as irreparably damaged victims, leaving no space for Indigenous male survivorship beyond these

settler-imposed categories. This pattern was starkly evident in *Blackwater v. Plint*, where the courts refused to fully recognize suffering as an inevitable consequence of their inherent dysfunction. As Innes and Anderson argue, Indigenous plaintiffs are trapped in a colonial paradox: they reinforce stereotypes that equate Indigenous identity with pathology and dysfunction. This racialized legal logic ensures that Indigenous men are perpetually excluded from full recognition as survivors, compelling them to navigate a system that ultimately serves to uphold state impunity while reinscribing colonial notions of Indigenous masculinity as either inherently violent or fundamentally broken (2015, p. 3-17).

By pathologizing Indigenous men, the ruling in *Blackwater v. Plint* relied on psychiatric assessments that reinterpreted the plaintiffs' suffering through the lens of pre-existing instability, rather than acknowledging the direct and devastating impact of sexual abuse. As Blackburn (2012) observes, courts often require Indigenous plaintiffs to prove both their cultural authenticity and their injury, a paradox that ensures that claims of Indigenous suffering are always filtered through colonial frameworks that assume pre-existing dysfunction (Blackburn 2012, p. 290).

This legal logic mirrors what Sherene Razack (2015) describes as the racialization of trauma; wherein Indigenous people's suffering is framed as part of their inherent condition rather than as inflicted harm. This framework ensures that colonial institutions can acknowledge Indigenous suffering without taking full responsibility for it. Instead, Indigenous men are positioned as unstable, unreliable, and inherently predisposed to hardship, ensuring that financial reparations remain limited and that their suffering is individualized rather than linked to structural violence.

Trials involving Indigenous plaintiffs such as *Blackwater v. Plint*, function not only to determine liability but to actively construct and regulate the meaning of Indigenous injury. They serve as authoritative sites where the courts define what counts as legitimate harm and who deserves compensation (Buchanan & Darian-Smith, 2011; Merry, 1990). Carole Blackburn's (2012) analysis of *Blackwater* underscores how these legal processes reinforce colonial power by narrowly circumscribing the scope of recognized suffering, effectively policing Indigenous trauma through legal categories that privilege white settler norms and minimize the responsibility of state and church institutions.

The refusal to recognize cultural loss as a legally compensable harm exposes the structural limitations of tort law in addressing colonial violence. Tort claims require a direct, linear relationship between the defendant's actions and the plaintiff's injury (Osborne, 2011), but cultural loss—deeply interwoven with historical dispossession and forced assimilation—does not fit within this rigid framework. Blackburn's analysis aligns with broader critiques of legal reconciliation efforts, where courts and government settlement agreements compartmentalize Indigenous suffering into discrete, manageable categories rather than addressing the full scope of harm caused by settler colonialism (Valverde, 1998; Blackburn, 2012).

Ultimately, *Blackwater v. Plint* demonstrates how colonial legal frameworks do not merely adjudicate past wrongs but actively participate in the ongoing regulation of Indigenous narratives. By integrating the work of Roach, Feldthusen, McMahon, Blackburn, Razack, Innes, and Anderson, this chapter positions *Blackwater* as a case

study of how legal discourse manufactures Indigenous injury while absolving colonial institutions of accountability.

Theoretical Framework

This chapter employs the theoretical insights of Michel Foucault, Frantz Fanon, Glen Coulthard, Scott Morgensen, and Sunera Thobani to critically examine how *Blackwater v. Plint* reinforced colonial constructions of Indigenous masculinity through legal discourse. These frameworks reveal how the ruling did not merely apply legal principles neutrally but actively participated in the regulation and pathologization of Indigenous men to minimize institutional accountability.

Foucault's concept of biopower is essential for understanding how the court in *Blackwater v. Plint* governed Indigenous masculinity and suffering. Unlike traditional juridical power, which focuses on repression through laws and punishment, biopower operates by administering life at the level of populations—producing norms, managing bodies, and regulating what kinds of life are permitted to flourish (Foucault, 1977; 1980a; 1980b). In this case, the legitimate injury and whose suffering warranted recognition, effectively policing Indigenous trauma in ways that reinforced colonial authority. The selective deployment of expert testimony privileged narratives that preserved state legitimacy while marginalizing evidence of systemic violence. By presenting the state as a neutral arbiter, the ruling reduced institutional liability and transformed Indigenous suffering from a structural outcome of colonialism into an individualized pathology, ensuring that indigenous lives remained governed under settler norms.

Fanon's analysis of colonial violence and psychological domination reveals how colonial regimes systematically strip colonized men of dignity, depicting them as

irrational, envious or lacking virtues ascribed to the colonizer (Fanon, 1963, p. 52-53). While he does not explicitly theorize masculinity, his account of how colonialism denies initiatives and greatness to the colonized implicitly exposes a process of emasculation—one echoed in *Blackwater v. Plint*, where the court framed Indigenous men as already broken and predisposed to dysfunction, minimizing the institutional violence they endured.

Coulthard's (2014) critique of the politics of recognition further reveals how the legal system functions to recognize Indigenous suffering only in ways that maintain settler colonial dominance. While Coulthard does not directly address law, his argument that state recognition operates as a means of containment is particularly relevant in the legal context of *Blackwater v. Plint*. The case exemplifies how settler institutions acknowledge certain forms of Indigenous trauma—such as sexual abuse—only when doing so reinforces the existing legal and political order. By refusing to engage with the broader context of colonial dispossession, loss of culture, or intergenerational trauma, the court ensured that recognition did not lead to reparative justice. Instead, it served to depoliticize trauma, treating it as an individualized affliction rather than a product of systemic violence.

Scott Morgensen (2015) extends and deepens Coulthard's critique by foregrounding how colonial masculinity operates as a technology of governance inseparable from settler legal power. He asks what gendered subjectivities Europeans brought to colonial relationships and how these subjectivities transformed to uphold settler rule. Morgensen demonstrates that colonial masculinity emerged not only to dominate Indigenous men, but also to reorganize European gender orders in ways that

served the project of colonial control. Through this framework, Indigenous men are not merely dominated—they are constructed as inherently unstable, violent, or deficient, and thus made to appear as the rightful targets of colonial discipline. As Morgensen writes, “colonial masculinity sustains both colonial and heteropatriarchal power by presenting its victims as the cause and proper recipients of its own violations” (2015, p. 55). This insight supports and complicates Coulthard’s critique by showing how recognition is not only racialized but also gendered: Indigenous men are denied the status of victim because they are first constructed as inherently broken, thereby justifying their continued exclusion from full recognition and redress.

Furthermore, Morgensen’s (2015) observation that colonial masculinity reproduces itself through stories of failure and fantasies of its own reform is especially relevant in *Blackwater v. Plint*. The court acknowledged sexual violence but presented the plaintiffs as incapable of recovery due to their racial and gendered “original position”—a legal fiction that enabled the denial of full reparations. Thus, Morgensen adds an embodied, gendered layer to Coulthard’s structural critique, emphasizing how Indigenous men are not only denied justice but are positioned as undeserving of it by the very logic that claims to recognize them.

Sunera Thobani (2007) further expands this theoretical framework by exposing how settler law is not designed to repair Indigenous harm but to manage and contain it. Her concept of racialized governance demonstrates how legal structures serve settler sovereignty by controlling the terms through which Indigenous suffering is recognized. In *Blackwater v. Plint*, the use of the crumbling skull defence illustrates what Thobani identifies as the law’s role in structuring the conditions under which Indigenous people

are deemed legitimate victims. By framing trauma as pre-existing and minimizing state and Church responsibility, the ruling reflects what Thobani describes as the legal erasure of colonial violence through a racialized framework that individualizes harm and forecloses systemic accountability.

By integrating Foucault's biopower, Fanon's colonial masculinity, Coulthard's critique of recognition, Morgensen's theorization of colonial masculinity as a reproductive system of governance, and Thobani's analysis of racialized legal containment, this chapter situates *Blackwater v. Plint* within a broader legal pattern that extends beyond tort law and into the ongoing colonial regulation of Indigenous bodies. Rather than treating this case as an isolated legal failure, this chapter argues that *Blackwater v. Plint* represents a calculated legal strategy in which the Canadian courts recognized Indigenous trauma in ways that protected state legitimacy while ensuring that Indigenous men remained framed as damaged rather than as victims of systemic violence.

Methodology

This chapter adopts a counter-narrative methodology to critically examine how *Blackwater v. Plint* erased Indigenous male victimhood through legal mechanisms that both obscured institutional responsibility and reinforced colonial constructions of Indigenous masculinity. Counter-narrative offers a means of reading against the grain of dominant legal discourse—uncovering how courts selectively deploy facts, pathologize Indigenous identities, and foreground narratives that deflect systemic accountability.

This approach foregrounds the lived and structural impacts of colonialism by privileging perspectives often marginalized in legal rulings. Rather than reapplying the theoretical framework in full, the counter-narrative method focuses on exposing how the

legal narrative functions as a continuation of colonial governance—portraying Indigenous men not as subjects of rights but as already broken, pathological figures. This methodology draws upon the insights of critical theory not to restate them, but to guide an interpretive lens that reveals how law codifies racial and gendered assumptions as neutral judgment. In doing so, the chapter reclaims the suppressed dimensions of Indigenous male victimhood and reframes *Blackwater v. Plint* as a paradigmatic case of colonial containment disguised as adjudication.

Overview of Blackwater v Plint Case

The *Blackwater v. Plint* case is a complex and landmark civil lawsuit arising out of the sexual abuse of Indigenous children at the Alberni Indian Residential School (AIRS) in British Columbia. The case is rooted in the broader context of Canada's residential school system, which was established under the Indian Act and involved federal partnerships with various churches to assimilate Indigenous children.

The litigation followed the criminal conviction of Arthur Henry Plint, a dormitory supervisor at AIRS, who was sentenced to 12 years in prison after being found guilty in 1995 and 1997 of sexually assaulting 27 boys between 1943 and 1970, when they were between the age of 5 and 19 years of age. Plint had worked at AIRS from 1948 to 1953 and again from 1963 to 1968. Following his conviction, six male plaintiffs and one female plaintiff (the female M.J.'s case was dismissed, and her case did not involve Plint), brought forward civil claims against both the Government of Canada and the United Church of Canada.

The case unfolded in two phases. The first phase addressed whether Canada and the United Church were vicariously liable for the sexual assaults committed by Plint.

Justice Brenner concluded that both defendants were vicariously liable due to the close connection between Plint's position as a dormitory supervisor and the abuse he committed. Brenner emphasized Plint's role as a parental figure who possessed substantial authority and constant presence in the children's lives, creating a power imbalance that facilitated the abuse. Justice Brenner stated: "In my view, Plint occupied a position analogous to that of a parent. He was responsible for the care and supervision of the boys under his control on a full-time basis. The boys, including the plaintiffs, were compelled to live at AIRS and to submit to Plint's authority in circumstances that gave them virtually no control over their daily lives" (*Blackwater v. Plint*, 2005, para. 147). He further elaborated: "Plint's parental authority was not limited to a narrow scope. He was responsible for enforcing rules, ensuring discipline, supervising daily activities, and generally controlling every aspect of the boys' daily lives. He used his authority and power to perpetrate the sexual assaults upon the plaintiffs" (*Blackwater v. Plint*, 2005, para. 148). This phase concluded with Justice Brenner finding both Canada and the United Church jointly and severally vicariously liable for the sexual assaults. He ruled that the close connection between Plint's role as a parental authority and the abuse he inflicted made it appropriate to hold the institutional defendants responsible for his actions.

The second phase of the trial addressed broader liability issues, including negligence, breach of fiduciary duty, breach of non-delegable statutory duty, limitation defences, third-party claims between the defendants, and damages. At this stage, all but seven of the twenty-three plaintiffs had settled their claims out of court.

A central challenge in this case was the evidentiary burden placed on the plaintiffs recounting traumatic events that occurred decades earlier. As Justice Brenner emphasized, these were “historic sexual assault case(s)” involving “memories of extremely unhappy and traumatic events (*Blackwater v. Plint*, 2005, paras 4-7). The judge acknowledged the psychological difficulty in recalling such experiences and noted the lack of witnesses, as the sexual assaults often happened in isolation.

Importantly, Brenner clarified that the plaintiffs’ honest belief in their memories was not sufficient: “The tests the law requires is not whether the plaintiffs hold an honest belief...but whether they have proven to the standard that the law requires that those events in fact occurred” (*Blackwater v. Plint*, 2005, para.17).

The civil suit also grappled with the historical silence surrounding the abuse. Many of the boys did not realize others were also being victimized; as one plaintiff recalled, “we didn’t talk about those things” (*Blackwater v. Plint*, 2005, para. 200). Justice Brenner recognized that this silence extended beyond the school walls to the home. As he observed, “In some cases, the parents themselves had been students at residential school and had been raised in an environment where adult authority was not to be questioned” (*Blackwater v. Plint*, 2005, para.152). Their own experiences, he noted, “likely conditioned them not to question authority figures at these institutions, thus compounding their inability or unwillingness to respond when their own children complained” (*Blackwater v. Plint*, 2005, para. 152). This intergenerational dynamic normalized institutional abuse and helped maintain a cycle of silence, leaving children without support and allowing perpetrators like Plint to continue unchecked.

The court also addressed whether AIRS could be considered unsafe at the time. Justice Brenner emphasized that the issue was not whether the school met today's standards of safety, but whether it was reasonably safe according to the standards of the day (*Blackwater v. Plint* 2005, para. 223). He concluded that there was no evidence showing AIRS fell below those historical standards, pointing to favorable reports from federal inspectors. A 1954 inspection praised the school as "an unqualified success," noting that students were developing "worthwhile independent qualities" and that the visit had been "very encouraging in every respect" (*Blackwater v. Plint*, 2005, para. 225). In 1965, another report described AIRS as "a safe, secure place to work and play and to mature," commending the staff for their efficient and successful operation of the school (*Blackwater v. Plint*, 2005, para. 226). These characterizations were used to support the finding that AIRS was not unreasonably unsafe by the standards of the time—even as the plaintiffs testified to pervasive abuse and fear within its walls.

Justice Brenner dismissed the plaintiffs' claims in negligence and fiduciary duty against Canada and the United Church. He concluded that while both institutions owed a duty of care, there was insufficient evidence that either had actual knowledge of the abuse or had acted dishonestly or disloyally. Fiduciary duty, he reiterated, requires more than negligence—it demands evidence of dishonesty or an abuse of trust for personal gain which was not established in this case.

In contrast, Canada was found to have a non-delegable statutory duty under the Indian Act. The Act conferred near-total control of Indigenous children's lives to the federal government. Despite contracting educational services to the United Church, Canada retained near-total control over children's lives, including compulsory attendance

at residential schools, and thus bore a higher level of responsibility. Justice Brenner concluded that “Canada failed to discharge its statutory obligations,” citing the federal government’s pervasive role in funding, operations, and inspections (*Blackwater v. Plint*, 2001, para 259). However, this finding was overturned by the Supreme Court of Canada in 2005, which held that the trial judge erred in law by imposing a non-delegable statutory duty on Canada (*Blackwater v. Plint*, 2005, para. 55). This reversal narrowed Canada's legal accountability despite its dominant role in the residential school system, reinforcing the limits of tort law in addressing state complicity in systemic abuse.

The case also dealt with limitation defences. Under the *British Columbia Limitation Act*, claims related to sexual misconduct are not time-barred. However, the plaintiffs also alleged non-sexual forms of abuse and breach of fiduciary duty, which required the Court to consider whether those claims were filed within the statutory time limits. The Court ruled that they were not, noting that the plaintiffs failed to plead or prove entitlement to a postponement of the limitation period (*Blackwater v. Plint*, 2005, para. 267-281).

Finally, the Court rejected the United Church’s claim that Canada should fully indemnify it for any damages. While Canada has agreed to indemnify the Church in cases involving motor vehicle use, no broader indemnity existed. Justice Brenner concluded that the two entities operated AIRS as a joint venture, and therefore each bore responsibility. Ultimately, Canada was assigned a greater share of the fault due to its statutory duties, control over funding, and role in selecting students and school administrators (*Blackwater v. Plint*, 2005, para. 319-324).

The *Blackwater v. Plint* decision thus serves as a pivotal case in Canadian law. It affirms that institutions can be held vicariously liable for sexual abuse committed by their employees, even when the abuse was not explicitly authorized. It also illustrates the complexities of addressing historic abuse, the limitations of legal standards in capturing systemic harm, and the persistent barriers Indigenous survivors face in seeking justice.

While the legal questions addressed in *Blackwater v. Plint* illuminate how institutions were shielded through procedural reasoning and constrained standards of liability, the human impact of these decisions is most fully understood through the lived experiences of the plaintiffs. The narratives of the six men who continued their civil claims offer vital insight into how the abuse at AIRS shaped their lives—emotionally, psychologically, and materially. Their testimonies, along with how the court received and interpreted them, reveal the deeper currents of disbelief, pathologization, and minimization that often accompany Indigenous male victimhood. What follows is a closer look at each plaintiff’s story and how the legal system constructed, constrained, or dismissed their claims.

Plaintiffs

It is important to note that the only detailed accounts of the plaintiffs’ lives are drawn from Justice Brenner’s decision, meaning their narratives are mediated entirely through a colonial legal framework. The descriptions of their home lives, experiences at AIRS, and trajectories afterward were not constructed from comprehensive testimonies or self-determined narrative accounts, but from fragmented sources—earlier intake questionnaires, psychological assessments unrelated to the trial, and responses to carefully directed questions posed by experts and legal counsel. These disparate details—

such as childhood discipline, family instability, early behavioral challenges, school performance, and later substance use—were not interpreted as outcomes of colonial violence but instead as pre-existing dysfunctions. Brenner selectively assembled and interpreted these fragments to establish an “original position” of damage for each plaintiff, thereby justifying the minimization of institutional responsibility and compensation. With the exception of Frederick Leroy Barney, whose name is used with consent, all other plaintiffs are identified only by initials—a common legal practice in sexual abuse cases that may protect privacy, yet still underscores how their identities were ultimately defined and constrained by the judicial process. In this way, the plaintiffs’ suffering was not treated as inflicted harm but as inevitable, a legal construction that erased the transformative impact of residential school abuse. What follows, then, must be read not as an unfiltered account of these Indigenous men’s lived realities, but as a juridical narrative that reshapes, fragments, and contains their experiences in service of protecting settler institutions.

Mr. Frederick Leroy Barney

Mr. Frederick Leroy Barney arrived at AIRS at the age of 7. He weighed only 50 pounds and was sexually abused shortly after his arrival. He was one of many boys at AIRS victimized by Arthur Plint. Barney’s testimony, and that of others, revealed the deeply traumatic experiences suffered by boys in the school, often in isolation and silence. As noted by the courts, many boys did not realize others were also being abused because “we didn’t talk about those thing” (*Blackwater v. Plint*, 2005, para. 200).

Barney’s life before AIRS is presented as deeply unstable and violent. Justice Brenner recounts that Barney described “considerable violence in which his father

assaulted both his mother and him,” including a disturbing account in which Barney “witnessed an incident in which his father raped his mother” (*Blackwater v. Plint*, 2005, para. 428–429). According to the judgment, Barney believed that this assault resulted in his conception and that his mother stayed with his father only because she became pregnant with him—something that left him with a profound sense of shame and responsibility. The account contains an inherent contradiction—Barney is said to have witnessed an assault that led to his own conception—yet Justice Brenner never comments on this implausibility. Rather than acknowledging the trauma-laden distortion of memory or considering alternative explanations, the court took this narrative as fact, helping to solidify Barney’s original position as one shaped by dysfunction and inherited trauma before he ever entered AIRS. This construction of Barney’s background as intrinsically damaged is later complicated by the defence, which argues in para. 432, that Mr. Barney “tries to minimize these problems in an effort to advance his claim,” thus simultaneously pathologizing and discrediting his narrative. In this way, the judgement moves fluidly between accepting implausible stories of inherent dysfunction and casting doubt on the plaintiff’s credibility when it serves to protect institutional defendants.

Justice Brenner relies selectively on expert opinions in constructing his conclusions. He accepts psychiatric assessments that align with framing the plaintiff’s injuries as rooted in pre-existing family dysfunction, while perspectives that might offer a more nuanced or sympathetic view of the plaintiff’s trauma are minimized or appear less central to the judgement’s reasoning. This is evident in his discussions of Barney, where experts reports are used to emphasize family instability, childhood exposure to violence, and personal responsibility for later difficulties—reinforcing a view of Barney’s harms as

largely predetermined (*Blackwater v. Plint*, 2005, para. 430-434). At this same time, the court underscores the inherent challenges of litigating claims so many decades after the abuse occurred stressing that most assaults were committed in secret, with no witnesses, and that social attitudes of the time made it “virtually unthinkable” for adults—let alone parents—to consider children might be sexually abused? (*Blackwater v. Plint*, 2005, para. 200-202). Even when confronted with reports, of misconduct “the court found that adults typically treated such incidents isolated rather than indicative of a systemic problem” (*Blackwater v. Plint*, 2005, para. 205). In this way, the judgement carefully manages the evidence: foregrounding factors that reduce institutional liability while situating sexual violence against the plaintiffs within a narrative of pre-existing dysfunction and individual pathology, rather than as the direct outcome of colonial institutions.

Ultimately, Brenner constructed Barney not as a full person but as a case study in trauma—defined by violence, shame, and pathology. His Indigenous masculinity is framed as the result of personal dysfunction, with little consideration given to the broader context of systemic abuse, cultural loss, or colonial control. Despite the contradictions in the narrative and the limitations of the available evidence, Brenner fails to interrogate these gaps. Instead, he relies on Barney’s own words to reinforce a one-dimensional portrayal—one shaped more by legal convenience than by the complexity of Barney’s lived experience.

The treatment of Barney’s experiences exemplifies how Justice Brenner employed the crumbling skull defence by attributing his psychological difficulties primarily to pre-existing family instability, rather than to institutional violence. By selectively favoring

expert opinions that supported this framing, the court reduced the role of sexual abuse at AIRS, pathologizing Barney's trauma and insulating the system from accountability.

Mr. R.F.

Mr. R.F.'s early life was characterized by instability, poverty, and disconnection. He was raised in a transient lifestyle, often living in abandoned shacks or on a fishing boat. His father was largely absent during his formative years, and he admitted to having no role model for a father. By the age of five, he was sent to AIRS, an abrupt and traumatic shift from his isolated upbringing to a rigid institutional setting. At AIRS, R.F. encountered a new world of rules, discipline, and violence—both from staff and among the students. He described the school as having a “prison mentality,” where the bigger boys preyed on the younger ones, and where emotional and physical abuse were rampant (*Blackwater v. Plint*, 2005, para. 539).

Sexual violence was a defining part of his time at AIRS. At age six, he was sexually assaulted by an older boy. Not long after, and while in Dormitory 1, he was repeatedly sexually assaulted by approximately eight older male students three to four times a week, over a period of months (*Blackwater v. Plint*, 2005, para. 540). He later describes this as being “thrown to the dogs” (para. 541). He was also sexually assaulted by Arthur Plint, and the court ultimately found that between 1962 and 1963, Plint assaulted R.F. on at least six to twelve occasions, both on and off the school premises (*Blackwater v. Plint*, 2005, para. 598-599). These assaults were acknowledged to have been a material contributor to his periods of depression.

Despite the trauma, R.F. initially excelled academically. He was the top of his class from grades one and six and valedictorian in grade six. However, after AIRS

students were integrated into public schools in Port Alberni, his performance dropped significantly. He described the “culture shock” of being labelled a “lower class Indian” as overwhelming, leading to a decline in self-worth and academic motivation (*Blackwater v. Plint*, 2005, para. 544).

Social exclusion extended beyond the classroom. Although his family moved to a reserve adjacent to AIRS, he was sent away to the residential school while cousins stayed at home. His parents never visited him, and the reserve children were hostile toward the AIRS students. This led to deep resentment and confusion, particularly because his mother took in boarders—his cousins—while he remained institutionalized just 200 yards away (*Blackwater v. Plint*, 2005, para. 547).

His home life after AIRS was marked by dysfunction and overcrowding, living with up to twenty-one people in a small house. R.F. began drinking at age twelve and later used drugs. Although he attributed the beginning of his drinking to peer pressure, he also connected it to memories of confinement or loss of freedom at AIRS (*Blackwater v. Plint*, 2005, para. 555). He later pursued education through the Department of Indian Affairs’ Boarding Out Program, motivated by the need to escape alcohol and overcrowding.

R.F.’s adult life included both hardship and achievement. He was legally blind due to retinitis pigmentosa and struggled with employment, though he remained engaged in educational, publishing, and community work for most of his adult life. Despite consistent alcohol and drug use into adulthood—along with multiple dysfunctional relationships, including an abusive marriage—he did not attribute his substance use

directly to sexual abuse, but rather to larger struggles including isolation, visual impairment, and social marginalization.

Brenner assessed two psychiatric experts in R.F.'s case, Dr. Susan Penfold, who testified on R.F.'s behalf, concluded he had PTSD and that his alcohol and drug use were linked to the sexual abuse. However, her credibility was undermined by her willingness to suggest that anal rape had likely occurred—even though R.F. had denied this. Justice Brenner found her to be overly partisan, particularly when she insisted on diagnoses that lacked evidentiary support (para. 591-592). Dr. O'Shaughnesy, who assessed R.F., as cooperative and articulate, concluded there were not current signs of psychiatric disorder, PTSD, or anxiety. While R.F. had experienced depressive episodes, these were short-lived, often connected to alcohol use, and did not require ongoing psychiatric intervention (*Blackwater v. Plint*, 2005, para. 583-585).

Brenner ultimately concluded that although the abuse R.F. suffered at AIRS was serious and contributed to his depression, it did not affect his ability to work or lead a fulfilling life. R.F. testified that he had always considered himself able to work and the court found that he had lived a full and engaged adult life. Significantly, Brenner applied the crumbling skull principle, finding R.F. was already predisposed to psychological difficulties due to his family background and that the sexual assaults merely aggravated an existing condition (*Blackwater v. Plint*, 2005, para. 588). R.F. was awarded \$85,000 in non-pecuniary and aggravated damages, and 20,000 in punitive damages against Plint alone (*Blackwater v. Plint*, 2005, para. 600-601).

Mr. R.J.

In the case of Mr. R.J., Justice Brenner’s reasoning reflects a broader legal strategy aimed at constructing an “original position” of dysfunction in order to minimize the causal link between residential school abuse and long-term psychological harm. Mr. R.J.’s accounts of his sexual abuse by Plint varied over time. At trial, he described a single incident involving mutual fondling, masturbation, and oral sex. However, in separate disclosures to experts, he reported a more extensive pattern of abuse including anal penetration and multiple threats from Plint. Rather than acknowledging these variations as consistent with trauma disclosure—where memories of abuse may surface gradually—Brenner treated the inconsistencies as a credibility issue, stating that “these three descriptions differ markedly” and the court must “be satisfied that the plaintiff has proved to the appropriate standard” the specifics of the assault (*Blackwater v. Plint*, 2005, para. 607-608).

The court leaned heavily on the notion that Mr. R.J.’s early life was already unstable, casting doubt on his claims and reducing institutional liability. His memories of childhood were described as vague, and the court noted that “he was not born into a stable family setting: and “does not know the identity of his father (*Blackwater v. Plint*, 2005, para. 614). Brenner emphasized that Mr. R.J. “felt very lonely” and “terrified for the entire ten-year period he was at A [...] Residential School,” even apart from the abuse (*Blackwater v. Plint*, 2005, para. 615-616). By emphasizing pre-existing instability and trauma, Brenner constructed a version of Mr. R.J.’s life in which the abuse served as an extension of prior hardship rather than a new, compounding trauma.

This framing was reinforced through expert testimony. Dr. Derek Eaves, the psychiatrist for the defence, assumed multiple assaults in his assessment but nonetheless

concluded that the sexual abuse “had a very minor if any, role in development of Mr. R.J.’s psychological problems” (*Blackwater v. Plint*, 2005, para. 648). Dr. Eaves attributed Mr. R.J.’s depression to physical health conditions such as heart disease and ankylosing spondylitis, and not to trauma resulting from sexual abuse. He also concluded that Mr. R.J.’s alcohol use was more likely due to environmental and familial factors, noting that “his own siblings had significant alcohol problems” (para. 652). Although the plaintiff’s counsel argued that delayed disclosure was common among survivors and that post-trial disclosures should be given weight, Brenner ultimately dismissed this argument. He ruled that Mr. R.J. had proved only a single assault and awarded just \$20,000 in non-pecuniary and aggravated damages—with non-pecuniary damages referring to compensation for intangible harms like pain, suffering, and emotional distress—and \$3,000 in punitive damages against Plint (*Blackwater v. Plint*, 2005, para. 658–659).

Moreover, Brenner concluded that there was no evidence to support a claim of income loss, based on Mr. R.J.’s largely steady employment history from the 1960s to the 1990s. Despite testimony about long-term emotional harm, including feelings of alienation, shame, and abandonment, Brenner stated that the abuse did not cause any psychological injury “beyond the de minimums level” (*Blackwater v. Plint*, 2005, para. 658). The legal construction of Mr. R.J.’s “original position” thus relied on a combination of fragmented testimony, disputed expert evidence, and racialized assumptions about resilience and dysfunction. Through this approach, the ruling denied Mr. R.J. full recognition as a victim. It reinforced the broader colonial legal logic that Indigenous men’s suffering is an inherent condition rather than the result of institutional violence.

Mr. D.S.

Justice Brenner’s portrayal of Mr. D.S. reflects a clear example of how the legal system constructs an “original position” of dysfunction to limit institutional accountability for residential school abuse. From the outset, Mr. D.S.’s life was framed through the lens of instability. Orphaned in infancy and raised by grandparents described as rigid and emotionally distant, he reported a lack of parental guidance and bonding well before entering A. [...] Residential School. His struggles in school were also highlighted, with a 1968 counselling report stating, “he had a lack of memory” and “extremely short memory span” (*Blackwater v. Plint*, 2005, para. 744), facts which Brenner used to reinforce the idea of pre-existing vulnerabilities

Brenner emphasized that while Mr. D.S. began using alcohol and later marijuana and cocaine, he did not directly link these behaviours to his experiences of sexual abuse. Instead, the court foregrounded social factors such as peer pressure and substance using in his home community. When Mr. D.S. later developed chronic pain and depression after leaving his job at MacMillan Bloedel due to ankylosing spondylitis, he attributed the pain to “toxins in [his] muscles from the verbal and physical abuse” at residential school (para. 750), but notably did not cite sexual abuse as a contributing factor.

This framing was reinforced through the court’s handing of expert testimony. Mr. Colby, the plaintiff’s psychological expert, based his assessment on an incomplete and, at times, inaccurate understanding of D.S.’s background. He omitted critical facts about familial alcoholism and mischaracterized the nature of D.S.’s relationship with his grandfather—believing it to be positive, while Mr. D.S. described it as emotionally lacking and controlling during his testimony (*Blackwater v. Plint*, 2005, para. 756-758).

Colby also misunderstood the specifics of the assaults, originally describing them as more forceful than what was later confirmed in court. On review, Colby conceded that the actual abuse described by Mr. D.S.—Plint placing his hand on the outside of Plint’s pants—was milder than what he had originally reported (*Blackwater v. Plint*, 2005, para. 763-764).

The court seized upon these discrepancies to reject Colby’s conclusions, finding that the expert testimony did not sufficiently connect the abuse to Mr. D.S.’s psychological condition. Instead, Brenner identified other life events—particularly the loss of D.S.’s long-term employment—as more likely causes of his emotional distress stating, “the loss of his job at MacMillan Bloedel has had a profound effect upon him” (*Blackwater v. Plint*, 2005, para. 762). Brenner also highlighted that D.S. himself attributed his struggles with relationships and feelings of insecurity not to sexual abuse, but to inadequate parental guidance and cultural disconnection.

Ultimately, Justice Brenner ruled that while “relatively mild” sexual assaults occurred—limited to fully clothed incidents involving Plint placing D.S.’s hand on his genital area—these did not result in compensable psychological harm (*Blackwater v. Plint*, 2005, para. 766). The award was correspondingly minimal: \$10,000 in non-pecuniary damages and \$2,000 in punitive damages against Plint (*Blackwater v. Plint*, 2005, para. 767). D.S. was denied damages for income loss and counselling, as the court concluded that none of his long-term difficulties could be sufficiently linked to the abuse.

The ruling illustrates how Indigenous male trauma is often rendered legally invisible unless it conforms to narrow, court sanctioned understanding of injury. By pathologizing D.S.’s early life, discrediting his expert witness, and downplaying the

severity of his abuse, the court reproduced a colonial logic in which only certain kinds of pain are recognized—and only when they fit neatly into established legal categories. In D.S.’s case, the court constructed a narrative in which his suffering was inevitable, his instability pre-existing, and the abuse merely incidental. As with other plaintiffs in *Blackwater v. Plint*, the ruling reveals a systemic refusal to fully acknowledge Indigenous men as victims of institutional violence.

Mr. M.W. (1)

Justice Brenner constructs Mr. M.W. (1)’s narrative by placing significant emphasis on his troubled childhood, which predates his attendance at AIRS. From an early age, M.W. (1) experienced a turbulent home life, marked by emotional neglect and physical abuse. His father was often absent due to seasonal work at the canneries and struggled with alcoholism. His mother disciplined him harshly, frequently resorting to beatings with sticks or kindling, often exacerbated by his bedwetting. Brenner particularly notes that M.W. (1) himself described intense resentment and anger toward his mother due to these beatings, explicitly linking this resentment to his broader hostility towards women later in life (*Blackwater v. Plint*, 2005, para. 768-776).

M.W. (1)’s behavioral problems manifested early. Brenner highlights incidents where, as a child, M.W. (1) was considered uncontrollable—so much so that his mother took him to Mill Bay Indian Hospital for evaluation, where he was strapped to a bed and fought with other children. This extreme behavioural pattern, including a quick temper and aggressive reactions, established itself well before his time at residential school (*Blackwater v. Plint*, 2005, para. 773-775).

Brenner also identifies multiple traumatic events from M.W. (1)'s childhood, including a near-drowning at age six, witnessing his cousin drown and losing his home in a fire. These events, alongside the conditions at the canneries—including severe infestations of cockroaches that included nightmares and exacerbated bedwetting—were significant sources of early trauma (*Blackwater v. Plint*, 2005, para. 777-778).

At AIRS (1964-1967), M.W. (1) endured a violent, oppressive environment, characterized by frequent corporal punishment, forced participation in a brutal “gauntlet” by fellow students, and persistent racial discrimination. Brenner underscores that, separate from the sexual abuse perpetrated by Arthur Plint, life at the school was deeply traumatic and consistently violent (*Blackwater v. Plint*, 2005, para. 781-783).

Following his departure from the residential school, M.W. (1) showed improved academic performance in Day School, excelling once he mastered English. However, upon returning to his family, both parents' alcoholism intensified, and M.W. (1) himself began drinking alcohol at age twelve. Brenner points out that this drinking appeared unrelated to residential school trauma, arising instead from peer and family influences.

Throughout his teenage years, M.W. (1)'s behaviour remained volatile. His adolescence was marked by frequent fights, largely driven by perceived racism from non-Indigenous peers, reinforcing his aggressive behaviour pattern. Brenner indicates clearly that this hostility toward non-Natives originated from racial tensions rather than residential school abuse (*Blackwater v. Plint*, 2005, para. 789-794).

Alcohol became central to his social life leading to chronic drinking problems. Brenner describes how alcohol dominated his teenage and early adult years, causing conflicts and disruptions in school, family, and employment contexts. Significantly,

Brenner repeatedly emphasizes that this drinking, while detrimental, appears rooted in social habits rather than as a direct consequence of sexual abuse by Plint (*Blackwater v. Plint*, 2005, para. 795-804).

Professionally, M.W. (1) demonstrated a generally consistent ability to secure employment, working in various capacities—including logging, fisheries management and eventually as a counselor. His employment history, while marred by frequent interpersonal conflicts with employers and coworkers, was notable stable until alcohol-related incidents led to job terminations. These conflicts, Brenner notes, were primarily attributed to personality clashes, perceived workplace harassment, and racial discrimination, rather than to his experiences at residential school (*Blackwater v. Plint*, 2005, para. 803-827).

Brenner places great weight on the counseling records from the Victoria Life Enrichment Society (VLES) in 1985 and 1990. In these sessions, M.W. (1) himself attributed his anger, resentment, anxiety, and family disruptions directly to workplace dynamics, clearly identifying his job environment—not residential school abuse—as the primary source of stress in his life. Brenner regards these contemporaneous accounts as credible and compelling evidence, challenging M.W. (1)'s later assertion at trial that the sexual abuse at AIRS was the primary source of all his problems (*Blackwater v. Plint*, 2005, para. 807-821).

In examining expert evidence, Brenner critically assessed psychologist Robert Colby's report. Colby heavily relied on self-reported narratives from M.W. (1) that largely omitted crucial details of his early traumatic experiences, behavioural issues, and family violence. Brenner notes serious flaws in Colby's approach, as Colby did not

thoroughly investigate other significant traumatic factors that could have impacted M.W. (1)'s lifelong struggles—including alcoholism, violent behaviour, troubled interpersonal relationships, and workplace conflicts—stem from pre-existing childhood traumas, family dynamics, racial tensions, and unrelated life experiences rather than the sexual abuse alone (*Blackwater v. Plint*, 2005, para. 843-853).

Consequently, Brenner awarded M.W. (1) a substantial, though moderated sum of \$125,000 in non-pecuniary and aggravated damages and punitive damages of \$20,000 against Plint, reflecting both the severity of the assaults and their context. However, Brenner explicitly denied claims for past and future income loss, finding insufficient causal linkage to the abuse, awarding only \$5,000 for future counselling needs (*Blackwater v. Plint*, 2005, para. 855-857).

Mr. M.W. (2)

Justice Brenner constructed *M.W. (2)*'s narrative by emphasizing the multiple inconsistencies and contradictions in his testimony regarding the nature and frequency of sexual assaults by Arthur Plint at AIRS. Initially, when he first disclosed the assaults after returning home to K., M.W. (2) described to his brother Darryl only one form of sexual abuse: being forced by Plint to touch Plint's penis (*Blackwater v. Plint*, 2005, para. 859-863). Similarly, in his second statement to Constable Hopp (RCMP) on January 12, 1996, M.W. (2) again described only one incident in which he was forced to fondle Plint's penis. Brenner placed significant weight on these earlier disclosures due to their consistency and the safe, neutral context in which they were made (*Blackwater v. Plint*, 2005, para. 863-864 and 874-876).

However, over time and particularly after hearing graphic trial testimony from his brother and other plaintiffs, M.W. (2)'s descriptions dramatically expanded to include more severe forms of abuse—oral and anal rape, and frequent, ongoing assaults. Brenner concluded that these later descriptions are not credible, suggesting instead they reflected an adoption of the testimony he heard at trial rather than genuine recollections (*Blackwater v. Plint*, 2005, para. 867-873).

Despite the defendants' admissions of abuse based on the Statement of Claim, Brenner specifically rejected claims involving Plint fondling or masturbating M.W. (2). He firmly limited his finding to the original disclosure of Plint forcing M.W. (2) to fondle him, though Brenner allows that this likely happened more than once between 1961 and 1963 (paras. 881-884).

Brenner underscored the numerous additional traumatic and challenging experiences that significantly shaped M.W. (2)'s early life and development. Prior to attending residential school, M.W. (2) experienced family instability marked by alcohol abuse and physical altercations between his parents. After returning home, his family environment was characterized by pervasive alcoholism, involving both parents and older siblings, clearly influencing his early introduction to alcohol and drug use (*Blackwater v. Plint*, 2005, para. 890, 893-894, 919).

Beyond familial instability, Brenner highlighted other profoundly traumatic incidents that impacted M.W. (2) outside of his residential school experience, notably a severe incident where he almost drowned after his father's fishing boat exploded. In that incident, he witnessed his father engulfed in flames and severely injured, events which

Brenner concluded had significant psychological consequences for M.W. (2) independent of AIRS (*Blackwater v. Plint*, 2005, para. 891-892, 920).

Within AIRS, aside from sexual abuse by Plint, M.W. (2) was subject to routine physical violence, frequent fights with peers, and repeated traumatic episodes involving running the “gauntlet”—a brutal ritual in which he was forced to run naked between two lines of boys who struck him as he passed. These episodes, Brenner emphasizes, profoundly affected him psychologically, independently from the sexual abuse he experienced (*Blackwater v. Plint*, 2005, para. 885, 895–896).

Justice Brenner critically assessed M.W. (2)’s credibility, noting multiple discrepancies in his testimony concerning employment history, living situations and past experiences. Brenner particularly highlighted his dismissive attitude when confronted with inconsistencies, undermining the reliability of his testimony overall (*Blackwater v. Plint*, 2005, para. 885-896).

In evaluating expert testimony, Brenner placed limited weight on Dr. Robert Ley’s psychological assessment, noting that Ley relied on M.W. (2)’s self-reports, which he found exaggerated and inconsistent. Brenner also observed that Dr. Ley failed to adequately consider other significant sources of trauma, such as severe familial dysfunction, thereby weakening his conclusion that linked sexual abuse at a residential school to M.W. (2)’s current psychological distress (*Blackwater v. Plint*, 2005, para. 906-915).

Conversely, Brenner found Dr. Desmond Coen’s neuropsychological assessment more persuasive. Dr. Coen’s identified significant cognitive impairments, along with psychological challenges such as dysthymia, which he concluded more plausibly resulted

from prenatal factors, family alcoholism, and personal substance abuse rather than from sexual assaults by Plint (*Blackwater v. Plint*, 2005, para. 897-905).

Ultimately, Brenner concluded that M.W. (2)'s ongoing psychological and vocational difficulties cannot be attributed causally to sexual abuse. Rather, he argued, they more reasonably stemmed from pre-existing familial and social conditions, early traumas unrelated to the school, and his cognitive impairments. Brenner therefore awarded a comparatively modest sum of \$15,000 in non-pecuniary and aggravated damages, alongside \$5,000 in punitive damages against Plint, explicitly rejecting claims for past and future income loss or future counselling (*Blackwater v. Plint*, 2005, para. 916-924).

Analysis: The Legal Regulation of Indigenous Male Victimhood in *Blackwater v. Plint*

This chapter asks: Why was the crumbling skull defence so easily justified in *Blackwater v. Plint*? How did the legal reasoning in this case reflect broader colonial strategies for minimizing institutional liability while reinforcing racialized narratives of Indigenous dysfunction? These questions frame the analysis of how the legal system operates as an extension of colonial governance, dictating who is eligible for compensation and whose suffering is recognized as legitimate.

The legal reasoning in *Blackwater v. Plint* reveals how the Canadian legal system operated as an extension of colonial governance by deploying doctrines like the crumbling skull defence and psychiatric containment to obscure institutional accountability and frame Indigenous suffering as inevitable rather than inflicted. These strategies were not neutral applications of tort law but mechanisms of settler-colonial power that dictated the limits of redress and recognition. One of the most consequential

legal strategies employed was the use of the crumbling skull defence. By applying this doctrine, the court reframed the plaintiffs' trauma as a continuation of pre-existing dysfunction rather than the result of sexual abuse at AIRS. As Justice Brenner noted, "Given Mr. Barney's family background, his life prior to A [...] Residential School, and the other traumatic experiences... it is probable that Mr. Barney... would have experienced significant psychological difficulties in any event" (Blackwater v. Plint, 2005, para. 517). This framing neutralized the violence suffered and suggested that Indigenous men were already broken before entering the residential school system.

This maneuver functioned as what Thobani (2007) describes as a strategy of racialized governance—one in which legal recognition is extended only in ways that contain Indigenous suffering (Thobani 2006, p. 17). Rather than recognizing sexual abuse as a life-altering harm, the court used the plaintiffs' "original position" to construct a racialized baseline of dysfunction. In doing so, the law upheld the view that Indigenous suffering is inherent and thus not a legitimate object of state responsibility. This aligns with Morgensen's (2015) observation that colonial masculinity presents its victims as the cause and proper recipients of its own violations, thereby legitimizing the denial of justice (Morgensen 2015, p. 39-40).

The court's reliance on psychiatric assessments reinforced this logic by pathologizing Indigenous masculinity. In M.W. (1)'s case, the court dismissed the long-term psychological impact of sexual abuse by favouring psychiatric testimony that emphasized pre-existing behavioural problems and minimized the role of trauma. It stated: "Much of Mr. M.W. (1)'s anger... is based on his impression that he is being singled out because of his race, [but] this seems to be unrelated to the sexual assaults"

(*Blackwater v. Plint*, 2005, para. 846). This dismissal of race-based trauma ignores the institutional nature of the abuse and the long-term effects of colonial governance. It reaffirms Thobani's assertion that settler law does not seek to rectify Indigenous suffering but to manage it. Fanon's (1963) analysis of colonial psychiatry speaks directly to the court's strategy in *Blackwater v. Plint*, where psychiatric testimony was used to pathologize Indigenous plaintiffs. He warned that "colonialism in its essence was already taking on the aspect of a fertile purveyor for psychiatric hospitals" (Fanon, 1963, p. 249), indicating that under colonial rule psychiatrists often treat trauma as individual pathology rather than systemic harm. The court replicated this framework, attributing plaintiffs' anger, and emotional distress to inherent instability rather than institutional violence inflicted upon, thereby depoliticizing their suffering, and minimizing institutional culpability.

The court's handling of R.F.'s case demonstrates how, even when sexual abuse was acknowledged, attention shifted away from institutional responsibility toward R.F.'s supposed resilience and continued functionality. Instead of addressing the enduring, systemic impacts of the abuse, the judgment focused on R.F.'s ability to maintain employment and participate in community life, treating this as evidence that the trauma bore little legal weight. This reliance on resilience as a judicial benchmark exemplifies a broader legal tactic that shields colonial institutions from accountability. As Razack (2015, p. 32) observes, such "structured forgetting" allows courts to recognize harm without interrogating the structures that enabled it. Brenner concluded that despite enduring repeated assaults by peers and by Plint, R.F.'s employment and social life were not meaningfully disrupted (*Blackwater v. Plint*, 2005, para. 600). This reasoning

overlooks the pervasive impacts of trauma, especially for male survivors whose suffering may not align with clinical or expected presentations. By framing R.F.'s continued contributions to society as proof of minimal harm, the court effectively minimized the abuse's significance. This embodies what Razack terms a logic of "structured forgetting," where systemic violence is sidelined in favour of framing harm as individual anomaly or resilience.

Moreover, Brenner's distinction between peer-on-peer violence and abuse by staff disproportionately emphasized intra-Indigenous harm. His detailed descriptions of assaults by older boys detached this violence from the institutional setting that produced it, reinforcing colonial assumptions of inherent Indigenous dysfunction. Rather than identifying AIRS as the structure that incubated this harm, the ruling situated it within the victims themselves, continuing a narrative of internalized pathology. The court failed to link R.F.'s alcohol use and unstable relationships to the trauma he experienced, instead attributing these difficulties to other social or personal factors. This reflects a judicial pattern in which Indigenous men must present their trauma in recognizable, clinically validated forms to receive recognition.

The court also rejected Dr. Susan Penfold's PTSD diagnosis in favour of Dr. O'Shaughnessy's assessment, which found no current psychiatric disorder. Brenner undermined Penfold's credibility for suggesting that anal rape may have occurred despite R.F.'s own denial—further highlighting how Indigenous claims are scrutinized under impossibly rigid evidentiary standards. These moves reinforced settler neutrality by selectively validating only those expert opinions that aligned with limited state liability.

Maria Yellow Horse Brave Heart (1998) emphasizes the importance of understanding Indigenous trauma within a historical and communal context, arguing that the psychological and emotional pain experienced by Indigenous peoples is not isolated, but rooted in generations of colonial violence, forced assimilation, and systemic erasure. Had this framework been applied in *Blackwater v. Plint*, the court might have recognized the plaintiffs' suffering not as isolated or inevitable dysfunctions but as evidence of state-inflicted harm across generations (Braveheart 1998, p. 283). Yet, the court explicitly refused to do so. Brenner wrote: "It is not the judicial role or function to consider such societal matters" (*Blackwater v. Plint*, 2005, para. 333).

This was especially clear in how the court positioned itself: it treated the issue as an individual problem rather than recognizing its role in maintaining colonial power. By doing this, the legal system turned systemic harm into a matter of personal misfortune, protecting settler institutions from being held collectively responsible. By separating sexual abuse from the wider context of colonial violence, the court ultimately reinforced the authority of the settler state. Thobani's (2007) critique of legal containment is especially relevant here—the law functioned not to deliver justice, but to manage Indigenous claims in a way that left foundational power structures untouched. In this way, the ruling illustrates what Fanon (1963) critiques as the colonial tendency to render structural violence invisible—transforming collective, state-inflicted trauma into individualized pathology, legible only through categories that uphold colonial authority (Fanon, 1963, p. 249-251).

Each plaintiff's legal reasoning pattern dismissed the structural impact of colonial violence on personal violence. Barney's trauma was reframed through his "original

position” as already damaged. M.W. (1)’s anger and instability were disconnected from racialized trauma and treated as personal flaws. D.S.’s chronic pain was dismissed because he could not articulate a causal link to the sexual abuse. R.F.’s resilience was weaponized against him, with the court suggesting that his ability to function undermined the severity of the abuse he suffered. This logic is particularly disturbing: to exceed the court’s racialized expectations is, paradoxically, to disqualify oneself from recognition as a victim. In each case, the law did not fail to see harm—it refused to see it as a product of colonial institutions. These narratives reveal the systemic erasure of Indigenous male victimhood through legal tools that pathologize, compartmentalize, and ultimately silence survivors. These legal judgments were not neutral but embedded in a settler-colonial logic of governance, shielding the state and Church while denying Indigenous men full legal recognition.

As this chapter transitions into an examination of *R. v. Gladue*, these tensions carry forward. If tort law could not fully recognize the systemic roots of Indigenous suffering, can criminal law? Can restorative justice account for the racialized and gendered patterns that shaped the court’s understanding of victimhood in *Blackwater v. Plint*? Or does it merely repackage these assumptions under a more palatable framework? These are the questions the next chapter must confront—questions not only of legal precedent, but of political will, historical accountability, and the possibility of justice for Indigenous men within a system that has never seen them as fully human.

In sum, the legal reasoning in *Blackwater v. Plint* reveals how settler-colonial governance is upheld through legal and psychiatric tools that individualize and depoliticize Indigenous suffering. By pathologizing the plaintiffs, dismissing structural

violence, and selectively validating psychiatric evidence, the court erased the broader realities of institutional harm. These are not simply failures of justice; they exemplify what Foucault describes that “biopower was without question an indispensable element in the development of capitalism,” where it ensures “the controlled insertion of bodies into the machinery of production and the adjustment of the phenomena of populations to economic processes” (Foucault, 1978, p. 140-141).

Indigenous male victimhood is not merely overlooked but actively regulated and constrained by law. As the following chapter will explore, the shift from civil to criminal law does not guarantee redress—instead, it may repackage these colonial logics under the guise of restorative justice.

Chapter Four: Locating Reuben Beaver: Unveiling Indigenous Masculinity Under the Legal Landscape

Within the landscape of Canadian legal history, court cases often reflect deeper societal attitudes, biases, and systemic injustices. Among these, *R. v. Gladue* [1999] S.C.R. 688 stands out as a landmark decision, intended to reduce the disproportionate incarceration rates of Indigenous peoples through the application of restorative justice principles. This case marked a turning point in Canadian jurisprudence and aimed to address the impacts of colonialism within sentencing practices by considering the unique systemic and social factors affecting Indigenous peoples. Yet beneath the surface intention to bring justice lies a critical issue: the enduring influence of colonial narratives that shape how Indigenous men are portrayed and perceived. The portrayal of Reuben Beaver, an Indigenous man whose common-law partner was convicted of manslaughter in 1999, reveals significant biases in how Indigenous men are represented within both legal and academic discourses. This portrayal not only reinforces harmful stereotypes of Indigenous men as inherently violent but also perpetuates broader colonial narratives, further marginalizing them within the justice system and in public perception.

On 16 September 1995, Jamie Gladue fatally stabbed Reuben Beaver during a heated argument fueled by alcohol and accusations of infidelity. The court ultimately determined that Beaver had provoked Gladue, framing the incident as a domestic conflict. This portrayal raises critical questions about how Indigenous men are depicted in intimate partner violence contexts. The narrative constructed around Beaver centers on his character flaws—highlighting his past violence, infidelity, and a prior conviction for domestic assault—while failing to consider the broader historical and systemic forces that may have shaped his life. Through the de-contextualization of Beaver’s experiences and

the selective emphasis on his perceived faults, the court and subsequent academic literature contribute to a narrow and distorted portrayal. This reinforces the enduring stereotype of the violent Indigenous man, a depiction that persists even in death, leaves little space for a more nuanced or humanized understanding.

Where, then, did Reuben Beaver's perceived violence originate? And can we ever fully comprehend the deeper structural and historical factors that shaped his experiences? These questions are crucial to understanding the limitations of the narrative that has emerged—not from Beaver's own defence but through selective details introduced in the preliminary hearing, where his character, past faults, and personal history were scrutinized to assess Jamie Gladue's actions. Although Beaver was not on trial, his portrayal became increasingly violent in the discourse that followed, as legal and academic discussions amplified aspects of his character to fit a colonial narrative. This portrayal raises significant questions about how Indigenous men, even in death, become symbols within frameworks that depict them as inherently violent threats.

Colonial policies, including the Indian Act, created a legal and ideological framework that criminalized Indigenous men and entrenched stereotypes portraying them as dangerous and deviant. These policies, designed to regulate and control Indigenous identities, have left a lasting imprint on how Indigenous men are perceived—an imprint that continues to shape contemporary legal interpretations. Although little is known about Reuben Beaver's life beyond a few selective details, the disproportionate emphasis on moments of conflict presents him through a narrow and one-dimensional lens. This focus on isolated incidents, detached from structural and historical forces, distorts his identity, and recasts it into the enduring stereotype of the violent Indigenous man. Such a

portrayal, shaped by colonial logics, denies the complexity of his humanity, reducing him not just to a caricature or archetype, but to a figure abstracted from the qualities that colonial frameworks reserve for those deemed fully human—rationality, redemption, interiority, and moral legibility. His dehumanization exceeds the making of a stock character; it renders him intelligible only through the violence imposed upon him and the violence he is accused of embodying.

This analysis extends beyond Beaver's portrayal alone. Whether Indigenous men are positioned as perpetrators or victims within the justice system, their experiences are often filtered through colonial frameworks that either criminalize or pathologize them. Even when Gladue reports are introduced to contextualize offences within histories of displacement, trauma, and systemic marginalization, they rarely disrupt the underlying power dynamics of the legal system. Instead, they individualize harm, treating colonialism as a backdrop rather than an ongoing structure that shapes both so-called criminal behaviour and victimization. In this way, the same colonial logic that confines Beaver's life to a narrow narrative continues to govern how Indigenous masculinity is understood, managed, and disciplined in Canadian courts.

This framing of Beaver carries broader implications. When his actions are repeatedly interpreted through this limited lens, they uphold a colonial narrative that criminalizes Indigenous men, casting them as inherently violent and overlooking the systemic forces that have shaped their lives. By focusing solely on his individual conduct, these representations fail to account for the socio-economic marginalization, cultural dislocation and layers of trauma that arise under colonialism. Although *R. v. Gladue* sought to introduce restorative principles, Beaver's depiction exposed the

limitations of such efforts when colonial biases remain unchallenged. This pattern reflects a larger trend in which Indigenous masculinity is reduced to assumptions of criminality, flattening into complex lives into simplistic stories and deepening the marginalization of Indigenous men and communities.

This chapter employs a counter-narrative approach to challenge both the dominant depiction of Reuben Beaver and the colonial frameworks that sustains it. The aim is not to justify harsher sentencing for Jamie Gladue or shift blame onto her actions. Rather, it interrogates how Beaver's account has been constructed through colonial logics—patterns that reach far beyond this individual case to shape how Indigenous men are broadly represented. By questioning the roots of his perceived violence and placing his experience within the context of colonialism, this analysis exposes the enduring stereotypes that continue to influence legal and academic discourse. While it does not deny Beaver's own accountability, it resists the one-dimensional image that dominates his posthumous depiction.

Yet it is not simply the one-dimensionality of that image that is most troubling. The issue is not whether another dimension—a more accurate or sympathetic one—might have served better. Rather, the problem lies in the very act of reduction itself, which is less about misrepresentation and more about utility. The flattening of Beaver into a singular figure—violent, deviant, or provocative—serves a practical function within the logic of settler-colonial power. It renders him intelligible to the court and to legal and scholarly audiences in a way that conveniently aligns with pre-existing narratives of Indigenous men as threats to social order. This reduction allows institutions to bypass the structural conditions that may have shaped his life—dispossession, systemic racism,

intergenerational trauma—and instead manage him as a fixed type: the violent Indigenous man.

In this sense, the portrayal does not seek truth so much as it seeks control. It allows the legal system to maintain its authority by designating who is worthy of full human recognition and who can be dismissed as a stereotype. Through this lens, Beaver is not merely mischaracterized—he is abstracted from the qualities that colonial frameworks reserve for full personhood: complexity, vulnerability, and the capacity for transformation. The reduction is not incidental; it is required. It upholds a settler-colonial order that depends on the legibility of Indigenous men as problems to be punished rather than people to be understood. And in doing so, it forecloses any possibility of justice that acknowledges the full weight of colonial violence and its enduring impact on Indigenous lives.

By focusing on the structural forces at work, this chapter advocates for a more nuanced understanding of Indigenous masculinity, moving beyond reductive stereotypes that depict Indigenous men as inherently violent. While we may never fully grasp the structural and historical forces that shaped Reuben Beaver's life, interrogating the narratives that define him is essential. Shifting the focus from individual actions to the broader colonial context reveals how both the Canadian legal system and academic discourse continue to marginalize Indigenous men. In this sense, the work being undertaken here is not only analytical but also ethical: it involves making visible what has been obscured, and speaking where silence has long been imposed. As Wittgenstein suggests, “what we cannot speak of is often what most demands our attention” (Wittgenstein, 2001, p. 189). It is precisely in the face of that difficulty—of giving voice

to pain, complexity, and erasure—that this counter-narrative insists on trying. Beaver’s portrayal—both in the courtroom and in subsequent literature—illustrates how colonial violence and stereotypes persist, not only in judicial reforms purportedly aimed at justice but also in scholarly interpretations that reinforce harmful narratives. Acknowledging these complexities is necessary to challenge the ongoing impact of colonialism and reimagine how Indigenous men are represented in both the justice system and academic inquiry.

The portrayal of Reuben Beaver in *R. v. Gladue* is rooted in colonial frameworks, particularly those established through policies like the Indian Act. These legal structures constructed Indigenous masculinity through the lens of patriarchal dominance and violence behavior—an image used to justify state control over Indigenous communities. Such policies framed Indigenous men as inherently threatening, even as they were simultaneously subjected to colonial law’s so-called civilizing supervision. This portrayal not only reflects the historical function of colonial law in regulating Indigenous masculinity, but also demonstrates how these enduring frameworks continue to shape contemporary understandings of Indigenous men within the justice system.

Theory and Methodology

This chapter employs a counter-narrative methodology to challenge the dominant portrayal of Reuben Beaver and the colonial frameworks that inform it. This approach critically engages with legal and academic texts to uncover how legal narratives construct Indigenous masculinity in ways that reinforce colonial violence.

Drawing on the theoretical insights of Frantz Fanon (1963), Michel Foucault (1975; 1978), this chapter interrogates how power operates within legal and academic

discourse by breaking it into three key questions: how legal structures function, what their impact is on the body, and why these systems remain resistant to change. Foucault's concept of biopower explains the how and the why—showing how institutions regulate bodies, produce truth, and continually reproduce state control by constructing Indigenous lives through the narrative of deviance and criminality. Fanon addresses the what, revealing the profound bodily and psychological impacts of colonial regulation. His work on decolonization demonstrates how laws like the Indian Act and the criminal justice system have historically positioned Indigenous men as both hyper-violent and subjugated shaping their lived experiences and societal perception. In sustaining a framework that continually casts Indigenous men as inherent threats, both legal and academic institutions reinforce colonial dominance and ensure that structural transformation remain elusive.

This chapter also considers how the regulation of Indigenous men operates at the level of embodiment—where legal and academic discourse not only construct meaning around Indigenous masculinity but also shape how it is lived and experienced. Embodiment, in this context, refers to the ways individuals express and endure the effects of social and political structures through their bodies. For Indigenous men, this means that the regulation of masculinity does not remain abstract or symbolic; it has direct, material consequences. Through this lens, embodiment becomes key to understanding how legal and academic systems discipline Indigenous men—how they are marked, surveilled, and subjected to control in ways that reflect and reinforce colonial narratives that cast them as inherently violent. The intersection of law, discourse, and

embodiment reveals that colonial power operates not only through representation but through the physical criminalization and exclusion of Indigenous men from justice itself.

The legal and academic treatment of Indigenous men does not occur in isolation but is shaped by pre-existing frameworks that define violence, criminality, and masculinity in ways that do not explicitly engage with Indigenous men, yet profoundly affect how they are perceived and regulated. Much of the scholarly discourse on violence within Indigenous communities has centered on violence against Indigenous women, particularly through the frameworks of intimate partner violence (IPV) and Battered Women's Syndrome (BWS). These frameworks have played a crucial role in revealing how the legal system has failed to protect Indigenous women, but they also leave little room to examine how Indigenous men are positioned within these same legal and academic structures. In the absence of scholarship on Indigenous masculinity a dominant narrative has taken shape, one that casts Indigenous men as inherently violent and thereby reinforces colonial perceptions of criminality and moral deficiency.

Although no dedicated body of literature exists on the treatment of Indigenous men in the justice system as a gendered category, the assumptions embedded in IPV discourse, legal interpretations of violence, and colonial policy have deeply shaped how Indigenous masculinity is understood—often without interrogation or critique. This absence is significant because it allows the construction of Indigenous men as inherently violent to circulate as taken-for-granted knowledge: the kind of assumption that “everybody knows” or that “goes without saying.” Such unexamined narratives obscure the colonial roots of these portrayals and render them natural rather than constructed. Before turning to the details of *R. v. Gladue*, the following literature review examines

how dominant legal and academic frameworks—particularly those focused on IPV and criminality—have shaped perceptions of Indigenous men and established the discursive conditions under which Beaver’s portrayal was produced and later reinforced.

Violence, Law, and Indigenous Masculinity

For decades, the discourse on IPV has been shaped by feminist critiques that emphasize the link between violence and patriarchal systems. Scholars such as Dobash and Dobash (1979) argued that IPV reflects the systemic enforcement of male dominance over women, normalized through societal and institutional structures. This gendered perspective framework dominated early discussions, framing IPV as predominantly male-perpetrated violence aimed at maintaining power and control.

While this perspective was instrumental in establishing gender-based power dynamics, it often overlooked intersectional factors, including the roles of race, class, and colonial histories in shaping violence (Merry, 2011). By centering patriarchal values as the primary cause of IPV, early frameworks neglected how intersecting identities and systemic inequalities contribute to violence. For example, in Indigenous communities, IPV occurs not only due to patriarchal structures but also as a direct consequence of colonialism, which disrupted traditional social systems and imposed systemic oppression (Anderson, 1993).

Colonialism has played a significant role in shaping violence within Indigenous communities. By dismantling egalitarian gender systems and imposing patriarchal values, colonial systems created conditions that exacerbated social issues such as IPV (Monture, 1999). These colonial narratives risk perpetuating stereotypes that portray Indigenous men as inherently violent, a narrative shaped by colonial ideologies that criminalize

Indigenous masculinity. This narrow focus marginalizes Indigenous men's experiences while erasing the broader systemic and historical forces that perpetuate violence within their communities (Innes, 2015).

However, this framework has faced criticism for its narrow focus on heteronormative dynamics, often excluding the experiences of same-sex relationships and cases where women perpetrate violence against men (Dutton, 1994; Straus, 1999). Critics argue that it inadequately addresses the complexity of IPV, failing to account for situations where power dynamics deviate from traditional gendered expectations. Scholars like Dutton (1994) and Straus (1999) have highlighted the prevalence of bidirectional violence, where both partners exhibit aggression. Research by Bates (2016) and others further suggests that women may engage in physical aggression at rates comparable to or exceeding those of men (Bates (2016); Langhinrichsen-Rohling, 2010).

The issue of violence against Indigenous males has traditionally received limited attention with much of the focus in academic and public discourse placed on Indigenous women as victims. Recently, however, Indigenous scholars like Robert Innes and Kim Anderson (2015), and feminist scholar Sherene Razack (2015) have begun to examine Indigenous males not only as perpetrators but as victims of violence. This shift encourages a broader exploration of how colonial violence has historically impacted Indigenous men, whose experiences have often been overlooked.

While much of the research has centered on the victimization of Indigenous women, it is essential to recognize that colonialism has deeply disrupted entire communities, affecting not only women but also men, transgender, and Two-Spirited peoples. Today, all genders within Indigenous communities continue to endure the

legacies of this colonial violence. The continued vulnerability of Indigenous people across genders is evident in the rising numbers of missing and murdered Indigenous men, women, and Two-Spirited individuals—figures that reflect an urgent need to expand our understanding of how colonial and systemic violence affects every member of these communities (Hunt, 2016, p. 3). Addressing this broader scope of victimization is critical for creating comprehensive approaches to healing and justice that honor the experiences and resilience of all Indigenous peoples.

The gender-inclusive approach challenges the notion that patriarchal values are the sole cause of IPV. Instead, it recognizes that psychological, social, and cultural factors, along with intersectional identities such as race, class, and sexuality, shape individuals' experiences of violence and their interactions with institutions (Crenshaw, 2013; hooks, 2000). This perspective underscores the importance of addressing these intersecting influences to fully understand and respond to IPV.

Within Indigenous communities, the role of colonial legacies in shaping patterns of violence has become increasingly recognized. Colonialism disrupted traditional social structures and imposed inequalities, exacerbating issues like violence. Indigenous scholars such as Patricia Monture-Angus (1999) and Kim Anderson (2016) argue that colonial systems not only imposed patriarchal values but also erased egalitarian Indigenous gender systems. While some researchers attribute violence among Indigenous men primarily to patriarchy (McGillivray & Comaskey, 1999), this perspective oversimplifies the issue. A more nuanced analysis reveals how colonialism and patriarchy intersect to create unique challenges for Indigenous peoples, influencing both the

prevalence of IPV and the systemic responses to it. This understanding is crucial for developing culturally sensitive interventions that move beyond simplistic narratives.

Dominant narratives about Indigenous men often reduce their identities to binary stereotypes: either inherently violent or passive victims (Innes, 2015, p. 8; Morgensen, 2015, p. 42). Such portrayals ignore the complexities of their experiences and the historical, social, and cultural factors shaping their lives. A counter-narrative approach reveals how these simplifications parallel those applied to white men, attributing issues solely to patriarchy while erasing the impacts of colonialism. By uncovering these layers of systemic bias and historical trauma, scholars can challenge stereotypes that continue to marginalize Indigenous men (Innes and Anderson, 2015, p. 6).

The literature on IPV has expanded from a focus on gendered power dynamics to more inclusive and intersectional perspectives. While feminist critiques have been instrumental in linking IPV to gender inequality, colonial legacies, particularly in Indigenous contexts, are often overlooked. Addressing these broader perspectives is critical to understanding not only immediate instances of violence but also the systemic structures perpetuating inequality and harm.

This literature review lays the groundwork for exploring the intersections of gender, power, and violence in IPV cases involving Indigenous men. By examining feminist and gender-inclusive perspectives, it critiques the limitations of frameworks like BWS in addressing the unique cultural and historical contexts of Indigenous communities. These limitations often perpetuate harmful stereotypes and marginalize Indigenous men by reducing their identities to narrow constructs shaped by colonial and patriarchal systems.

While scholars have extensively analyzed the over-incarceration of Indigenous peoples and the systemic discrimination within Canadian courts, little attention has been paid to how these narratives shape the portrayal of Indigenous men in cases like *R. v. Gladue*. The case offers a critical example of how legal and academic discourse converge to construct Indigenous masculinity as inherently violent. The following section outlines the events of 16-17 September 1995, examining how the legal system framed Reuben Beaver's actions and identity in ways that align with broader colonial narratives.

Overview of *R. v. Gladue* (1996): The Events of September 16-17, 1995

On the evening of September 16, 1995, Jamie Gladue, a 19-year-old Indigenous woman, celebrated her birthday with her 20-year-old common-law husband, Reuben Beaver, and a group of friends at the apartment of Georgette Atleo in Nanaimo, British Columbia.

Throughout the evening, alcohol consumption was a significant factor that contributed to heightened emotions and increasing tensions between Jamie Gladue and Reuben Beaver.

As the night progressed, Gladue became convinced that Beaver was involved with her older sister, Tara Chalifoux. Her frustration escalated to the point where she explicitly stated to the Atleo sisters, "The next time he fools around on me, I will kill him" (*R. v. Gladue*, B.C. Provincial Court, May 21, 1996, Preliminary Hearing, Day 1, p. 40).

Despite the direct threat, which suggested premeditated intent, this statement was largely dismissed in later legal arguments. Instead of questioning Gladue's intent and her deliberate actions over the course of the night, the legal framing of the case and the defence strategy focused on Beaver's perceived role in provoking her response. The emphasis on Beaver's alleged infidelity ultimately shaped the defence's argument, the

court's interpretation of mitigating factors, and the construction of agreed-upon facts that would later be reinforced in legal reasoning.

As the night progressed, Beaver asked Gladue to return home with him, but she refused. Eventually, he left the party alone, shortly after Tara, which heightened Gladue's suspicions. At this moment, Gladue confided in Georgette Atleo, saying, "He's going to get it this time." She further asserted that Beaver and Gladue had previously been involved, which only intensified her anger. In an attempt to confirm her suspicions, Gladue asked Georgette Atleo to "hit on Reuben to see if he would go with her," but Georgette refused (*R. v. Gladue*, B.C. Provincial Court, May 21, 1996, Preliminary Hearing, Day 1, p. 40).

While Gladue's threats could suggest premeditation, the defence instead emphasized here emotional response to romantic humiliation. This is a common strategy in cases involving intimate partner violence, where framing an accused person's action as reactive rather than calculated and mitigate culpability. However, in this case, such a framing intersected with broader racialized and gendered narratives.

The portrayal of Beaver's departure from the party was later framed in legal discourse as an act of betrayal rather than a neutral action, reinforcing the notion that his behavior justified Gladue's response. This interpretation was central to how the defence positioned Gladue's actions in court. When read alongside enduring colonial constructions of Indigenous masculinity, these narratives risks reinforcing stereotypes of Indigenous men as inherently unfaithful, aggressive, and emotionally unstable. Thus, what might appear as a standard legal approach takes on deeper significance when situated within the colonial frameworks that have long criminalized and pathologized

Indigenous men. The court's acceptance of this portrayal ensured that Jamie Gladue was seen as reacting out of immediate emotional distress rather than as someone who had issued a clear threat and later acted upon it.

This legal strategy was essential in securing a conviction for manslaughter rather than second-degree murder. Instead of critically interrogating whether Beaver's alleged infidelity had actually been established, the defence presented it as a fact, arguing that his actions were the ultimate cause of Gladue's emotional state and her subsequent attack (*R. v. Gladue*, B.C. Provincial Court, February 13, 1997, Reason for Sentencing, p. 84).

The defence lawyer's approach relied on presenting Gladue as a deeply remorseful and emotionally overwhelmed young woman who had acted out of momentary distress. Rather than contesting the sequence of events that led to Beaver's death, the defence strategy focused on portraying Gladue as someone whose actions had been shaped by external pressures, including her relationship with Beaver and the emotional turmoil caused by his alleged infidelity. This approach was instrumental in shifting the narrative away from her earlier statements and her pursuit of Beaver and instead placing the emphasis on his actions.

The court accepted this reasoning by incorporating agreed-upon facts that framed Beaver's actions as provocations that contributed to Gladue's reaction. These agreed-upon facts included the claim that Beaver had humiliated Gladue by sleeping with Chalifoux and then admitting it, even though Chalifoux's testimony did not indicate that intercourse had occurred (*R. v. Gladue*, B.C. Provincial Court, May 22, 1996, Preliminary Hearing, Day 2, p. 21). Additionally, the assertion that Beaver had insulted Gladue by calling her "fat and ugly" was introduced through defence submissions rather

than directly verified testimony (*R. v. Gladue*, B.C. Provincial Court, February 13, 1997, Reason for Sentencing, p. 79). The defence's argument that Gladue's response was an emotionally driven outburst rather than an intentional act of violence was further supported by agreed-upon facts that ignored her earlier threats to harm Beaver (*R. v. Gladue*, B.C. Provincial Court, May 21, 1996, Preliminary Hearing, Day 1, p. 40).

Although these claims were fundamental in the court's reasoning, not all were substantiated through direct evidence. The allegations that Beaver and Chalifoux had been sexually involved only emerged after Beaver's death. When questioning under oath during the preliminary hearing, Chalifoux testified that although Beaver had been in her room earlier that night, and they had kissed and undressed, she refused to have sex, and Beaver stopped and left (*R. v. Gladue*, BC Provincial Court, May 22, 1996, Preliminary Hearing Day 2, p. 21). This testimony directly contradicts the notion that they had engaged in sexual intercourse.

Nonetheless, the idea that Beaver and Chalifoux were sexually involved was accepted in the agreed statement of facts presented at sentencing. This likely drew on Gladue's own accusations at the part hours before the killing, combined with Crown and defence concessions to avoid a full trial. As a result, the court proceeded on the basis of an untested narrative of infidelity, never addressing the contradictions in the available evidence. This underscores how central themes of betrayal and sexual jealousy were constructed in the legal narratives without rigorous examination.

There was no direct confirmation that Beaver had ever admitted to Gladue that he had been with Chalifoux that night. The claim that he had confessed to sleeping with her was not based on any recorded statement made by Beaver but was instead presented

through defence submissions—lawyer arguments, not evidence tested in court (*R. v. Gladue*, BC Provincial Court, February 13, 1997, Reason for Sentencing, p. 84). This submission went unchallenged by the Crown, allowing it to become an accepted part of the narrative despite lacking direct evidence. Similarly, there was no independent verification that Beaver had made the insulting remarks attributed to him. The widely cited claim that he called Gladue “fat and ugly” and stated that she was “not as good as the others” was introduced in sentencing argument rather than being established through witness testimony (*R. v. Gladue*, BC Provincial Court, February 13, 1997, Reason for Sentencing, p. 79).

Gladue herself never took the stand to confirm whether she and Beaver had actually spoken about Chalifoux before the altercation. This absence of direct testimony from Gladue meant that key elements of the defence’s argument were based on speculation rather than verifiable fact. Instead, these claims were introduced through defence submissions and went unchallenged by the Crown, allowing them to shape the court’s final reasoning. By allowing these unverified claims to stand as fact, the court reinforced the portrayal of Beaver as a humiliating and unfaithful partner whose actions had provoke Gladue’s response, even though there was no direct evidence that such events had transpired as they were presented.

This selective reliance on certain statements while ignoring inconsistencies demonstrates how the legal narrative surrounding Beaver’s role in the case was constructed. The court’s decision to accept the defence’s framing without requiring corroboration ensured that Gladue’s emotional distress was prioritized over an accurate

assessment of the facts. This approach not only shaped the sentencing outcome but also influenced subsequent interpretations of the case in legal and academic discourse.

While these claims were accepted as mitigating factors in Gladue's sentencing, the testimony that contradicted this narrative received far less scrutiny. Mr. Gretchin, a neighbor, testified that he heard loud noises coming from Gladue's apartment and a woman shouting, "I'm sick and tired of you fooling around with other women." When he went to check, he saw Gladue running after Beaver, while Beaver frantically banged on a neighbor's door, pleading, "Let me in! Let me in!" (*R. v. Gladue*, B.C. Provincial Court, May 22, 1996, Preliminary Hearing, Day 1, p. 61). Despite the clear indication that Beaver was actively trying to escape the situation rather than acting aggressively, this aspect of the case was not meaningfully considered in the final sentencing.

The forensic evidence presented in court further complicated the assumption that Beaver was the aggressor. The autopsy revealed that Beaver had a minor stab wound on his right upper arm, suggesting that he had been stabbed inside the apartment before the final altercation took place outside (*R. v. Gladue*, B.C. Provincial Court, February 13, 1997, Reason for Sentencing, p. 79). A paring knife with traces of Beaver's blood was discovered on the living room floor, further supporting the possibility that a struggle had taken place indoors before Gladue pursued him outside.

Despite this, the court did not consider whether Beaver had acted in self-defence. Instead, Gladue's bruises on her arm and collarbone were treated as the only physical evidence of a struggle, reinforcing the assumption that Beaver had attacked her (*R. v. Gladue*, B.C. Provincial Court, February 13, 1997, Sentencing Proceedings, p. 25). The forensic inconsistencies in the case, including the presence of multiple weapons and the

sequence of injuries, were not examined critically. This ensured that Beaver's actions remained fixed within the established narrative of provocation and aggression, while alternative explanations for the altercation were not explored.

The legal reasoning in *R. v. Gladue* was not simply a neutral assessment of the events of one night but rather a structured narrative that aligned with colonial frameworks of Indigenous masculinity. By emphasizing Beaver's alleged infidelity and the claim that he had provoked Gladue's actions, the court allowed the defence to redirect attention away from Gladue's threats and pursuit of Beaver. This selective framing reinforced a one-dimensional portrayal of Beaver as an unfaithful and volatile Indigenous man whose actions ultimately justified the violence committed against him.

The case illustrates how legal narratives are not merely about establishing facts but about shaping memory and reinforcing state power over Indigenous identities. The court's treatment of Reuben Beaver was part of a broader colonial strategy that continues to regulate and criminalize Indigenous masculinity, ensuring that Indigenous men are framed as violent and unworthy of protection under the law.

Academic Narratives Surrounding Reuben Beaver

The portrayal of Reuben Beaver in *R. v. Gladue* did not end with the legal case. Instead, it was taken up by scholars who expanded upon the existing narrative, further entrenching the image of Indigenous men as violent and dangerous. The case has become a landmark decision frequently referenced across various disciplines, including law, criminology, gender studies, and Indigenous studies. As a result, interpretations of Beaver's role in *R. v. Gladue* have shaped academic discourse in ways that remain largely unchallenged.

The works of Arunita Das (2020), Carmella Murdocca (2013), Elizabeth Sheehy (2013), and Gillian Balfour (2008) have contributed to the continued framing of Beaver as an aggressor, relying on selective, incomplete, and sometimes unverified evidence. These scholars' interpretations are not only repeated within their own analyses but are frequently cited by others, solidifying a narrative that presents Beaver's actions and character as definitive rather than contested.

The way these citations function within academic discourse is significant. Each successive work that references Arunita Das, Carmella Murdocca, Elizabeth Sheehy, or Gillian Balfour often extends their interpretations without critically engaging with the original legal record. Over time, Reuben Beaver's portrayal has become increasingly detached from the complexities of his life and the specific context of the case. For instance, Murdocca's assertion that Beaver raped Tara Chalifoux—despite no such claim appearing in court documents—has been cited by later scholars as though it were an established fact. Similarly, Balfour's reference to a non-existent presentence report on domestic violence has shaped broader discussions on gendered violence in legal scholarship, despite its inaccuracy.

This pattern recalls Edward Said's (1978) critique of Orientalist scholarship, where representations gain authority through self-referential "system of relationships" that allows almost any claim to be repeated without fear of contradictions (Said, 1978, p. 94). In the same way these misrepresentations, once cited and re-cited, accrue legitimacy within the field, reinforcing colonial narratives of Indigenous masculinity as inherently violent. Such practices raise serious concerns about scholarly rigor and reflexivity, suggesting an unsettling resistance to revising foundational assumptions or interrogating

the positionality of authors—even within literature that professes critical or decolonial commitments.

What is particularly striking is that these portrayals are not just about Reuben Beaver—they actively participate in the construction of Indigenous masculinity as a colonial category. These narratives do not simply describe individual Indigenous men; they delimit what Indigenous men are permitted to be. The exercise of control here operates not merely through direct criminalization, but at the symbolic level—through the regulation of possibility itself. By repeatedly framing Beaver as violent, abusive, and unfaithful, these scholars contribute to a larger discourse in which Indigenous masculinity is imagined as inherently dangerous. This mode of power mirrors the historical function of colonial legal systems, which have long positioned Indigenous men as threats to be contained through incarceration, surveillance, and the denial of subjecthood.

This process reflects a broader contradiction in the scholarship. In an effort to highlight how the legal system fails Indigenous women, these scholars reinforce the very colonial mechanisms they critique by extending the criminalizing gaze toward Indigenous men. The justice system has long relied on narratives of Indigenous male violence to justify state control, and rather than challenging this framing, these scholars reproduce it in academic form. Their work, while framed as advocacy, ultimately contributes to the ongoing marginalization of Indigenous men by reinforcing the assumption that they are predisposed to violence. In doing so, they participate in the regulation of Indigenous masculinity, defining it through the very stereotypes that have long served as tools of colonial oppression.

The responsibility of scholars in producing and perpetuating such narratives cannot be ignored. These representations also inform how justice is administered under the Gladue framework, *R. v. Gladue* is not merely precedent—it is a guideline that shapes sentencing across Canada. Scholars have observed alarming trends. Debra Parks (2013) critiques the gap between Gladue’s intent and its implementation, noting that “the promise of Gladue has been undermined by a shallow application of its principles and an overreliance on individualized accounts of trauma divorced from the colonial structures that produce it” (Parks, 2012, p. 24). Jonathan Rudin (2008) similarly warns of the risk that “Gladue reports become a list of problems rather than a context of understanding” (Rudin, 2008, p. 688). When academic portrayals—like those of Beaver, feed into the assumptions underpinning Gladue reports, the effect to re-inscribe colonial control under the guise of reform. These critiques demonstrate that academic misrepresentations don’t just mischaracterize Beaver—they risk determining who is considered redeemable and who is found beyond redemption within a system claiming to pursue restorative justice (Rudin, 2008, p. 134).

This section examines how these academic portrayals perpetuate the rhetoric introduced in the legal case, reinforcing colonial frameworks that position Indigenous men as dangerous and unworthy of complexity. While *R. v. Gladue* has been widely cited as a case that exposes systemic injustices faced by Indigenous women, the ways in which scholars have engaged with Beaver’s portrayal raise critical questions about how Indigenous men are positioned within both legal and academic discourse. These portrayals, built on inaccuracies and selective readings, demonstrate how Indigenous

men, even in death, remain subject to discourses that deny them complexity and humanity.

By examining how scholars have uncritically repeated and expanded on these portrayals, this section reveals how academic discourse has sustained and amplified the rhetoric introduced in the legal case. Scholars have a responsibility to critically engage with sources, verify claims, and challenge dominant narratives rather than reproducing them. The failure to do so not only distorts historical and legal records but also reinforces structures of oppression that Indigenous men continue to face. Rather than breaking away from colonial framings, these narratives ensure their persistence, demonstrating that the very injustices scholars seek to expose for Indigenous women are, in turn, inflicted upon Indigenous men.

Arunita Das (2020): Oversimplification and Hearsay

Legal scholar Arunita Das depicts Reuben Beaver as the instigator of the events leading to his death by centering Jamie Gladue's claim that he insulted her, calling her "fat and ugly," and presenting this as proof of his supposed cruelty and verbal abuse (Das, 2020, p. 4). While it is indeed possible that Beaver made this remark—many legal cases involving intimate partner violence hinge on conflicting personal testimony—Das's uncritical acceptance of this claim as fact despite the absence of corroborating evidence or witnesses, raises important questions about scholarly responsibility. When academics present unverified allegations as truth, especially in cases where the individual cannot respond or defend themselves, they risk reinforcing harmful narratives without sufficient scrutiny. Additionally, Das underscores Beaver's alleged infidelity as a key factor in the conflict, even though the claim surfaced only after his death in a statement made by

Chalifoux and was never legally substantiated. This cumulative effect of these assertions is to construct a version of Beaver that aligns with entrenched stereotypes of Indigenous masculinity—violent, unfaithful, and abusive—without critically engaging the evidentiary basis or the colonial context in which these portrayals arise.

In discussing the details of the abuse that Jamie Gladue experienced, Das states “...in his submission by defence, Mr. King submitted some photographs taken of Gladue shortly after her arrest. These exhibits entered as evidence show Gladue suffering detailed instances of abuse and neglect by Beaver. Photographs revealed bruises suffered on the night of the murder and included faded injuries from previous days. Gladue advised her counsel that Beaver was ‘a very good man...until he drank,’ and at this time, he was abusive” (*R. v. Gladue* Proceedings at Sentencing, p. 12). What is interesting about this is Reuben Beaver’s blood alcohol on autopsy indicated that he had a blood alcohol concentration of a hundred and six milligrams which is generally associated with a mild to moderate impairment (*R. v. Gladue* Proceedings at Sentencing, p. 7). Das overlooks significant details from the court records that challenge her framing of Beaver. For instance, the bruises observed on Gladue were presented as evidence of Beaver’s violence. However, alternative explanations suggest these bruises may have been caused by Beaver defending himself or attempting to escape further harm during the altercation. Notably, Mr. Gretchin, a neighbor who witnessed parts of the conflict, only heard Gladue’s voice, raising questions about who the aggressor was and what transpired during the struggle. Das’s analysis assumes Beaver’s guilt without interrogating the broader context or the limitations of the evidence.

By presenting Beaver as an unfaithful and verbally abusive partner, Das simplifies the complexities of the case and perpetuates a one-dimensional narrative of Indigenous male violence. This narrow framing aligns with colonial stereotypes and undermines the opportunity for a nuanced understanding of the systemic and historical factors influencing the lives of both Beaver and Gladue.

Das's portrayal of Reuben Beaver relies on an uncritical acceptance of Jamie Gladue's claims while omitting evidence that complicates this framing. By centering hearsay as fact and ignoring alternative interpretations of the case, Das extends the legal portrayal of Beaver as an aggressor without interrogating its basis. In doing so, her work contributes to the broader construction of Indigenous masculinity as inherently violent, reinforcing colonial narratives that position Indigenous men as threats rather than as individuals shaped by systemic forces. This unquestioned repetition in academic discourse allows these portrayals to take on the appearance of truth, shaping how both legal scholars and students come to understand Indigenous men within the justice system.

The refusal to engage with competing interpretations is not merely an oversight—it signals a deeper epistemic failure. When scholars fail to examine the evidentiary basis of their claims or refuse to entertain possibilities that complicate dominant narratives, the conditions for reasoned argumentation collapse. In such moments, the appearance of critical inquiry is maintained, but its substance is hollow. Instead of confronting the complexity of Reuben Beaver's life and the ambiguities of the case, the narrative becomes ideologically overdetermined—where any suggestion that he may not fit the role of aggressor is dismissed not through argument, but through silence. This tendency reflects a broader academic discomfort with examining Indigenous masculinity outside of

violent frameworks, particularly when doing so risks challenging prevailing assumptions about gender, victimhood, and power.

Carmella Murdocca (2013): Unsubstantiated Claims and Academic Misrepresentation

Criminologist Carmella Murdocca's analysis into *To Right Historical Wrongs* is compromised by her failure to engage with essential primary sources such as the preliminary hearing transcripts. Instead, she relies heavily on the agreed-upon facts outlined in the sentencing decision, which distorts the narrative of *R. v. Gladue*. A clear example is her assertion that Gladue caught Beaver and Chalifoux coming down the stairs of Chalifoux's townhouse, supposedly confirming Gladue's suspicions of infidelity. However, this version of events was never established as fact. In her testimony, Chalifoux explicitly stated that while Beaver had been in her room, she did not see how he left. This directly contradicts the narrative adopted in the sentencing decision and uncritically repeated by Murdocca. By overlooking such discrepancies and failing to verify the factual basis of her claims, Murdocca perpetuates a narrative that lacks evidentiary grounding and misrepresents the case.

More troubling is the introduction of an allegation that Beaver raped Chalifoux—an assertion entirely absent from the court record and directly contradicted by Chalifoux's own preliminary hearing testimony. Chalifoux clearly stated she did not have sex with Beaver; rather, when he made an advance toward her, she pushed him away and he immediately stopped and left (British Columbia, 1996, May 22, Preliminary Hearing Day 2, p. 21). Despite this, Murdocca (2013) claims that "Gladue did not kill in a jealous rage but was responding to being a victim of abuse and to the fact that her sister had been raped by her common-law partner" (p. 80). She bases this assertion on Kim Pate's

conference paper *Aboriginal Women and Their Over-Representation in Prison*, presented at a Gladue conference—a source that, despite extensive efforts including attempts to contact Murdocca, Pate, and Osgoode Hall, could not be located for verification.

This is significant for two reasons. First, it demonstrates how unverified claims can enter academic discourse and unjustly reinforce colonial stereotypes that depict Indigenous men as sexually violent, even when directly contradicted by primary evidence. Second, it highlights the critical importance of grounding serious allegations in the factual record to avoid perpetuating harmful and unfounded narratives about Indigenous masculinity. When unverifiable sources are cited, they risk becoming unchallengeable truths, shaping both public perception and scholarly understanding without proper scrutiny.

This example illustrates a broader issue in academic research: when scholars lack full access to court records or approach a case with a predetermined narrative, selective or inaccessible evidence is often used to validate assumptions rather than to engage critically with the complexities of the case. Such reliance on unverifiable or distorted sources not only obscures the historical record but also enables the unchecked reproduction of unsubstantiated claims. In this context, Murdocca's misrepresentation perpetuates harmful stereotypes of Indigenous men as sexual predators, collapsing complexity into colonial tropes and erasing the broader systemic forces that shaped Reuben Beaver's life and the circumstances of the case.

What makes Murdocca's framing particularly concerning is that she presents a claim of sexual violence that is wholly unsupported by legal documentation as if it were fact, thereby reinforcing racialized tropes of Indigenous men as inherently dangerous—a

stereotype deeply embedded in the colonial project. As her work is cited by other scholars, this distortion gains authority, allowing colonial narratives to persist and circulate unexamined.

Moreover, Murdocca's repetition of the rape allegation at both the beginning and end of her chapter further entrenches this narrative. While Chalifoux's brief mention of having "bad memories" might suggest past trauma, interpreting this as evidence of rape—without additional context or corroboration—is speculative at best. Scholars have an ethical responsibility to represent facts with precision, especially when advancing serious claims of sexual violence. By implying that Tara was raped without adequate evidence, Murdocca risks crossing into the realm of sensationalism, with potentially damaging consequences.

This repetition ultimately shapes how Reuben Beaver is remembered, encouraging readers to believe a rape occurred when, based on available testimony, it did not. In turn, this narrative reinforces portrayals of Beaver as violent and unfaithful, distorting his memory both legally and socially. Presenting unverified allegations as fact not only departs from the record but also perpetuates a sensationalized and racialized portrayal that furthers the colonial project.

More broadly, Murdocca's reliance on unverified claims underscores how so-called "agreed-upon facts" can evolve into exaggerated truths when primary records are inaccessible. Researchers who cannot afford transcripts or who face systemic barriers to accessing them often depend on secondary interpretations, unintentionally reproducing inaccuracies. These distortions then become embedded in academic discourse, reinforcing colonial biases through repetition.

Ultimately, Murdocca's framing contributes to the construction of Reuben Beaver as a hyper-violent, predatory figure, reinforcing harmful stereotypes about Indigenous masculinity. By centering an unsubstantiated claim, her narrative diverts attention away from the structural and colonial forces that shaped both Gladue's and Beaver's lives, replacing complexity with a reductive account that upholds rather than challenges systemic injustice.

Gillian Balfour (2008): Misleading Assertions and Incomplete Evidence

The work by Murdocca on Beaver is not anomalous. Similarly, criminologist Gillian Balfour's analysis is based on incomplete and inaccurate evidence, particularly in her assertion that a presentence report documented domestic violence in Beaver and Gladue's relationship (Comack & Balfour, 2004, p. 109). However, no such report exists in *R. v. Gladue*, suggesting that her interpretation likely relied on selectively available online materials rather than the full legal record. Balfour also references Jamie Gladue's claim that Beaver called her "fat and ugly," citing Indigenous scholar Patricia Monture instead of the court documents available on CanLII. Notably, Monture's account was not based on a published primary source but was instead attributed to a personal conversation with Balfour (Comack & Balfour, 2004, p. 109). This raises serious questions about scholarly rigor and methodology. Does citing an Indigenous scholar in place of a legal document lend the claim greater legitimacy, particularly when it reinforces a narrative of Indigenous male violence? Such a methodological choice appears less about evidentiary precision and more about sustaining a predetermined interpretive framework. When scholarship circulates within a closed loop of selective citation and unverified claims, it risks

becoming self-referential—an echo chamber that amplifies assumptions while silencing complexity.

While Balfour's focus on systemic barriers faced by Indigenous women is important, she assumes and may overstate Beaver's violence, portraying him as a persistent abuser despite limited evidence. His 1994 assault conviction, resulting in a 15-day intermittent sentence and one year of probation, is framed as definitive proof of his violent tendencies, yet it remains the only recorded instance of physical aggression. The court did not suggest it reflected a pattern of behavior.

Balfour's use of a non-existent presentence report is not merely a factual inaccuracy—it is an extension of the legal system's framing of Reuben Beaver as a violent offender. By reinforcing this narrative without critically engaging with primary sources, Balfour's work illustrates how academic research can replicate, rather than interrogate, the assumptions embedded within legal discourse. In such cases, scholarship risks becoming less a tool of critical inquiry and more a form of academic apologetics—defending dominant narratives under the guise of analysis. This methodological failure has broader consequences, shaping discussions on gendered violence while neglecting the ways in which the criminalization of Indigenous men operates as a colonial construct. By reinforcing a predetermined interpretation, Balfour's work does not challenge the justice system's portrayal of Indigenous men but instead contributes to its endurance within both legal and academic frameworks.

Elizabeth Sheehy (2014): Selective Use of Testimony and Assumptions

Legal scholar Elizabeth Sheehy critiques the systemic barriers Indigenous women face in the justice system, but in doing so, she reinforces problematic assumptions about Reuben

Beaver's character. Sheehy selectively references testimony from the preliminary hearing, often interpreting it in ways that extend beyond what the court documents support. For instance, she suggests that Tara Chalifoux's distress during cross-examination stemmed from abuse by Beaver, despite Chalifoux's explicit statement that her memories were unrelated to him and instead linked to a prior incident in her life (*British Columbia, 1996, May 22, Preliminary Hearing Day 2, pp. 38–39*).

Sheehy also emphasizes the self-defence argument, despite the court's rejection of BWS as a plausible defence. The court explicitly ruled that Jamie Gladue was not a battered woman and that her actions were not consistent with self-defence. Yet, by framing Beaver as a persistent abuser, Sheehy reinforces a narrative of Indigenous male violence without adequately engaging with the complexities of the case or the limitations of the evidence.

Her selective engagement with the preliminary hearing distorts the complexity of Beaver's role in *R. v. Gladue*, allowing academic discourse to further criminalize him beyond what was legally established. By implying that Chalifoux's distress was connected to abuse by Beaver—despite her explicit denial—Sheehy contributes to the broader pattern of positioning Indigenous men as inherently violent figures whose identities are defined by aggression. This method of interpretation does more than misrepresent legal records; it actively participates in the colonial construction of Indigenous masculinity as a threat that must be regulated, reinforcing the very structures of oppression that Sheehy critiques elsewhere in her scholarship.

Sheehy states: "...she had been in a common-law relationship with Beaver for almost three years, making it probable that since he had assaulted her while she was

pregnant, his violence was well out of control” (Sheehy, 2014, p. 191). This is not a factual claim but an assumption—one that takes a single conviction and extrapolates a presumed pattern of abuse without supporting evidence. In reality, Beaver had one conviction for assaulting Gladue while she was pregnant, for which he served a 15-day intermittent sentence and one year of probation. Rather than presenting these limited legal facts, Sheehy constructs an implied history of escalating violence, casting Beaver as a continuously dangerous offender. This narrative move reflects what Michel Foucault identifies as the production of “truth” through legal discourse—a process in which the state and its institutions do not merely document reality but actively shape it. As Foucault writes, “We are subjected to the production of truth through power and we cannot exercise power except through the production of truth” (Foucault, 1977, p. 27). By framing Beaver as a predictable and pathological figure, Sheehy’s account participates in a broader discursive formation that renders Indigenous men legible only as threats, allowing legal and academic systems to reproduce their criminalization under the appearance of neutral fact.

When Chalifoux, Gladue’s sister, was cross-examined by the defence, she explained that Beaver had come to her room that evening, they kissed, got undressed, but she told him no, and he left. Chalifoux stated, “it brought back bad memories,” but also explicitly told the court that these memories were not related to Beaver or anything he had done. Sheehy notes this in her book but alters the framing by adding the word “abuse” after the citation. Chalifoux did not use that word in her testimony; it was introduced by the defence lawyer. Sheehy writes “related to abuse”—a subtle but significant insertion that reshapes the reader’s understanding, implying that Beaver

engaged in a pattern of sexual violence. This aligns with Murdocca's later claim that he was a rapist, despite no legal or testimonial evidence supporting such an accusation.

This form of narrative-building further reinforces the automatic criminalization of Indigenous men by transforming an ambiguous event into one that fits the colonial stereotype of the predatory Indigenous male. Sheehy also asks: "How did the lawyers and judges involved in Gladue's case reach the conclusion that Gladue was not a battered woman? Was this a factual claim or a moral one?" (Sheehy, 2014, p. 198). She acknowledges that Gladue's alcohol consumption, jealousy, anger, and aggression contributed to the court's rejection of BWS as a valid defence. However, her argument remains structured to justify Gladue's actions while criminalizing Beaver. The judge explicitly stated that Gladue did not fit the criteria for BWS because there was no evidence of ongoing abuse or that she feared for her life. Rather than questioning how the legal system selectively determines who qualifies as a battered woman, Sheehy suggests that the real issue was that Gladue's actions were seen as morally unacceptable for a woman. This framing reinforces gendered colonial constructs of victimhood while protecting the restorative justice model and, in turn, upholding the criminalization of Indigenous masculinity.

Sheehy's approach to *R. v. Gladue* follows a colonial pattern that constructs Indigenous men as irredeemable aggressors while selectively positioning Indigenous women as victims when it suits the legal narrative. For example, she cites Lloyd Chalifoux's testimony: "Gladue and Chalifoux's father, Lloyd Chalifoux, testified that Beaver engaged in predatory sexual behavior" (Sheehy, 2014, p. 192). Yet, nowhere in Lloyd Chalifoux's actual testimony does he state that "Beaver engaged in predatory

sexual behavior.” Sheehy instead relies on his vague suspicions, stating: “He was very protective of his children. He recalled that when his kids were younger, he had been suspicious of Beaver’s motives” (Sheehy, 2014, p. 192). This framing suggests that Beaver was much older than Chalifoux’s children, when in fact, he was only one year older than Jamie Gladue. Chalifoux’s statement was based on suspicion, not evidence, yet it is incorporated as proof of Beaver’s criminal nature. This aligns with the colonial framework that presumes Indigenous men are inherently dangerous to women and children, a discourse long used to justify policies like residential schools and the Indian Act.

By layering together selective omissions of exculpatory evidence, the expansion of prior convictions, and the reinforcement of gendered colonial tropes, Sheehy is not merely analyzing the legal case—she is actively participating in the legal discourse that constructs Indigenous masculinity as inherently violent. This reflects a deeper power struggle that unfolds not at the level of evidence or debate, but at the level of possibility: what can be thought, what can be said, and who can be seen as complex. Within this epistemological constraint, Indigenous men like Beaver are constructed as legible only through violence, making alternate readings of their lives difficult, if not impossible, to imagine.

The violence of the Indigenous male is always assumed, always expanded, and always taken as truth, while alternative readings of the case remain buried or erased. Beaver’s violence was not an established fact but a courtroom necessity—constructed to serve legal arguments rather than to reflect objective truth. The court’s portrayal of him was not critically examined but instead absorbed by scholars, shaping how Indigenous

men are understood in both legal and academic discourse. This analysis is necessary because it disrupts the automatic reproduction of these portrayals, revealing how the legal system manufactures Indigenous male violence and how academic scholarship has too often failed to challenge it. The legal framing of Beaver as violent, aggressive, and dangerous was not about capturing the complexity of his individual life—it was about sustaining a broader colonial narrative that defines Indigenous men as inherent threats. Just as the Indian Act imposed legal categories that dictated how Indigenous men could be perceived and treated, modern scholarship continues this regulatory process by uncritically repeating the court’s framing. Rather than interrogating how these portrayals were constructed, scholars have often accepted them as given, allowing legal fictions to calcify into scholarly facts.

The misrepresentation of Tara Chalifoux’s testimony by Sheehy, and its later amplification by Murdocca, exemplifies how unverified or distorted narratives cascade through academic discourse, reinforcing stereotypes of Indigenous masculinity. This raises an urgent question: does academic literature produce new layers in the construction of Reuben Beaver, or does it simply recirculate the same colonial tropes under the appearance of scholarly authority?

Perpetuating Colonial Narratives

The academic amplification of unsubstantiated claims—such as Murdocca’s assertion of rape and Das’s emphasis on verbal provocation—reflects a troubling lack of accountability. These narratives reduce Reuben Beaver to a stereotype, obscuring the complexities of his life and reinforcing colonial constructions of Indigenous masculinity. Rather than engaging critically with the legal record, scholars have relied on hearsay,

unverified claims, and selective interpretations, ensuring that Indigenous men, even in death, remain defined by aggression and criminality.

The legal framing of Reuben Beaver as an aggressor did not end with *R. v. Gladue*—it was expanded through academic discourse, where misrepresented sources and unchecked claims solidified his portrayal as violent and morally deficient. When such narratives are repeatedly cited and re-cited, they gain legitimacy, making it increasingly difficult to challenge the assumption that Indigenous men are predisposed to violence. These portrayals do not merely describe an individual; they participate in the broader colonial project of defining Indigenous masculinity as inherently dangerous. By positioning Indigenous men as violent counterparts to victimized Indigenous women, these scholars reinforce the very legal frameworks they claim to critique, ensuring that colonial narratives remain intact.

This failure to critically examine the systemic forces shaping these portrayals has profound consequences. The persistence of these narratives justifies continued state control, surveillance, and incarceration of Indigenous men while ignoring the broader colonial structures that shape their realities. Instead of interrogating how colonialism constructs and regulates Indigenous masculinity, these scholars have often reproduced its logic, leaving Indigenous men trapped in a cycle of criminalization and erasure.

A counter-narrative approach is essential to breaking this cycle. This requires moving beyond surface-level critiques and engaging deeply with the legal and historical contexts that shape these portrayals. By centering marginalized voices and rejecting reductive interpretations, scholars can expose and challenge the dominant colonial narratives that continue to define Indigenous men through the lens of violence. This is not

merely an academic exercise—it is a necessary intervention into how Indigenous men are perceived, represented, and ultimately treated within both legal and social systems.

This distinction bears emphasis. The critique leveled against the scholars cited above is not confined to academic methodology or interpretation—it addresses a broader ethical and political failure. When scholarship reinforces uncritical portrayals of Indigenous men, it contributes to a wider network of symbolic and material violence. The concern here is not simply how Reuben Beaver has been represented in text, but how such representations uphold a system that continues to criminalize, silence, and erase Indigenous masculinity under the guise of legal and scholarly legitimacy.

The portrayal of Beaver in both legal and academic discourse reflects a larger historical process in which Indigenous men are criminalized and their complexity erased. As this chapter has demonstrated, *R. v. Gladue* is not just a case about one individual; it is a case study in how colonial legal and academic structures continue to frame Indigenous masculinity as inherently violent.

Conclusion

The *R. v. Gladue* case illustrates how colonial frameworks shape both legal outcomes and academic interpretations of Indigenous masculinity. Reuben Beaver's portrayal—reduced to a simplistic narrative of violence—reflects the systemic marginalization of Indigenous men within a justice system that criminalizes and regulates Indigenous bodies. This chapter has demonstrated how both the courts and academia relied on selective evidence, unverified claims, and reductive characterizations, reinforcing colonial stereotypes rather than critically engaging with the structural forces that shaped both Beaver and Gladue's lives.

Fanon's theories on the dehumanization of colonized subjects provide a critical lens for understanding how Indigenous men like Beaver are stripped of complexity and reduced to one-dimensional figures. Colonial systems construct and perpetuate stereotypes to justify control and exclusion, often portraying colonized men as inherently violent or morally deficient. The legal system's reliance on unverified claims of infidelity and verbal provocation reflects this broader colonial impulse to regulate Indigenous masculinity, framing it not as a lived identity but as a threat to social order.

Foucault's concepts of disciplinary power and biopower helps illuminates how these narratives function. Institutions like the legal system and academia regulate bodies and behaviors, constructing normative identities while pathologizing those that deviate. In *R. v. Gladue*, the court's framing Beaver as a violent aggressor exemplifies disciplinary power: by defining him through violence and even in death, the legal system reinforced its authority to surveil and correct Indigenous masculinity. At the same time, biopower operates at the level of population, producing broader narratives about which lives are deemed manageable, threatening, or expendable. Together, these mechanisms legitimize ongoing form of state control and criminalization of Indigenous peoples.

However, this portrayal was not confined to the courtroom. The academic literature that followed amplified and expanded these colonial frameworks. Scholars such as Murdocca, Sheehy, Balfour, and Das relied on selective evidence and unverifiable claims to frame Beaver as emblematic of the violent Indigenous man. Their work, while framed as advocacy, ultimately served the same colonial function as the legal system—to define, regulate, and pathologize Indigenous men. Rather than challenging the structures they claim to critique, these scholars reproduced the very logic of dehumanization and

control described by Fanon and Foucault, reinforcing the criminalization of Indigenous masculinity within academic discourse.

The legal and academic discourse surrounding Reuben Beaver reflects a longstanding pattern in which Indigenous men are positioned within a pre-existing colonial framework of criminality. His portrayal was not an objective assessment of events but a reflection of ingrained biases that cast Indigenous masculinity as inherently dangerous. These portrayals do more than shape how individual cases are understood—they uphold broader colonial narratives that justify the surveillance, punishment, and exclusion of Indigenous men while ignoring the systemic forces that shape their realities.

This chapter has shown how legal and academic narratives construct Indigenous masculinity in ways that reinforce colonial control. By tracing how courts and scholars have portrayed Indigenous men as inherently violent, it underscores the need to question these assumptions and the power structures they uphold. A counter-narrative approach becomes essential here, disrupting these entrenched portrayals by refusing to accept legal and academic framings at face value. Such an approach demands a deeper engagement with the colonial systems that shape these representations, pushing beyond surface critiques. By centering marginalized perspectives and rejecting reductive interpretations, scholars can challenge the dominant narratives that continue to define Indigenous men primarily through the lens of violence.

This is not simply an academic concern—it is a necessary intervention in how Indigenous men are perceived, represented, and ultimately treated within legal and social systems. Yet, in tracing the ways these narratives function, an underlying question emerges: Was this chapter ever really about Reuben Beaver? Or was he always a

reflection of something much larger—an Indigenous man whose life and death became secondary to the structures that defined him?

Chapter 5: Restorative Justice as Conditional Compassion in a Colonial System

Indigenous peoples remain vastly overrepresented in Canadian prisons, a fact repeatedly cited as evidence of systemic discrimination. According to the Office of the Correctional Investigator (Zinger, 2022), Indigenous adults comprise roughly 4.5% of Canada's population but over 32% of those in federal custody. This disproportion is often framed narrowly as a crisis of overrepresentation, inviting procedural remedies aimed at aligning incarceration rates with demographic representation. Such framing, however, risks obscuring a deeper colonial reality: it focuses on statistical concentration while sidestepping the more troubling question of over-criminalization—why Indigenous people are so persistently surveilled, policed, charged, and prosecuted in the first place. High incarceration rates are not the root injustice but rather symptoms of a legal and political order that systematically targets and governs Indigenous peoples through criminal law.

This chapter argues that restorative justice initiatives, specifically section 718.2(e) of the *Criminal Code*—which instructs judges to consider “all available sanctions other than imprisonment” with particular attention to the circumstances of Indigenous offenders—and its interpretation by the Supreme Court of Canada in *R. v. Gladue* (1999), do not disrupt this colonial foundation. Instead, they refine and modernize it. Though presented as humanitarian responses to overrepresentation, these measures often operate as technologies of governance that translate colonial control into the language of compassion, healing, and cultural relevance. They discipline Indigenous difference into legible, manageable forms, keeping Indigenous bodies under state oversight while appearing benevolent.

As earlier chapters have demonstrated, Canadian law manages Indigenous identity, vulnerability, and criminality in ways that often mask colonial violence behind neutral legal principles. Doctrines and provisions ranging from the Indian Act to the “crumbling skull” rule to section 718.2(e) function to individualize harm, obscure broader historical contexts, and normalize ongoing state control. In doing so, the law frames Indigeneity as a special condition requiring both regulation and compassion—ultimately continuing to reproduce systemic criminalization.

What follows demonstrates that section 718.2(e) and the jurisprudence surrounding *R. v. Gladue* do not principally aim to challenge why Indigenous peoples are over-policed, over-charged, and over-prosecuted. Instead, these sentencing provisions adjust outcomes only after guilt has been established, managing the consequences without confronting the colonial conditions that render Indigenous people more likely to be criminalized in the first place. This chapter develops that argument in four stages: first by outlining its theoretical and methodological framework; then by reviewing key literature and legal critiques; next by examining how these dynamics manifest in correctional practice and expectations surrounding Indigenous masculinity; and finally, by tying these insights back to the dissertation’s broader thesis on colonial governance through criminalization.

Theoretical Framework and Methodology

This chapter employs an integrated critical theoretical and methodological approach to examine how Canada’s restorative justice frameworks—particularly section 718.2(e) of the *Criminal Code* and the Supreme Court’s *R. v. Gladue* (1999) decision—do not disrupt colonial control but instead refine and extend it. It draws on three interconnected

frameworks: Michel Foucault's (1977) concepts of disciplinary power and biopolitics, Frantz Fanon's (1963) critique of colonial pathologization, and Robert Innes's (2015) analysis of Indigenous masculinity, read alongside Kim Anderson's (2016) work on Indigenous gender and the Native Women's Association of Canada's (2012) studies on policy impacts. Together, these perspectives reveal how state initiatives that appear compassionate or culturally responsive often function as instruments for disciplining Indigenous bodies and regulating Indigenous identities under the guise of care.

Foucault's theory of disciplinary power, particularly in *Discipline and Punish* (1977), is foundational for understanding how modern legal systems govern not just through overt punishment but by reshaping the inner subjectivity of those they target. Contemporary carceral institutions—prisons, parole boards, mandated treatment programs—rely on surveillance, detailed records, and psychological assessments to compel individuals to internalize state norms. Within *R. v. Gladue* (1999) processes, this appears in the expectation that Indigenous offenders will recount personal failings, disclose trauma histories, participate in therapy, and demonstrate remorse in forms legible to correctional authorities. This is not simply compassion but a means of producing self-regulating subjects who adopt the moral frameworks demanded by the state. Foucault's concept of biopolitics sharpens this analysis by showing how power operates at the level of populations. Section 718.2(e) is explicitly biopolitical: it does not recognize Indigenous nations or inherent rights but addresses a demographic problem—overrepresentation—by imposing special sentencing rules on a racialized group, treating Indigeneity as a collective risk to be managed through targeted interventions.

Fanon's critique in *The Wretched of the Earth* (1963) provides further insight by showing how colonial systems pathologize the colonized. Under this logic, acts by oppressed peoples are not seen as responses to dispossession and structural violence but as evidence of inherent moral or psychological deficiency. In the Canadian context, even when Gladue principles direct courts to consider colonial histories—residential schools, child welfare apprehensions, systemic poverty, land theft—these are often reframed as individual or familial pathologies requiring therapeutic correction. Colonial harm becomes medicalized, shifting the remedy from political redress or structural change to individualized treatment plans and community supervision orders. The Indigenous offender is positioned as a patient of state benevolence, needing to be fixed, while the colonial system that produced the harm remains unchallenged.

This is deepened by Innes's (2015) analysis of Indigenous masculinity, along with Anderson's (2016) and NWAC's (2012) work on gender, which highlight how colonial systems have long constructed Indigenous men as violent, irresponsible, and emotionally unstable, justifying increased policing, incarceration, and intervention. Correctional programming for Indigenous men frequently emphasizes anger management, confession, and emotional rehabilitation, implicitly demanding performances of humbled masculinity to secure state compassion. In my own experience piloting culturally specific programming inside medium and maximum-security institutions, I observed how parole boards often praised Indigenous men who publicly displayed remorse or recounted personal flaws, while men who maintained a reserved or stoic demeanor—sometimes consistent with cultural norms or protective self-control—were deemed unready for

release. This dynamic reveal how restorative justice processes discipline Indigenous men into narrowly acceptable forms of contrition and emotional expression.

Methodologically, this chapter combines critical discourse analysis and counter-narrative approaches. It examines legal texts such as *R. v. Gladue* (1999) and *R. v. Ipeelee* (2012) decisions, sentencing judgments, Gladue reports, and correctional program materials to trace how they construct Indigenous identity, criminality, and redemption. Reading against the grain of official narratives that position Gladue as a progressive departure from colonial patterns, this analysis exposes how such frameworks often repackage governance in therapeutic or culturally adapted forms that continue to subordinate Indigenous subjects. These textual critiques are anchored by empirical insights from my direct work conducting needs assessments and developing programming inside correctional facilities, offering grounded observations of how these theoretical dynamics operate in practice—how confessions of trauma are structured, how readiness for reintegration is evaluated, and how specific performances of remorse are rewarded.

Taken together, these frameworks and methodological tools reveal that section 718.2(e) of the Criminal Code—and the Gladue principles developed by the Supreme Court to guide its application, which require judges to consider the unique systemic and background factors affecting Indigenous offenders and to explore alternatives to incarceration—do not signify ruptures with colonial governance. Instead, they are sophisticated adaptations of it, shifting overtly punitive control into more subtle forms of disciplinary and biopolitical management, justified through the humanitarian language of healing, rehabilitation, and cultural relevance.

This is not a peripheral phenomenon. The biopolitical management of Indigenous overrepresentation is a central feature of how Canadian criminal law sustains itself as morally legitimate. Section 718.2(e) does not arise from an acknowledgment of land theft, treaty violations, or structural racism requiring reparation. It emerges instead from statistical irregularity: the presence of too many Indigenous bodies in prisons relative to their proportion of the general population. This transforms what is fundamentally a question of colonial domination into a technocratic problem of demographic imbalance.

The language of overrepresentation is itself revealing. It abstracts away from histories of forced displacement, economic marginalization, and legal discrimination that make criminalization predictable. It turns systemic violence into a numeric anomaly to be remedied through altered sentencing practices. The deeper work of dismantling the structures that produce Indigenous poverty and criminalization is never on the table.

The state then extends this managerial approach by commissioning or requesting Gladue reports, which the Crown, the defence, or the Indigenous offender themselves may initiate. Although Gladue reports do not include formal psychological assessments, they draw on social histories, community input, and personal backgrounds to provide context for sentencing. In many cases, Gladue information is included in a pre-sentence report prepared by a probation officer. However, the narratives and personal histories in these reports can still serve as tools for surveillance and control. What is meant as contextual evidence of colonial harm can, paradoxically, be used to assess risk, justify probation conditions, mandate therapeutic interventions, and increase monitoring. In this way, Gladue evidence—rather than reducing punishment—can be reframed as an aggravating factor against Indigenous offenders.

A parallel dynamic appears in correctional settings. Indigenous men are frequently enrolled in specialized programs that blend cultural teachings with cognitive-behavioural models. While these can offer important spaces for reflection and community, they also implicitly frame Indigenous male experience as in need of controlled emotional reordering. Anger management modules repeated confessional exercises, and therapeutic sessions all function to reshape Indigenous masculinity into forms that the state deems safe. Those who fail to conform to these expectations—who resist vulnerability or decline to perform remorse—are often described in parole hearings as lacking insight or accountability.

This echoes Fanon's warning that colonial systems medicalize the very conditions they produce, pathologizing resistance or stoicism as symptoms to be treated. It also illustrates Foucault's insight that modern power does not merely repress; it produces subjects who internalize the norms of the dominant order. Under Gladue, the state's intervention is portrayed as compassion, but it is deeply invested in ensuring that Indigenous men become governable through therapeutic compliance.

Finally, by tracing these dynamics back to gender, we see how Gladue processes perpetuate colonial constructions of Indigenous men as inherently volatile and requiring special corrective measures. The law's humanitarian embrace is thus conditional. It demands that Indigenous men expose personal wounds, demonstrate public contrition, and submit to rehabilitation regimes. In doing so, it both reaffirms longstanding stereotypes of Indigenous male danger and legitimizes the continued authority of the criminal justice system over Indigenous life.

Literature Review

The development of restorative justice practices in Canada must be situated within a broader history of colonial domination, systemic dispossession, and the longstanding criminalization of Indigenous peoples. Scholars such as Patrick Wolfe (2006) have argued that settler colonialism operates through a “logic of elimination,” seeking not merely to extract resources or exploit labour but to erase Indigenous political, cultural, and legal orders altogether. Building on this, Quinless (2022) highlights how institutions like the residential school system, the reserve system, and entrenched patterns of systemic racism have embedded structural violence into every facet of Indigenous life, making colonial domination an enduring feature rather than a historical moment. Coulthard (2014) furthers this critique by contending that colonialism persists as an ongoing structure that continues to regulate Indigenous peoples through legal, economic, and social mechanisms. This body of work underscores that the criminalization of Indigenous communities should not be understood as an unfortunate anomaly but as a predictable function of a colonial state invested in managing and regulating Indigenous existence.

Criminalization has long served as a critical tool in this colonial project. As Stark (2016) demonstrates, Indigenous political resistance during the nineteenth century was systematically reframed as criminal conduct, allowing the colonial state to delegitimize Indigenous authority and consolidate settler sovereignty under the guise of law and order. This practice continues into the present. Van Styvendale (2022) argues that interconnected systems of policing, prisons, child welfare, and education work together to disproportionately criminalize Indigenous peoples, maintaining a colonial order that normalizes Indigenous suffering and death to uphold settler dominance. In examining the

experiences of individuals like Cory Cardinal, Van Styvendale reveals how these institutions manage Indigenous bodies and communities in ways that are fundamentally about preserving colonial power, not administering neutral justice.

The criminalization of Indigenous men occupies a particularly fraught space within this colonial landscape. Innes and Anderson (2015) note that Indigenous men are predominantly depicted as perpetrators of violence, rarely as individuals shaped by or responding to colonial harm. This narrative obscures the structural conditions that give rise to cycles of harm and justifies the continued surveillance and incarceration of Indigenous men as inherently suspect. Such stereotypes are not incidental; they are deeply gendered tools of colonial governance that sustain images of Indigenous masculinity as hyper-violent, emotionally deficient, and in constant need of correction. This framing ensures that interventions—whether punitive or therapeutic—remain focused on managing Indigenous men’s behaviour rather than addressing the broader colonial conditions that shape it.

Even critiques that aim to protect Indigenous women have sometimes reinforced these reductive constructions. Feminist scholars like Balfour (2008) and Cameron (2008) have rightly raised concerns that restorative justice processes might privilege offender rehabilitation over the safety of Indigenous women, particularly in cases of intimate partner violence. Yet in doing so, some of these critiques risk positioning Indigenous men primarily as threats, inadvertently reinforcing colonial stereotypes of deviance and danger. Murdocca (2013) similarly critiques how restorative justice reforms tend to pathologize Indigenous offenders, framing them as damaged subjects in need of correction, while failing to situate their lives within the broader context of ongoing

colonial dispossession. This underscores how even well-intentioned legal reforms can replicate colonial narratives, channelling resources into regulating Indigenous men rather than dismantling the systemic roots of harm.

The psycho-affective dimensions of colonialism further complicate these dynamics. Drawing on Frantz Fanon's concept of internalized colonialism and Coulthard's (2014) analysis of psycho-affective attachments, scholars have shown how colonial structures are not merely imposed externally but also internalized, shaping Indigenous identities and attachments in ways that can block genuine decolonization. This internalization means that any justice initiative failing to directly address both the psychological and structural impacts of colonialism risks reinforcing the very hierarchies it claims to dismantle. Restorative justice programs that demand individualized confessions of guilt and performances of emotional transformation—without confronting the collective, structural violence of colonialism—ultimately operate as technologies of governance that keep Indigenous men under the watchful eye of the state.

Taken together, this literature reveals that the criminalization of Indigenous peoples, and particularly Indigenous men, cannot be divorced from Canada's broader colonial project. Restorative justice initiatives like those developed under section 718.2(e) and *R. v. Gladue* are not neutral or purely benevolent responses to over-incarceration. Instead, they function within and often reinforce colonial structures that pathologize Indigenous life, obscure systemic violence, and demand that Indigenous men perform narrowly defined scripts of remorse and rehabilitation to access conditional compassion. By foregrounding these often-neglected dimensions, this dissertation contributes a necessary counter-narrative—one that challenges both the colonial

structures embedded in legal reforms and the scholarly silences that allow these dynamics to persist.

Analysis: Over-Criminalization, Gladue’s Conditional Compassion, and the Persistent Spectre of Violence

Section 718.2(e) of the *Criminal Code*, introduced as a legislative response to the glaring overrepresentation of Indigenous people in Canadian prisons, was intended to encourage courts to consider alternatives to incarceration by examining the unique systemic and background factors facing Indigenous offenders. The Supreme Court’s decision in *R. v. Gladue* (1999) elaborated on this mandate, emphasizing the need to address the legacy of colonialism, residential schools, and displacement. Yet rather than disrupting the colonial structures that produce Indigenous criminalization, these measures have often served to refine them.

At the heart of this framework are Gladue reports, which are supposed to provide courts with contextual information about the life experiences of Indigenous offenders. While these reports were envisioned as a tool to help judges understand the histories of Indigenous offenders to find alternatives to incarceration, they frequently function to repackage structural violence into individualized narratives of dysfunction. Cunliffe and Findlay (2017) demonstrate how Gladue reports tend to catalogue traumatic histories—substance use, poverty, foster care, family breakdown—primarily to assess risk and manage sentencing, not to demand structural redress. In doing so, they subtly shift responsibility back onto Indigenous individuals and families, framing colonial harms as personal or intergenerational pathologies requiring therapeutic intervention.

This logic is particularly pronounced for Indigenous men. Historical and contemporary stereotypes have long cast Indigenous masculinity as inherently violent,

irresponsible, and emotionally deficient (Innes, 2015; Anderson, 2016). The Native Women's Association of Canada (2012) underscores how policy narratives frequently depict Indigenous men as threats to familial and community stability, justifying ongoing surveillance and intervention. Gladue reports, correctional assessments, and parole hearings often replicate these colonial constructions. Programs tailored for Indigenous male offenders tend to emphasize anger management, emotional literacy, and domestic violence prevention—implicitly suggesting that Indigenous masculinity itself is suspect and must be reshaped into forms legible to settler authorities (Green, 2018).

The spectre of violence plays a decisive role here. Although *R. v. Ipeelee* (2012 SCC 13) sought to reaffirm Gladue by explicitly warning against the use of stereotypes that Indigenous offenders are inherently dangerous—stating that risk cannot be presumed on the basis of race—this has done little to alter practical outcomes. In parole decisions, bail hearings, and sentencing submissions, concerns about violence and public safety continue to dominate. As Cunliffe and Findlay (2017) note, Gladue considerations are often neutralized when an Indigenous offender is deemed violent or high risk, despite the Supreme Court's clear instruction that these stereotypes should not be determinative. Thus, even as the law formally disavows racialized notions of dangerousness, these ideas remain embedded in institutional practices.

Empirical and observational insights from correctional environments reinforce this pattern. In parole board hearings and correctional reports, success is frequently measured by how well Indigenous men conform to therapeutic scripts that emphasize remorse, acceptance of personal pathology, and emotional vulnerability. Men who can narrate their experiences through the expected language of trauma—confessing to

criminal thinking errors, expressing visible shame, or breaking down emotionally—are often rewarded with community-based recommendations or reduced security classifications (Green, 2018). Conversely, those who maintain composure, speak in culturally rooted but non-confessional ways, or resist framing their lives solely through damage are frequently categorized as lacking insight and consequently denied parole or alternatives to custody. These dynamics reveal how seemingly therapeutic or compassionate approaches are carefully calibrated, rewarding only those who meet the system’s expectations.

This pattern produces what might be termed conditional compassion. The state extends leniency to Indigenous offenders, particularly men, only when they submit to narratives that mark them as damaged subjects requiring corrective care. This does not dismantle the underlying structures of colonial governance; rather, it integrates Indigenous offenders into them by demanding confessions of pathology and emotional transformation that reaffirm settler norms of accountability and rehabilitation. Gladue, instead of fundamentally challenging the over-criminalization of Indigenous peoples, manages it by recasting punitive oversight as culturally sensitive compassion.

Moreover, by focusing almost exclusively on sentencing, section 718.2(e) and Gladue processes do not address the front-end dynamics of criminalization. They do not interrogate how policing practices disproportionately target Indigenous communities, how prosecutorial discretion amplifies minor charges, or how systemic socio-economic inequalities rooted in colonial dispossession continue to funnel Indigenous people into the criminal justice system at alarming rates (Roach & Rudin, 2000; Green, 2018). By the time Gladue is applied, the machinery of criminalization has already achieved its primary

goal: producing Indigenous subjects who must now be managed, treated, and rehabilitated.

There is a deeper danger in how this emphasis on Indigenous men's conduct is framed. When the primary legal and policy focus remains on correcting the behaviours of Indigenous men—on addressing their supposed propensity for violence—this leaves unexamined the broader structural forces that create cycles of harm and simultaneously diverts attention from collective healing. Concentrating exclusively on the behavioural risks that Indigenous men pose will never address, much less eliminate, violence against Indigenous women and children.

Indeed, continually representing Indigenous men as inherently violent has profound impacts of its own. It sustains stereotypes that ripple through policing practices, prosecutorial strategies, correctional policies, and even community interventions, ensuring that Indigenous men are always already under suspicion. This not only justifies ongoing surveillance and control but also distorts how communities can understand and respond to harm. It channels resources into managing Indigenous men rather than dismantling the colonial, economic, and social structures that perpetuate violence in the first place.

Moreover, by remaining fixated on individual wrongdoing, the criminal justice system rarely turns its attention to the collective impacts of colonial violence—land dispossession, cultural erasure, family separation—that continue to fracture Indigenous communities. The harms experienced by Indigenous women and children are often situated as failures of Indigenous men, reinforcing a narrative of Indigenous male deviance that eclipses the systemic roots of these dynamics.

The only viable path forward must move beyond simply correcting behaviors to addressing impacts—impacts that are historical and ongoing, structural as well as interpersonal. This means shifting from individualized therapeutic models of reform to approaches centered on collective healing, community restoration, and substantive redress for colonial harm. It also means recognizing that healing Indigenous men from the distortions and injuries inflicted by colonial violence is essential not just for them, but for creating conditions where Indigenous women, children, and communities can also thrive.

These insights also lay critical groundwork for the dissertation's conclusion, which argues that meaningful responses to Indigenous over-criminalization must move beyond frameworks that see Indigenous men primarily as violent subjects needing control or correction. Instead, they must grapple with the colonial conditions that have produced multiple layers of harm. Without addressing these foundational impacts—without dismantling the structures of dispossession, racism, and imposed gender roles that fracture Indigenous lives—the criminal justice system will continue to circulate Indigenous men through courts and prisons under the banner of culturally sensitive compassion.

Only by refusing to isolate violence from its broader context, and by centering the collective impacts and possibilities of healing, can there be any genuine movement toward justice. In this way, the limitations of section 718.2(e) and Gladue do not simply illustrate a failure of implementation; they reveal the necessity of entirely rethinking how colonial states approach both harm and responsibility.

The analysis throughout this chapter has shown how Gladue, while framed as a progressive response to Indigenous over-incarceration, primarily operates to refine and perpetuate the colonial governance of Indigenous lives. Its emphasis on individualized therapeutic correction, especially of Indigenous men, does not dismantle the underlying dynamics that produce harm in the first place. By concentrating on individual behaviour—on compelling Indigenous men to demonstrate remorse, vulnerability, and emotional transformation—the system shifts scrutiny away from the broader structures of colonial violence that fracture Indigenous families and communities.

This has far-reaching implications. Continually representing Indigenous men as inherently violent does more than justify intensified surveillance and intervention; it also shapes how Indigenous women and children experience safety, support, and justice. As long as responses to violence are framed through the narrow lens of correcting Indigenous male behavior, they risk ignoring the colonial policies, dispossessions, and economic marginalization that fuel cycles of harm. This not only individualizes what are fundamentally systemic issues, it reproduces patterns of intervention that fail to protect the most vulnerable.

Moving beyond the surface behavior to examine impacts—both historical and ongoing—is thus not merely an academic exercise. It is essential for disrupting how colonial power continues to operate through the management of Indigenous difference. Without addressing how the persistent portrayal of Indigenous men as violent sustains colonial stereotypes, deflects accountability from state structures, and distorts possibilities for collective healing, there can be no meaningful transformation. This insight carries directly into the conclusion of this chapter.

Conclusion: Over-Criminalization, Not Just Overrepresentation

This chapter has demonstrated that the real crisis confronting Indigenous peoples in Canada is not simply one of statistical overrepresentation in prisons. It is far more profound and insidious: a crisis of systemic over-criminalization rooted in a long history of colonial power that constructs Indigenous existence itself as risky, suspect, and in perpetual need of management through law. The disproportionate incarceration of Indigenous peoples is not an unfortunate by-product of an otherwise neutral system—it is a direct outcome of structures that continually target, police, and define Indigenous bodies and lives as criminal.

Section 718.2(e) of the Criminal Code and the jurisprudence stemming from *R. v. Gladue* embed this colonial logic deeply within the contemporary administration of justice. Much like the Indian Act's mechanisms of identity registration or blood quantum, these legal instruments single out Indigeneity for special treatment—not to recognize inherent rights or sovereignty, but to address what is framed as a uniquely racialized social problem. They mark Indigenous difference as a factor to be processed, managed, and adjusted within the sentencing apparatus. In so doing, they transform Indigeneity into a form of legal vulnerability: a status that triggers alternative considerations, but only because the state presumes Indigenous people will inevitably appear before it as offenders.

Crucially, these reforms intervene only after guilt has been established. They do not ask why police surveillance disproportionately targets Indigenous neighborhoods, why prosecutorial discretion compounds charges that lead to higher convictions, or why Indigenous youth are funneled from child welfare systems into criminal systems. By

confining their operation to the sentencing phase, section 718.2(e) and Gladue decisions accept the over-policing and over-prosecution of Indigenous peoples as an unexamined baseline. Their focus is purely on how to sentence Indigenous people differently once they stand convicted—thereby normalizing the fact that they will predictably arrive there in the first place.

In this way, the law does not confront the colonial conditions that drive Indigenous criminalization. Instead, it manages their consequences by compelling Indigenous offenders—especially Indigenous men—to reshape themselves into docile, remorseful subjects under the language of cultural healing and community reintegration. Success is measured by how well they recount personal failings, disclose intergenerational trauma, and adopt state-approved narratives of rehabilitation. Section 718.2(e) was never crafted to honor Indigenous nations or repair structural harm; it was introduced to manage a statistical anomaly—too many Indigenous people in prison—by adjusting sentencing for a racialized group without changing the colonial order that ensures their continued criminalization.

Under the Gladue framework, colonial harm is often re-narrated not as structural violence demanding collective redress, but as individual pathology to be therapeutically corrected. Indigenous offenders are asked to catalogue their family's residential school history, their experiences of poverty or addiction, in ways that transform histories of dispossession into evidence of personal dysfunction. Compassion becomes conditional, extended only if the Indigenous person accepts this colonial diagnosis: that they are broken and must submit to correction under the state's control.

This is particularly acute for Indigenous men. Colonial institutions have long constructed Indigenous masculinity as inherently dangerous—violent, irresponsible, in need of monitoring. Modern correctional programs sustain this image by centering on anger management, emotional regulation, and the performance of a humbled, remorseful masculinity. In parole hearings or restorative circles, Indigenous men who can weep, confess trauma, and articulate remorse in a way legible to non-Indigenous authorities are praised as rehabilitated and granted community alternatives. Those who do not—whether because they come from cultural traditions where shame is expressed differently, or because surviving institutional violence taught them to be guarded—are seen as lacking insight and thus deserving continued incarceration.

But beyond this narrow disciplining, there is a deeper tragedy: this very system—presented as a space for rehabilitation—cannot and does not allow Indigenous men to truly heal from the impacts of colonial violence. It is embedded within the same colonial structures that caused the harm. It isolates trauma as individual failure, demands that Indigenous men perform a prescribed script of brokenness and repentance, and never meaningfully addresses the dispossession, racism, and economic exploitation that continue to fracture Indigenous lives. It is a process that keeps Indigenous men bound to the colonial state under the guise of therapy, never offering the possibility of collective, community-led healing that might actually interrupt cycles of harm.

In this way, Gladue becomes the latest iteration of Canada’s long strategy of governing Indigenous peoples through a mix of force and apparent benevolence. Earlier chapters traced how the Indian Act regulated Indigenous identity itself, how the “crumbling skull” doctrine minimized colonial accountability by treating Indigenous

vulnerability as inevitable, and how courtroom practices sanitized colonial violence. Gladue repackages these same logics into a therapeutic form—extending a hand of empathy that ultimately guides Indigenous people back into compliance with colonial structures.

This leads to a sobering recognition: the problem is not simply that too many Indigenous people are in prison. It is that the Canadian legal system continues to define Indigenous life—especially Indigenous masculinity—as inherently risky, demanding constant regulation through criminal justice. This is why even well-intentioned reforms like Gladue, cultural programming, and community sentencing remain trapped in a colonial framework. They address the symptoms (high incarceration rates) while leaving the disease (over-criminalization born of colonialism) intact.

And so, the question becomes unavoidable: how can Indigenous women, children, and communities ever be truly free of violence when the very systems that continue to ensnare Indigenous men deny them real pathways to heal from colonial harm? As long as justice remains defined by state correction, by individual therapy that ignores collective dispossession, by programs that seek to reshape Indigenous men without dismantling the structures that deformed them, true safety and freedom will remain out of reach. Only by dismantling these colonial mechanisms—rather than merely softening them—can Canada move beyond managing Indigenous peoples under the guise of care and toward a justice grounded in Indigenous autonomy, law, and life itself.

Chapter 6: Reclaiming Indigenous Masculinity and Challenging Colonial Narratives

Colonialism did not simply dispossess Indigenous peoples of land and governance; it penetrated deeply into the fabric of Indigenous lives, identities, and relations. It constructed a legal and social order in which Indigenous men, in particular, have been persistently criminalized, regulated, and erased—not only by the state and its laws, but also by academic and intellectual systems that claim to study them. Today, even as overt forms of colonial rule have transformed, the Canadian legal system and the bodies of knowledge that support it continue to operate as powerful instruments for maintaining colonial hierarchies. They do so by defining Indigenous masculinity in narrow, violent terms that justify its ongoing surveillance, control, and punishment.

This dissertation began with a critical question: How has the Canadian criminal justice system, through its denial of colonial violence and its regulation of Indigenous masculinity, contributed to the continued criminalization and marginalization of Indigenous men? This question arose from an awareness that while scholarship often acknowledges the overrepresentation of Indigenous peoples in prison, it frequently treats this as a crisis of numbers—a statistical imbalance to be corrected—rather than confronting the deeper colonial structures that make Indigenous people, and especially Indigenous men, so vulnerable to criminalization in the first place.

What this dissertation has uncovered is that colonialism operates not as a historical backdrop to Indigenous over-incarceration, but as its living foundation. Through historical policies such as the Indian Act, legal doctrines like the crumbling skull rule, and contemporary initiatives such as restorative justice, colonial power continues to shape the lives of Indigenous men, defining them as threats, disciplining

their identities, and erasing their experiences as victims of colonial violence. In doing so, the Canadian legal system does more than apply neutral standards of law—it actively constructs Indigenous masculinity as inherently violent and deviant, rendering Indigenous men perpetually legible as criminals in need of management.

Moreover, this process is not confined to the courtroom. Academic scholarship and public discourse frequently mirror and reinforce these legal constructions. By selectively framing Indigenous men's lives through the lenses of pathology and danger, these narratives obscure the structural and historical forces that have produced the conditions Indigenous men must navigate. The combined effect of legal, scholarly, and cultural representations is to normalize the idea that Indigenous men are predisposed to violence and dysfunction, which in turn rationalizes their continued criminalization and exclusion.

This work intervenes by challenging these intertwined legal and scholarly narratives. It argues that Indigenous men's overrepresentation in the criminal justice system cannot be understood apart from the colonial structures that have systematically constructed Indigenous masculinity as a site of danger, deviance, and necessary regulation. By exposing how law and academia collaborate in this construction—often under the guise of neutrality, objectivity, or even compassion—this dissertation demonstrates that colonial power is not merely a matter of past conquest or current disproportion; it is a pervasive system that continues to shape who is seen as a victim, who is cast as a threat, and who is rendered undeserving of recognition and healing.

One of the most pervasive findings of this dissertation is how colonial legal frameworks have systematically constructed Indigenous masculinity as a site of inherent danger, deviance, and necessary regulation. This construction has its roots in the foundational policies of the colonial state. As seen in the Indian Act, Indigenous men were not merely governed as subjects but specifically targeted through gendered mechanisms that emasculated traditional leadership roles, imposed patriarchal structures, and criminalized resistance. For example, the criminal prosecutions that followed events like the Frog Lake Massacre (1885) and the public executions at Battleford reveal how Indigenous men who resisted starvation policies or treaty violations were depicted as violent insurgents, threats to the colonial order whose masculinity had to be subdued through spectacular punishments. As historical records show, such as Prime Minister John A. Macdonald's chilling remark that executions would convince the red man that the white man governs, these acts were not simply punitive but performative, constructing Indigenous masculinity as dangerous and legitimizing colonial control through fear and subjugation.

This construction persists in contemporary legal doctrines. In *Blackwater v. Plint*, the application of the crumbling skull rule exemplifies how Indigenous men's suffering is treated not as a consequence of colonial violence but as evidence of inherent fragility or dysfunction, implicitly reinforcing the notion that Indigenous men are damaged or unstable. Similarly, in *R. v. Gladue*, the portrayal of Reuben Beaver centers on his single conviction for assaulting Jamie Gladue while she was pregnant, extrapolated into a broader narrative of habitual violence. Scholars like Sheehy amplify this construction by suggesting, without evidence, that his violence was well out of control, turning one

documented incident into an implied history of escalating abuse. This framing is not grounded in the factual record. However, it arises from a legal and scholarly tendency to treat Indigenous men's behaviour as symptomatic of intrinsic violence. This tendency ensures they remain legible to the state primarily as risks requiring intervention.

The Erasure and Pathologization of Indigenous Men's Victimhood

A second critical insight emerging from this research is how colonial legal and academic frameworks systematically deny Indigenous men recognition as victims, often pathologizing their suffering rather than situating it within histories of colonial violence. In *Blackwater v. Plint*, for instance, the testimonies of plaintiffs who endured horrific sexual and physical abuses at the hands of church and state officials were repeatedly undercut by judicial reasoning that emphasized their supposed pre-existing vulnerabilities or familial dysfunctions. Justice Brenner's opinion frequently invoked the plaintiffs' backgrounds as justification for reduced damages, framing the abuses they suffered at residential schools as less consequential because of the conditions of their lives prior to institutionalization. This logic not only individualizes harm, displacing attention from systemic colonial violence, but also implicitly casts Indigenous men's victimization as an extension of their own communities' failures.

Similarly, in the treatment of Reuben Beaver, both in court and in subsequent academic discourse, there is a conspicuous absence of any serious engagement with the colonial conditions that shaped his life. Instead, Beaver is almost exclusively represented as a violent partner, with no meaningful exploration of how structural factors—such as intergenerational trauma, systemic poverty, and the legacies of displacement—might have influenced his circumstances. Murdocca's work starkly illustrates this erasure. By

introducing the unfounded claim that Beaver raped Tara Chalifoux—despite the fact that Chalifoux testified she did not have sex with him and pushed him away—Murdocca intensifies Beaver’s portrayal as a sexual predator. Her reliance on a conference paper by Kim Pate that could not be located for verification, despite extensive efforts, underscores how easily unsubstantiated claims can enter academic discourse and further entrench harmful stereotypes of Indigenous men, without acknowledging their potential victimization by colonial structures.

The Persistence of Colonial Regulation Under the Guise of Reform

A third theme that cuts across this work is the way colonial governance adapts, continuing to regulate Indigenous masculinity even through initiatives presented as progressive or compassionate. Restorative justice practices, particularly as articulated through section 718.2(e) of the *Criminal Code* and interpreted in *R. v. Gladue* (1999), exemplify this dynamic. These measures ostensibly aim to reduce Indigenous over-incarceration by directing courts to consider alternatives to imprisonment. However, as this dissertation has shown, they intervene only after guilt has been established, managing outcomes without addressing the deeper reasons why Indigenous people are so heavily policed, charged, and prosecuted in the first place.

More critically, restorative justice frameworks often impose expectations of remorse, participation in state-sanctioned treatment programs, and compliance with culturally framed interventions that remain under colonial oversight. This is a biopolitical strategy in Foucault’s sense: rather than using overt force, the state governs Indigenous bodies by regulating their emotions, behaviors, and expressions of healing. Indigenous men, already constructed as violent and deviant, are subjected to these regimes of

rehabilitation, which paradoxically demand that they internalize narratives of dysfunction in order to access more lenient sentences. In this way, restorative justice does not disrupt colonial constructions of Indigenous masculinity—it refines and reproduces them under the language of cultural sensitivity and care.

The Collusion of Legal and Academic Discourses in Sustaining Colonial Narratives

Finally, this dissertation reveals how legal judgments and academic analyses work together to reinforce colonial portrayals of Indigenous men. The courtroom does not operate in a vacuum; its narratives are echoed, amplified, and sometimes distorted by scholars who purport to analyze these cases critically. Yet rather than challenging the reduction of Indigenous men to figures of violence, many scholars reproduce these constructions, often by selectively reading or extending the legal record.

The treatment of Reuben Beaver is a stark example. Sheehy's assertion that Beaver's violence was well out of control builds an implied pattern of abuse on a single known conviction, transforming limited legal facts into a narrative of escalating danger. Murdocca goes further, framing Beaver almost entirely through his alleged violence while citing unverified sources to bolster the portrayal of him as sexually predatory. This scholarly repetition not only legitimizes the legal framing of Beaver but insulates it from challenge: as Foucault notes, power produces truth, and the circulation of these representations across legal and academic texts makes them appear self-evident. Indigenous masculinity becomes knowable only through the lens of pathology and violence, foreclosing readings that might recognize Indigenous men as survivors of colonial harm or as complex individuals shaped by forces beyond their control.

Theoretical and Methodological Contributions

This dissertation's engagement with theory and method is not simply an academic exercise but central to its intervention in how we understand the regulation of Indigenous masculinity. By bringing together the insights of Frantz Fanon (1963), Michel Foucault (1977), Indigenous studies scholarship, and a counter-narrative methodology, this work advances new ways of conceptualizing how colonial power continues to shape Indigenous men's lives and identities.

Fanon: Colonial Violence as Foundational

Fanon's analysis of colonial violence has been indispensable in framing how this dissertation approaches the construction of Indigenous masculinity. Fanon argues that colonialism is not merely a system of economic exploitation or legal domination, but a totalizing structure that dehumanizes the colonized and inscribes violence into the very fabric of their existence. This insight is critical to understanding why Indigenous men in Canada are so persistently constructed as threats. Fanon's work illuminates how colonial power needs to produce the image of the violent native in order to justify its own repressive structures. The Indian Act's emasculation of Indigenous governance, the spectacle of executions following events like Frog Lake, (1885) and the use of doctrines such as the crumbling skull rule all serve to reinforce the narrative that Indigenous men are predisposed to violence and dysfunction—thus legitimizing continued colonial control.

Through Fanon, this dissertation has been able to trace how legal and scholarly depictions of Indigenous men as inherently dangerous are not accidental or isolated, but integral to maintaining colonial authority. Fanon also pushes this analysis beyond

surface-level critiques of prejudice, showing that the criminalization of Indigenous men operates as a form of colonial violence that is foundational, not peripheral, to the Canadian state.

Foucault: Biopower, Surveillance, and Regulation

Where Fanon provides a lens on the violent, spectacular face of colonial power, Foucault's concepts of biopower and governmentality help reveal how colonial regulation has evolved into more subtle, insidious forms. Foucault shows that modern states do not rely solely on direct force but also on diffuse techniques of surveillance, normalization, and disciplinary control. This is crucial for understanding why contemporary legal practices like restorative justice—seemingly aimed at compassion and healing—still function to regulate Indigenous masculinity.

For example, section 718.2(e) and its interpretation in Gladue decisions require Indigenous men to demonstrate remorse, participate in state-approved programs, and perform particular narratives of healing in order to receive alternatives to incarceration. This is not merely compassionate consideration; it is a mode of governance that disciplines Indigenous identity, molding it into forms legible and manageable to the state. By applying Foucault's insights, this dissertation reveals how even progressive-seeming interventions often extend the reach of colonial power, regulating Indigenous difference under the guise of cultural sensitivity.

Foucault's concept of truth production is also central here. As he argues, power produces truth, shaping what can be said, known, and thought. Legal and scholarly discourses that repeatedly depict Indigenous men as violent or pathological do not simply reflect reality—they actively constitute it, closing off possibilities for seeing Indigenous

men as victims of colonial trauma or as complex subjects beyond the narrow confines of criminality.

Indigenous Studies and Counter-Narrative Methodology

Yet this dissertation does not stop at using Western critical theory. It is equally grounded in Indigenous studies scholarship, which foregrounds the need to understand colonialism as an ongoing structure and to center Indigenous perspectives and survivance. Drawing on the work of Indigenous scholars who critique how colonial power operates through both gender and law, this research positions Indigenous masculinity not as a marginal or secondary issue but as a core site of colonial regulation.

The counter-narrative approach employed throughout this dissertation is essential to this intervention. Rather than simply analyzing how law and scholarship depict Indigenous men, this methodology actively disrupts those portrayals by reading against the grain, challenging dominant interpretations, and amplifying silenced or obscured perspectives. In examining figures like Reuben Beaver or Big Bear, the counter-narrative approach refuses to accept colonial representations at face value. It highlights how Beaver's identity was flattened into that of a violent offender by both courts and scholars, ignoring the broader colonial conditions that shaped his life. Similarly, it repositions Big Bear not as a violent rebel, but as a leader resisting starvation and dispossession.

This methodology matters because it moves beyond critique to possibility. It creates intellectual space to imagine Indigenous masculinities outside the binaries of hyperviolence and emasculation imposed by colonial frameworks. By disrupting the narratives that justify ongoing regulation, counter-narratives open pathways for seeing

Indigenous men as survivors, as complex human beings, and as agents capable of existing beyond the scripts colonialism has written for them.

Together, these theoretical and methodological choices advance knowledge by exposing how deeply colonial power is embedded in legal, scholarly, and cultural constructions of Indigenous masculinity. They also insist that dismantling these constructions requires more than pointing out bias or imbalance—it requires fundamentally rethinking the epistemological frameworks that have rendered Indigenous men knowable only through lenses of threat and dysfunction. By centring counter-narratives, this dissertation not only critiques existing systems but also contributes to creating intellectual spaces where Indigenous masculinities can be reclaimed on their own terms, offering a vision of justice that is not about better managing Indigenous bodies but about dismantling the colonial structures that govern them.

Implications for Law, Scholarship, and Policy

The findings of this dissertation have significant implications for how law, academic scholarship, and broader societal discourses must reckon with the criminalization of Indigenous men. They point to the urgent need to move beyond approaches that focus narrowly on overrepresentation as a statistical problem, toward an analysis that confronts the colonial structures producing these outcomes.

Cases such as *R. v. Gladue* and *Blackwater v. Plint* illustrate how deeply colonial logics continue to operate within the Canadian legal system. *Gladue* is often celebrated for directing judges to consider the unique circumstances of Indigenous offenders, yet as this dissertation has shown, it does so only after guilt is established, leaving intact the colonial systems that produce criminalization. Moreover, by framing solutions around

individual rehabilitation—requiring demonstrations of remorse and participation in programs—it positions Indigenous men as primarily responsible for addressing fundamentally structural harms.

Similarly, in *Blackwater v. Plint*, the application of the crumbling skull doctrine pathologized Indigenous plaintiffs, treating their experiences of colonial trauma as pre-existing weaknesses that reduced the responsibility of the state and church for their abuses. These legal moves not only denied Indigenous men full recognition as victims but also reinforced the idea that their suffering was somehow inherent, rather than produced by colonial violence.

Understanding these cases through the lens of this dissertation's analysis demands that we see them not as isolated legal missteps, but as part of a broader system that continually redefines colonial harm as Indigenous pathology. This shift in perspective is essential for developing legal frameworks that do not reproduce the very violence they purport to address.

For law and scholarship to move beyond complicity in colonial governance, they must first abandon the assumption that Indigenous masculinity is inherently dangerous or dysfunctional. Legal practitioners, scholars, and policymakers must be willing to interrogate how their own frameworks—whether sentencing guidelines, risk assessments, or even critical analyses—often rely on and reinforce colonial constructions of Indigenous men.

Academics, in particular, must take greater care in how they represent Indigenous men in their work. As seen in Murdocca's (2015) unverified repetition of claims about Reuben Beaver, scholarly narratives can powerfully shape how Indigenous men are

understood both within the academy and in public discourse. When these narratives fail to rigorously engage primary sources or rely on speculative interpretations, they do not simply misrepresent individual cases—they perpetuate structural patterns of colonial knowledge production that have real-world impacts on how Indigenous men are treated in law and society.

Community narratives, too, must reckon with the deep imprint of colonial logics. Even well-intentioned efforts to address violence within Indigenous communities can unintentionally reproduce colonial scripts if they do not situate that violence within the broader context of dispossession, systemic racism, and intergenerational harm caused by the state.

Seeing Indigenous Men as Survivors of Colonial Violence

At the heart of these implications is the necessity to see Indigenous men not as threats, but as survivors of an ongoing colonial project. This means recognizing how colonial policies and laws—whether through the Indian Act’s emasculation of Indigenous governance, the punitive doctrines of modern courts, or the seemingly benevolent mechanisms of restorative justice—have systematically criminalized and pathologized Indigenous masculinities. It means acknowledging that the struggles Indigenous men face is not evidence of inherent dysfunction but of enduring structural violence.

This reframing is essential not only for justice systems but for any effort that seeks to promote healing and reconciliation. Without it, interventions risk simply adjusting the terms under which Indigenous men are governed, continuing to demand their conformity to colonial expectations rather than addressing the harms inflicted upon them.

The findings of this dissertation also highlight the importance of turning toward Indigenous knowledge systems and leadership in envisioning alternative futures. True justice for Indigenous men cannot come from further integration into colonial systems of control, no matter how culturally adapted. It must come from approaches that center Indigenous law, relationality, and understandings of masculinity that exist beyond colonial definitions of aggression and deviance.

This requires scholars and legal actors not just to listen to Indigenous voices but to be willing to fundamentally reshape their frameworks. It means embracing Indigenous-led approaches to justice that prioritize community-defined healing, accountability, and sovereignty over state-managed rehabilitation. It also means recognizing the need for structural transformation—not merely to mitigate overrepresentation in prisons, but to dismantle the colonial systems that make such overrepresentation inevitable.

The analyses and findings of this dissertation carry profound implications for how the Canadian legal system, academic scholarship, and broader community narratives engage with the intersections of colonialism and Indigenous masculinity. At stake is far more than procedural fairness or incremental policy change; what is required is a fundamental dismantling of the colonial structures that continue to criminalize, pathologize, and regulate Indigenous men.

This research fundamentally challenges how landmark cases such as *R. v. Gladue* and *Blackwater v. Plint* are often understood within both legal and scholarly discourse. In mainstream interpretations, Gladue is frequently celebrated for instructing courts to consider the unique circumstances of Indigenous offenders, positioning it as a turning point toward culturally sensitive justice. However, as this dissertation has

demonstrated, Gladue does not interrogate why Indigenous people are so persistently policed, charged, and convicted in the first place. It intervenes only after criminal liability is established, framing colonial violence not as an active force structuring criminalization, but as a background context to be weighed at sentencing.

Moreover, by centring individual rehabilitation—requiring expressions of remorse, participation in culturally sanctioned programs, and the performance of healing—Gladue reinforces a paradigm in which Indigenous men must narrate their lives through state-approved scripts of dysfunction to access reduced sentences. This is not a challenge to colonial power but an adaptation of it, repackaging control in the language of compassion.

Similarly, *Blackwater* reveals how Canadian courts continue to pathologize Indigenous victims through doctrines like the crumbling skull rule. Rather than fully acknowledging the violent ruptures inflicted by church and state, the judgment minimizes institutional responsibility by attributing harm to the plaintiffs' supposed pre-existing vulnerabilities. This reasoning treats colonial violence as inherent to Indigenous existence, normalizing it as part of their natural condition rather than recognizing it as imposed by systemic dispossession, abuse, and neglect.

A critical implication of this work is that these cases must be read not as examples of neutral justice grappling with Indigenous circumstances, but as evidence of a legal system structurally committed to maintaining colonial hierarchies. They demonstrate how law continues to obscure state violence by individualizing harm, framing Indigenous men as either damaged subjects whose pain reduces institutional liability or as offenders whose criminality demands continued surveillance and regulation.

Beyond courts, this dissertation highlights the complicity of legal scholarship, criminology, and broader academic literature in sustaining colonial representations of Indigenous men. As shown through the analysis of authors like Sheehy and Murdocca, even critical scholars often replicate state narratives that portray Indigenous men as inherently violent, sexually dangerous, or perpetually out of control. By selectively reading case facts, relying on unverified claims, or failing to interrogate the colonial conditions underlying Indigenous men's criminalization, such scholarship reinforces stereotypes under the guise of feminist, criminological, or restorative critiques.

This insight demands a profound shift in how legal scholars and practitioners approach questions of Indigenous justice. It is not enough to document statistical disparities or propose procedural adjustments. Scholars must rigorously question the epistemic frameworks they bring to their analyses: Who is being rendered knowable, and on what terms? What colonial assumptions about masculinity, deviance, and danger underwrite seemingly objective accounts? True transformation requires a willingness to disrupt the narrative convenience that casts Indigenous men as naturalized risks, justifying continued state management.

Community and public narratives must also grapple with the uncomfortable truth that even well-meaning efforts can perpetuate colonial scripts. Initiatives aimed at addressing violence in Indigenous communities, for example, often focus on individual rehabilitation without attending to the systemic, intergenerational impacts of colonial policies that created the conditions for harm. When programs demand that Indigenous men prove themselves worthy of mercy by conforming to state-defined models of healing, they

replicate the same power structures that initially sought to destroy Indigenous social systems, kinship, and governance.

Central to these implications is the imperative to fundamentally reframe how Indigenous men are seen—not as inherent threats or pathological subjects, but as survivors of a sustained and multifaceted colonial project. This shift is essential because so long as Indigenous masculinity is constructed through the lens of danger, Canadian law and policy will continue to treat Indigenous men as problems to be managed rather than as people who have endured profound violence at the hands of the state and who deserve recognition, support, and justice.

Seeing Indigenous men as survivors entails acknowledging that their interactions with the criminal justice system are not solely matters of individual wrongdoing but are deeply rooted in historical and ongoing state practices of dispossession, family disruption, and systemic poverty. It demands that legal and scholarly frameworks recognize colonial violence not as a peripheral background but as the central context shaping the lives of Indigenous men. Without this recognition, efforts at reconciliation, healing, or restorative justice will remain superficial, addressing symptoms without dismantling the structures that perpetuate harm.

Beyond Legal Tweaks: Dismantling Colonial Structures

Finally, the implications of this work reach far beyond recommendations for better implementation of Gladue principles or more culturally tailored sentencing options. Such measures, while perhaps reducing the harshness of individual outcomes, do not confront the colonial foundations of Canadian law. This dissertation underscores that the problem is not simply that Indigenous men are overrepresented in prisons, but that the entire

apparatus of law—including its doctrines, procedures, and underlying epistemologies—has been constructed to criminalize and regulate Indigenous masculinity.

Dismantling these structures means more than adding Indigenous cultural programming within prisons or diversifying court staff. It means interrogating the foundational premises of Canadian criminal law: its reliance on individualized culpability that erases systemic violence, its pathologization of Indigenous communities, and its deployment of gendered stereotypes to legitimize control. It requires scholars, judges, and policymakers to question not just outcomes but the colonial logics that structure the very questions law is designed to answer—who is guilty, who is dangerous, and who deserves to be punished or healed.

Indigenous-led Frameworks and the Possibilities of Resurgence

One of the most hopeful implications of this research is the necessity of turning toward Indigenous-led frameworks for justice, healing, and governance. Rather than reshaping Indigenous lives to fit colonial models of acceptable behaviour or remorse, future approaches must prioritize Indigenous sovereignty, legal traditions, and community-based visions of accountability and wellbeing. Indigenous knowledge systems offer pathways to understanding masculinity, kinship, and responsibility that do not rely on colonial binaries of violence and emasculation.

Embracing these frameworks requires more than symbolic gestures; it demands that the state and its institutions cede power and make space for Indigenous communities to define their own futures, including how they address harm and support healing. For legal scholars and practitioners, it means engaging with Indigenous laws not as cultural curiosities or supplements to Canadian justice, but as authoritative systems in their own

right, capable of guiding responses to wrongdoing that center relationality and collective responsibility over punishment and surveillance.

Directions for Future Research

The findings of this dissertation open up multiple avenues for future scholarship that can deepen, refine, and extend the critical examination of how colonialism continues to shape the lives and identities of Indigenous men. While this work has focused primarily on the intersection of colonial power, Canadian law, and Indigenous masculinity, it also highlights significant gaps in knowledge. It invites further study across several interconnected domains.

Another crucial direction for future research is to incorporate more direct testimonies, oral histories, and community-based knowledge from Indigenous men themselves. While this dissertation draws extensively on legal documents, court transcripts, and academic texts to reveal how Indigenous masculinity is constructed by colonial systems, the absence of substantial primary accounts from Indigenous men underscores the structural silencing that continues in both legal and scholarly arenas.

Future studies could prioritize participatory and relational methodologies that allow Indigenous men to articulate their own experiences of law, regulation, victimization, and survival. Such approaches would not only fill important empirical gaps but also resist the colonial habit of speaking about Indigenous subjects rather than listening to them. By privileging Indigenous voices, researchers can better understand how men themselves perceive, contest, or internalize the colonial narratives imposed upon them — and how they envision pathways toward healing and resurgence.

Building on the insights from Fanon and Foucault used here, future scholarship should more fully integrate Indigenous theories and epistemologies to analyze the regulation of Indigenous masculinity. While Fanon's work on colonial violence and Foucault's critiques of biopower have been indispensable for unpacking how colonial systems produce and manage Indigenous difference, they remain frameworks grounded in African, Caribbean, and European histories.

Indigenous scholars in Canada and globally have articulated theories of resurgence, relationality, and Indigenous law that offer models for understanding gender, power, and healing outside of colonial binaries. Drawing on Indigenous scholars would enrich analyses of how Indigenous masculinities are not only regulated by colonial systems but also recreated and reclaimed through Indigenous practices of governance, kinship, and community accountability.

Future studies might also explore how Indigenous legal orders conceive of masculinity, responsibility, and restitution — revealing alternatives to colonial justice frameworks that reduce Indigenous men to either violent threats or rehabilitated subjects under state supervision.

While this dissertation centers on Indigenous men, future research should also adopt more intersectional approaches that examine how colonial constructions of masculinity intersect with sexuality, age, disability, and other dimensions of identity. Investigating the experiences of Two-Spirit and non-binary Indigenous people, for example, would offer critical insights into how gendered colonialism operates along multiple, intersecting axes, producing distinct forms of vulnerability and resistance.

Additionally, comparative studies across other settler-colonial contexts — such as Australia, New Zealand, and the United States — could highlight both shared patterns and important divergences in how colonial legal systems construct, regulate, and criminalize Indigenous masculinities. Such analyses would deepen our understanding of the global dynamics of settler colonialism while remaining attentive to local histories, sovereignties, and forms of Indigenous resistance.

Ultimately, this dissertation has demonstrated that the criminalization of Indigenous men in Canada is not simply a matter of individual misconduct or cultural deficiency, but the predictable consequence of colonial structures that have long defined Indigenous masculinity as a problem to be managed. From the Indian Act's emasculation of traditional leadership to legal doctrines like the crumbling skull rule that pathologize Indigenous suffering, to contemporary practices of restorative justice that demand Indigenous men narrate their pain in state-sanctioned ways, colonial power remains deeply invested in producing Indigenous men as threats.

Confronting this reality requires far more than incremental policy reforms or superficial gestures toward cultural sensitivity. It demands a fundamental dismantling of the legal, academic, and societal narratives that continue to cast Indigenous men as inherently violent, deviant, or damaged. It calls for a reckoning with how colonialism has structured not only the institutions that police Indigenous lives but also the very knowledge systems that justify their ongoing regulation.

By centring counter-narratives, this dissertation has sought to disrupt the colonial stories that have rendered Indigenous men legible only through violence and dysfunction. It opens space to see Indigenous men instead as survivors of systemic harm, as complex

individuals whose struggles cannot be understood apart from histories of dispossession, state intervention, and intergenerational trauma. It also gestures toward possibilities of resurgence — futures in which Indigenous masculinities are no longer constrained by colonial definitions but reclaimed through Indigenous laws, relationships, and ways of being that exceed the narrow frames imposed by settler governance.

In this sense, the work undertaken here is not only an academic intervention but also an ethical commitment: to refuse the ease of dominant narratives, to expose the colonial logics that sustain them, and to participate in creating intellectual and political spaces where Indigenous men can be understood on their own terms. True justice will not come through better management of Indigenous lives within existing colonial systems. It will come through dismantling those systems and building new worlds in which Indigenous masculinities are recognized, honoured, and allowed to flourish beyond the shadow of colonial violence.

Reference

Legal Cases

Athey v. Leonati, [1996] 3 S.C.R. 458, 1996 CanLII 183 (SCC).

Blackwater v. Plint, 2001 BCSC 997.

Blackwater v. Plint, [2005] 3 S.C.R. 3, 2005 SCC 58.

R. v. Gladue, [1997] B.C.J. No. 233 (Prov. Ct.).

R. v. Gladue, [1999] 1 S.C.R. 688.

R. v. Ipeelee, 2012 SCC 13, [2012] 1 S.C.R. 433.

Provincial Court of British Columbia. (1996, May 21). *R. v. Gladue: Proceedings at preliminary hearing (Day 1, No. 34897 & 34897C)*. Nanaimo Registry.

Provincial Court of British Columbia. (1996, May 22). *R. v. Gladue: Proceedings at preliminary hearing (Day 2, No. 34897 & 34897C)*. Nanaimo Registry.

Supreme Court of British Columbia. (1997, February 12). *R. v. Gladue: Proceedings at sentence (Day 1, No. 34897)*. Nanaimo Registry.

Supreme Court of British Columbia. (1997, February 13). *R. v. Gladue: Reasons for sentence (No. 34897)*. Nanaimo Registry.

Supreme Court of Canada. (1999). *R. v. Gladue*, [1999] 1 S.C.R. 688.

Statutes & Commissions

Canada. (1850). *An Act for the Protection of Indian Lands*, 13–14 Vict., c. 74.

Canada. (1857). *An Act to Encourage the Gradual Civilization of the Indian Tribes*, 20 Vict., c. 42.

Canada. (1869). *An Act for the Gradual Enfranchisement of Indians, Better Management of Indian Affairs*, 32–33 Vict., c. 6.

Canada. (1876). *The Indian Act*, SC 1876, c. 18.

Canada. (1885). *Amendments to the Indian Act*, RSC 1885, c. 43, s. 117.

Canada. (1906). *The Consolidated Indian Act*, RSC 1906, c. 81.

Canada. (1920). Amendments to the Indian Act – Compulsory Enfranchisement, RSC 1920, c. 98.

Canada. (1927). Bill 14: Enfranchisement without Consent, RSC 1927, c. 114.

Canada. (1985). *Criminal Code* (R.S.C., 1985, c. C-46).

Canada. (1985). *Indian Act*, RSC 1985, c. I-5, s. 2(1).

Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11, s. 35(2). <https://laws-lois.justice.gc.ca/eng/Const/page-16.html>

Criminal Code, RSC 1985, c. C-46, s. 718.2(e).

Parliament of Canada. (1995). *Bill C-41: An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof*, 1st Sess., 35th Parl., 1995, c. 22.

Commissions & Inquiries

Commission of Inquiry into the Matters Relating to the Death of Neil Stonechild.

(2004). *Report of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild*. Government of Saskatchewan.

Commission on Systemic Racism in the Ontario Criminal Justice System.
(1995). *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*. Government of Ontario.

Iacobucci, F. (2013). *First Nations representation on Ontario juries: Report of the Independent Review*. Government of Ontario.

Ipperwash Inquiry. (2007). *Report of the Ipperwash Inquiry*. Government of Ontario. <http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/>

Public Inquiry into the Administration of Justice and Aboriginal People. (1991). *Report of the Aboriginal Justice Inquiry of Manitoba*. Government of Manitoba.

Royal Commission on the Donald Marshall Jr. Prosecution. (1989). *Report of the Royal Commission on the Donald Marshall Jr. Prosecution*. Province of Nova Scotia.

Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples*. Canada Communication Group – Publishing.

Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform.
(2004). *Final report of the Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform*. Government of Saskatchewan.

Task Force on the Criminal Justice System and Its Impact on the Indian and Métis People of Alberta. (1991). *Justice on Trial: Report of the Task Force (Cawsey Report)*. Government of Alberta.

Truth and Reconciliation Commission of Canada. (2015). *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada*. Government of Canada. <http://nctr.ca/reports.php>

National Inquiry into Missing and Murdered Indigenous Women and Girls.

(2019). *Reclaiming power and place: The final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*. Government of Canada

Books & Edited Volumes

Alfred, T., & Corntassel, J. (2005). Being Indigenous: Resurgences against contemporary colonialism. *Government and Opposition*, 40(4), 597–614.

Allen, P. G. (1992). *The sacred hoop: Recovering the feminine in American Indian traditions* (Rev. ed.). Beacon Press.

Anderson, K. (1993). *Chain her by one foot: The subjugation of Native women in seventeenth-century New France*. Routledge.

Anderson, K. (2016). *A recognition of being: Reconstructing Native womanhood*. Canadian Scholars' Press.

Andrews, I. (1975). Indian protest against starvation: The Yellow Calf incident of 1884. *Saskatchewan History*, 28(4), 4–10.

Baldry, E., & Cunneen, C. (2014). Imprisoned Indigenous women and the shadow of colonial patriarchy. *Australian and New Zealand Journal of Criminology*, 47(2), 276–298. <https://doi.org/10.1177/0004865813518543>

Balfour, G. (2013). Do law reforms matter? Exploring the victimization–criminalization continuum in the sentencing of Aboriginal women in Canada. *International Review of Victimology*, 19(1), 85–102.

Balfour, G. (2008). Falling between the cracks of retributive and restorative justice: The victimization and punishment of Aboriginal women. *Feminist Criminology*, 3(2), 101–120. <https://doi.org/10.1177/1557085108317551>

- Barker, A. (2021). *Making and breaking settler space: Five centuries of colonization in North America*. UBC Press.
- Barker, J. (2017). *Critically sovereign: Indigenous gender, sexuality, and feminist studies*. Duke University Press.
- Barker, J. (2008). Gender, sovereignty, rights: Native women's activism against social inequality. *Wicazo Sa Review*, 23(1), 71–95. <https://doi.org/10.1353/wic.0.0007>
- Bates, E. A. (2016). Current controversies within intimate partner violence: Overlooking bidirectional violence. *Journal of Family Violence*, 31, 259-266.
- Beahen, W., Horrall, S., & Dawson, M. (2000). Red coats on the prairies: The North-West Mounted Police, 1886–1900. *The Canadian Historical Review*, 81(4), 682-683. <https://doi.org/10.3138/CHR.81.4.682>
- Berger, R. (2015). Now I see it, now I don't: Researcher's position and reflexivity in qualitative research. *Qualitative Research*, 15(2), 219–234. <https://doi.org/10.1177/1468794112468475>
- Blackburn, C. (2012). Culture loss and crumbling skulls: The problematic of injury in residential school litigation. *PoLAR: Political and Legal Anthropology Review*, 35(2), 289–307. <https://doi.org/10.1111/j.1555-2934.2012.01200.x>
- Borrows, J. (2010). *Canada's Indigenous constitution*. University of Toronto Press.
- Boud, D., Keogh, R., & Walker, D. (2013). *Reflection: Turning experience into learning*. Routledge.
- Boyden, J., Maracle, L., Sinclair, N. J., Johnston, B. H., Claxton, D., Moses, D. D., Halfe, L. B., Alfred, T., Hill, J. C., & Anderson, K. (2014). *Masculindians: Conversations about Indigenous manhood*. University of Manitoba Press.

- Brave Heart, M. Y. H., Elkins, J., Tafoya, G., Bird, D., & Salvador, M. (2012). Wicasa Was'aka: Restoring the traditional strength of American Indian boys and men. *American Journal of Public Health*, 102(S2), S177–S183.
- Brownlie, R. (2003). *A fatherly eye: Indian agents, government power, and Aboriginal resistance in Ontario, 1918–1939*. University of Toronto Press.
- Brownlie, R., & Kelm, M.-E. (1994). Desperately seeking absolution: Native agency as colonialist alibi? *The Canadian Historical Review*, 75(4), 543–556. <https://doi.org/10.3138/CHR-075-04-01>
- Buchanan, N., & Darian-Smith, E. (2011). Introduction: Law and the problematics of Indigenous authenticities. *Law & Social Inquiry*, 36(1), 115–124.
- Cameron, A. (2008). Sentencing circles and intimate violence: A Canadian feminist perspective. *Canadian Journal of Women and the Law*, 18(2), 479–512. <https://doi.org/10.3138/cjwl.18.2.479>
- Carter, S. (2019). *Lost harvests: Prairie Indian reserve farmers and government policy* (Vol. 94). McGill–Queen’s Press–MQUP.
- Coulthard, G. S. (2014). *Red skin, white masks: Rejecting the colonial politics of recognition*. University of Minnesota Press.
- Crenshaw, K. (2013). Demarginalizing the intersection of race and sex: A Black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics. In *Feminist legal theories* (pp. 23–51). Routledge.
- Cunneen, C., & Tauri, J. M. (2019). Indigenous peoples, criminology, and criminal justice. *Annual Review of Criminology*, 2(1), 359–381.

- Das, A. (2020). Constructing criminality: R. v. Gladue, intersectionality, and the criminalization of Indigenous women. In E. Cunliffe (Ed.), *Gender justice, criminal law, and the criminalization of Indigenous women* (pp. 123–145). UBC Press.
- Daschuk, J. W. (2013). *Clearing the Plains: Disease, politics of starvation, and the loss of Aboriginal life*. University of Regina Press.
- Deer, S. (2015). *The beginning and end of rape: Confronting sexual violence in Native America*. University of Minnesota Press.
- Delgado, R., & Stefancic, J. (2001). *An introduction to critical race theory*. NYU Press.
- Dempsey, H. A. (2006). *Big Bear: The end of freedom* (Vol. 12). University of Regina Press.
- Dickason, O. P., & Nations, C. F. (1992). *A history of founding peoples from earliest times*. McClelland & Stewart.
- Dion, J. F. (1979). *My tribe, the Crees*. Glenbow Museum.
- Dobash, R. E., & Dobash, R. P. (1977–1978). Wives: The "appropriate" victims of marital violence. *Victimology: An International Journal*, 2(3–4), 426–442.
- Dobash, R. P., & Dobash, R. E. (2004). Women's violence against an intimate male partner: Working on a puzzle. *British Journal of Criminology*, 44(3), 324–349. <https://doi.org/10.1093/bjc/azh026>
- Dorries, H., & Harjo, L. (2020). Beyond safety: Refusing colonial violence through Indigenous feminist planning. *Journal of Planning Education and Research*, 40(2), 210–219. <https://doi.org/10.1177/0739456X19894382>

- Dua, E., & Robertson, A. (Eds.). (1999). *Scratching the surface: Canadian, anti-racist, feminist thought*. Canadian Scholars' Press.
- Dutton, D. G. (1994). Patriarchy and wife assault: The ecological fallacy. *Violence and Victims*, 9(2), 167–182.
- Fairclough, N. (2003). *Analysing discourse: Textual analysis for social research*. Routledge.
- Fanon, F. (1963). *The wretched of the earth*. Grove Press.
- Fanon, F. (1967). *Black skin, white masks*. Grove Press.
- Feldthusen, B. (2018). Justice Beverley McLachlin and tort law: The good, the bad, and the puzzling. In V. Gruben, G. Mayeda, & O. Rees (Eds.), *Common law controversies at the McLachlin Court* (pp. xx–xx). University of Toronto Press. (Also published as Ottawa Faculty of Law Working Paper, 2018-20).
- Finlay, L. (2002). “Outing” the researcher: The provenance, process, and practice of reflexivity. *Qualitative Health Research*, 12(4), 531-545.
- Fiske, J.-A., & Browne, A. (2006). Aboriginal citizen discredited medical subject: Paradoxical constructions of Aboriginal women's subjectivity in Canadian health care policies. *Policy Sciences*, 39(1), 91–111. <https://doi.org/10.1007/s11077-006-9013-8>
- Foucault, M. (1977). *Discipline and punish: The birth of the prison* (A. Sheridan, Trans.). Pantheon Books.
- Foucault, M. (1977b). Nietzsche, genealogy, history. In D. F. Bouchard (Ed. & Trans.), *Language, counter-memory, practice: Selected essays and interviews* (p. 139–164). Basil Blackwell.

- Foucault, M. (1982). The subject and power. *Critical Inquiry*, 8(4), 777–795. <https://doi.org/10.1086/448181>
- Foucault, M. (2003). *Society must be defended: Lectures at the Collège de France, 1975–1976* (D. Macey, Trans.). Picador.
- Friend, J. (2016). Gendered violence in Indigenous communities: A restorative justice approach. *Undergraduate Research Conference Proceedings*, 10(1). <https://doi.org/10.21038/urcp.2016.101>
- Giokas, J. (1995). The Indian Act: Evolution, overview and options for amendment and transition. *Royal Commission on Aboriginal Peoples*, Ottawa, Canada.
- Goodwill, J., & Sluman, N. (1984). *John Tootoosis*. Pemmican Publications.
- Gowanlock, T., Delaney, T., & Carter, S. (1999). *Two months in the camp of Big Bear: The life and adventures of Theresa Gowanlock and Theresa Delaney*. Canadian Plains Research Center.
- Green, J. M. (2012). The challenge of Gladue Courts. *Criminal Reports (Articles)*, 6th Series, 89 CR-ART 362.
- Guillemin, M., & Gillam, L. (2004). Ethics, reflexivity, and “ethically important moments” in research. *Qualitative Inquiry*, 10(2), 261–280.
- Henderson, J. (2015). Residential schools and opinion-making in the era of traumatized subjects and taxpayer-citizens. *Journal of Canadian Studies*, 49(1), 5–43. <https://doi.org/10.3138/jcs.49.1.5>
- hooks, b. (2000). *All about love: New visions*. William Morrow.

- Hokowhitu, B. (2015). Taxonomies of Indigeneity: Indigenous heterosexual patriarchal masculinity. In R. A. Innes & K. Anderson (Eds.), *Indigenous men and masculinities: Legacies, identities, regeneration* (pp. 80–95). University of Manitoba Press.
- Hokowhitu, B. (2012). Producing elite Indigenous masculinities. *Settler Colonial Studies*, 2(2), 23–48. <https://doi.org/10.1080/2201473X.2012.10648840>
- Howay, F. (1927). *The War Trail of Big Bear by William Bleasdel Cameron*. *The Canadian Historical Review*, 8(1), 75–76. <https://doi.org/10.3138/CHR-08-01-75>
- Hudson, B. (2002). Restorative justice and gendered violence: Diversion or effective justice? *British Journal of Criminology*, 42(3), 616–634.
- Hunt, S. (2016). *An introduction to the health of Two-Spirited people: Historical, contemporary, and emergent issues*. National Collaborating Centre for Aboriginal Health.
- Innes, R. (2013). *Elder Brother and the Law of the People: Contemporary Kinship and Cowessess First Nation*. University of Manitoba Press.
- Innes, R. (2015). Moose on the loose: Indigenous men, violence, and the colonial excuse. *Aboriginal Policy Studies*, 4(1). <https://doi.org/10.5663/aps.v4i1.24193>
- Innes, R., & Anderson, K. (2015). Who’s walking with our brothers? In R. A. Innes & K. Anderson (Eds.), *Indigenous men and masculinities: Legacies, identities, regeneration* (pp. 3–17). University of Manitoba Press.
- Jackson, M. (1988). Locking up Natives in Canada. *University of British Columbia Law Review*, 23, 215–240.

- Justice, D. H. (2014). Fighting shame through love. In S. McKegey (Ed.), *Masculindians: Conversations about Indigenous manhood* (pp. 134–145). University of Manitoba Press.
- Kirmayer, L. J., Gone, J. P., & Moses, J. (2014). Rethinking historical trauma. *Transcultural Psychiatry*, 51(3), 299–319.
- Kovach, M. (2021). *Indigenous methodologies: Characteristics, conversations, and contexts*. University of Toronto Press.
- Kulchyski, P. (1988). A considerable unrest: F. O. Loft and the League of Indians. *Native Studies Review*, 4(1–2), 95–117.
- Kyne, A. (2024). The violence of justice policy: Risk assessments and the criminalization of Indigenous people. *Yellowhead Institute Brief*. <https://yellowheadinstitute.org/brief/the-violence-of-justice-policy/>
- Langhinrichsen-Rohling, J. (2010). Controversies involving gender and intimate partner violence in the United States. *Sex Roles*, 62, 179–193.
- LaPrairie, C. (2002). Aboriginal over-representation in the criminal justice system: A tale of nine cities. *Canadian Journal of Criminology*, 44(2), 181–208.
- LaRocque, E. (1994). *Violence in Aboriginal communities*. National Clearinghouse on Family Violence, Family Violence Prevention Division, Health Programs and Services Branch, Health Canada.
- LaRocque, E. (2014). *When the other is me: Native resistance discourse, 1850–1990*. University of Manitoba Press.
- Lawrence, B. (2003). Gender, race, and the regulation of Native identity in Canada and the United States: An overview. *Hypatia*, 18(2), 3–31

- Leslie, J., & Maguire, R. (1978). *The historical development of the Indian Act*. Indian and Northern Affairs Canada.
- Leslie, J. F. (2002). The Indian Act: An historical perspective. *Canadian Parliamentary Review*, 25(2), 23–27.
- Lux, M. K. (2001). *Medicine that walks: Disease, medicine, and Canadian Plains Native people, 1880–1940*. University of Toronto Press.
- McKegney, S. (2021). *Carrying the burden of peace: Reimagining Indigenous masculinities through story*. University of Regina Press.
- McKegney, S. (2011). Warriors, healers, lovers, and leaders: Colonial impositions on Indigenous male roles and responsibilities. In J. Laker (Ed.), *Men & masculinities: A multidisciplinary reader* (pp. 241–268). Oxford University Press.
- McMahon, T. (2017a). The horrors of Canada's tort law system: The Indian Residential School civil cases. *SSRN*. <https://doi.org/10.2139/ssrn.2983995>
- McMahon, T. (2017b). Indian Residential Schools were a crime and Canada's criminal justice system could not have cared less: The IRS criminal court cases. *SSRN*. <https://doi.org/10.2139/ssrn.2906518>
- McGillivray, A., & Comaskey, B. (1999). *Black eyes all of the time: Intimate violence, Aboriginal women, and the justice system*. University of Toronto Press.
- Merry, S. E. (2011). *Gender violence: A cultural perspective*. John Wiley & Sons.
- Merry, S. E. (2009). *Human rights and gender violence: Translating international law into local justice*. University of Chicago Press.
- Merry, S. E. (1990). *Getting justice and getting even: Legal consciousness among working-class Americans*. University of Chicago Press.

- Miles, M. B., Huberman, A. M., & Saldaña, J. (2014). *Qualitative data analysis: A methods sourcebook* (3rd ed.). Sage Publications.
- Milloy, J. S. (1983). The early Indian Acts: Developmental strategy and constitutional change. In I. A. Getty & A. S. Lussier (Eds.), *As long as the sun shines and the water flows: A reader in Canadian Native studies* (pp. 56–64). University of British Columbia Press.
- Milloy, J. S., & McCallum, M. J. L. (2017). *A national crime: The Canadian government and the residential school system*. University of Manitoba Press.
- Monture-Angus, P. A. (1996). Lessons in decolonization: Aboriginal overrepresentation in Canadian criminal justice. In D. A. Long & O. P. Dickason (Eds.), *Visions of the heart: Canadian Aboriginal issues* (pp. 335–354). Harcourt Brace Canada.
- Monture-Angus, P. A. (1999). Women and risk: Aboriginal women, colonialism, and correctional practice. *Canadian Woman Studies/Les Cahiers de la Femme*, 19(1), 24–29.
- Morgensen, S. L. (2015). Cutting to the roots of colonial masculinity. In R. A. Innes & K. Anderson (Eds.), *Indigenous men and masculinities: Legacies, identities, regeneration* (pp. 38–61). University of Manitoba Press.
- Murdocca, C. (2013). *To right historical wrongs: Race, gender, and sentencing in Canada*. UBC Press.
- Native Women's Association of Canada (NWAC). (2017). *Understanding Gladue* and related engagement reports. NWAC.
- Osborne, P. H. (2011). *The law of torts* (4th ed.). Irwin Law.

- Pfefferle, B. R. (2006). Gladue sentencing: Uneasy answers to the hard problem of Aboriginal over-incarceration. *Manitoba Law Journal*, 32, 113–136.
- Quinless, J. M. (2022). *Decolonizing data: Unsettling conversations about social research methods*. University of Toronto Press.
- Rand, J. T. (2016). Status, sustainability, and American Indian women in the twentieth century. In C. Andersen & J. O'Brien (Eds.), *Sources and methods in Indigenous studies* (pp. 171–177). Routledge. <https://doi.org/10.4324/9781315528854>
- Razack, S. H. (2000). Gendered racial violence and spatialized justice: The murder of Pamela George. *Canadian Journal of Law & Society*, 15, 91–130. <https://doi.org/10.1017/S0829320100006430>
- Razack, S. (2015). *Dying from improvement: Inquests and inquiries into Indigenous deaths in custody*. University of Toronto Press.
- Roach, K. (2019). Plan B for implementing Gladue: The need to apply background factors to the punitive sentencing purposes. *Criminal Law Quarterly*, 67, 375–401.
- Roach, K. (2014). Blaming the victim: Canadian law, causation, and residential schools. *University of Toronto Law Journal*, 64(4), 566–595.
- Rudin, J. (2008). Aboriginal over-representation and R. v. Gladue: Where we were, where we are and where we might be going. *Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference*, 40, 687–713.
- Said, E. W. (2013). Orientalism reconsidered. In *Literature, politics, and theory* (pp. 210–229). Routledge.

- Satzewich, V., & Mahood, L. (1995). Indian agents and the residential school system in Canada, 1946–1970. *Historical Studies in Education/Revue d'histoire de l'éducation*, 7(1), 45–69.
- Schön, D. A. (2008). *The reflective practitioner: How professionals think in action*. Basic Books.
- Sheehy, E. A. (2013). *Defending battered women on trial: Lessons from the transcripts*. UBC Press.
- Shewell, H. (2004). *“Enough to keep them alive”: Indian welfare in Canada, 1873–1965*. University of Toronto Press.
- Simpson, L. (2017). *As we have always done: Indigenous freedom through radical resistance*. University of Minnesota Press.
- Simpson, L. R. (2004). Anticolonial strategies for the recovery and maintenance of Indigenous knowledge. *American Indian Quarterly*, 28(3/4), 373–384. <https://doi.org/10.1353/aiq.2004.0107>
- Sinclair, N. J., & McKegney, S. (2014). After and towards: A dialogue on the future of Indigenous masculinity studies. In S. McKegney (Ed.), *Masculindians: Conversations about Indigenous manhood* (pp. 223–237). University of Manitoba Press.
- Smith, L. T. (2021). *Decolonizing methodologies: Research and Indigenous peoples* (3rd ed.). Bloomsbury Publishing.
- Srivastava, P., & Hopwood, N. (2009). A practical iterative framework for qualitative data analysis. *International Journal of Qualitative Methods*, 8(1), 76–84. <https://doi.org/10.1177/160940690900800107>

- Stark, H. K. (2016). Criminal empire: The making of the savage in a lawless land. *Theory & Event*, 19(4). <https://doi.org/10.1353/tae.2016.0045>
- Steckley, J. L. (2016). *Indian agents: Rulers of the reserves* (Vol. 3). Peter Lang.
- Stonechild, B., Waiser, W., & Waiser, B. (1997). *Loyal till death: Indians and the North-West Rebellion*. Fifth House.
- Straus, M. A. (1999). The controversy over domestic violence by women: A methodological, theoretical, and sociology of science analysis. In X. B. Arriaga & S. Oskamp (Eds.), *Violence in intimate relationships* (pp. 17–44). Sage Publications.
- Sylvestre, M. E. (2013). The (re)discovery of the proportionality principle in sentencing in Ipeelee: Constitutionalization and the emergence of collective responsibility. *Supreme Court Law Review*, 63, 1–30.
- Thobani, S. (2007). *Exalted subjects: Studies in the making of race and nation in Canada*. University of Toronto Press.
- Titley, E. B. (1992). *A narrow vision: Duncan Campbell Scott and the administration of Indian Affairs in Canada*. UBC Press.
- Tobias, J. L. (1983). Protection, civilization, assimilation: An outline history of Canada's Indian policy. In J. R. Miller (Ed.), *As long as the sun shines and the water flows: A reader in Canadian Native studies* (pp. 39–56). University of British Columbia Press.
- Tomsen, S., & Gadd, D. (2019). Beyond honour and achieved hegemony: Violence and the everyday masculinities of young men. *International Journal for Crime, Justice, and Social Democracy*, 8(2), 17–30.

- Valverde, M. (1998). *Diseases of the will: Alcohol and the dilemmas of freedom*. Cambridge University Press.
- Van Dijk, T. A. (2015). Critical discourse analysis. In D. Tannen, H. E. Hamilton, & D. Schiffrin (Eds.), *The handbook of discourse analysis* (2nd ed., pp. 466–485). Wiley-Blackwell.
- Van Styvendale, N. (2022). Within this architecture of oppression, we are a vibrant community. In A. Gebhard, S. McLean, & V. St. Denis (Eds.), *White benevolence: Racism and colonial violence in the helping professions* (pp. 96–117). Fernwood Publishing.
- Wittgenstein, L. (2001). *Tractatus Logico-Philosophicus* (C. K. Ogden, Trans.). Routledge. (Original work published 1922)
- Williams, T. K. (2007). Punishing women: The promise and perils of contextualized sentencing for Aboriginal women in Canada. *Cleveland State Law Review*, 55(3), 269–287.
- Williams, T. K. (2012). Understanding internalized oppression: A theoretical conceptualization of internalized subordination [Doctoral dissertation, University of Massachusetts Amherst]. *ScholarWorks@UMass Amherst*.
- Wolfe, P. (2006). Settler colonialism and the elimination of the native. *Journal of Genocide Research*, 8(4), 387–409. <https://doi.org/10.1080/14623520601056240>
- Young, R. (1981). Introduction to Foucault, M. The order of discourse. In R. Young (Ed.), *Untying the text: A post-structuralist reader* (pp. 48–78). Routledge & Kegan Paul.

- Zimmerman, S. (1992). The revolving door of despair: Aboriginal involvement in the criminal justice system. *University of British Columbia Law Review*, 26, 367–389.
- Zinger, I. (2022–2023). *Annual report: Indigenous over-representation in federal corrections*. Office of the Correctional Investigator.