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# THE NATIONAL INQUIRY INTO THE MISSING AND MURDERED INDIGENOUS WOMEN OF CANADA: A PROBE IN PERIL

by Jenna Walsh

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## INTRODUCTION

Throughout public spaces across Canada, red dresses have been hung devoid of embodiment: the haunting vacancy serving to 'evoke a presence through the marking of an absence'.<sup>1</sup> The REDress project's creator, Jaime Black, has deemed her work an aesthetic response to current socio-political frameworks that normalise gendered and racialised violence against Aboriginal women across Canada. Her objective is to facilitate discussion surrounding the thousands of Indigenous women that have been missing or murdered in the last four decades, while providing a visual reminder of the lives that have been lost. Black's efforts are one of the many grassroots initiatives that have prompted collective calls for a federal response to the crisis. These calls have, at last, been answered. In September 2016, the Government of Canada launched a two-year Independent National Inquiry into the missing and murdered Aboriginal women and girls across the country, directing the Commissioners to propose concrete actions to counteract systemic causes of violence against Aboriginal women. Since its commencement, however, the Inquiry has been plagued by criticism, including the charge that community hearings have adopted an Anglo-legalist structure which has undermined attempts to prioritise Indigenous protocols.

This article will provide an overview of the context surrounding the national crisis, as well as outline the bottom-up initiatives which have provoked a political response. In addition, it will offer insight into the current state of the Inquiry, including the critiques that have arisen from within Indigenous communities in response to its perceived structural and administrative shortcomings.

## THE CRISIS

According to a 2014 report by the Royal Canadian Mounted Police, almost 1200 Indigenous women have gone missing or have been murdered in Canada since 1980.<sup>2</sup> However, activists from the Native Women's Association of Canada ('NWAC') and Walk 4 Justice initiative claim that the true figure is much higher, with advocates collecting the names of at least 4232 women.<sup>3</sup> This significant

discrepancy is indicative of the many operational difficulties that have skewed national data sets relevant to Aboriginal victims. Although Indigenous women are more likely to be victims of violence than their non-Indigenous counterparts, the scope of this violence is not easily quantified. This is, in part, due to inconsistent police practice in collecting information on Aboriginal identity, as well as under-reporting due to strained relationships between police and Indigenous communities. As a result, no definitive statistics can be given.

Despite under-reporting, the recorded figures are still alarming. Although accounting for only four per cent of the national population, Aboriginal women represent 16 per cent of Canadian female homicide victims.<sup>4</sup> Consequently, Indigenous women are at least 4.5 times more likely to be murdered than non-Indigenous women across the country. Of these documented cases, only 54 per cent have led to a homicide charge in instances where the victim was an Aboriginal woman, compared to the national indictment rate of 84 per cent.<sup>5</sup> British Columbia, in particular, has borne a heavy burden in the national crisis for its infamous Highway 16. The route has been deemed the 'Highway of Tears' for the many murders and disappearances which have occurred along the approximately 800km stretch of road since the 1960's, the majority of which have been Indigenous women. There is some disagreement about the number of unresolved cases within this route, but Inuit leaders from the region assert that there could be as many as forty-three.<sup>6</sup>

## SOURCES OF VIOLENCE

In the context of Aboriginal communities, violence against women must be understood as both a cause and effect of systemic impoverishment. Dispossession from Aboriginal land, the erosion of traditional customs and paternalistic federal legislation has contributed to years of marginalisation of Aboriginal peoples, which in turn has impaired community functioning. This often manifests as violence within the family unit. Although colonisation's ongoing impact on Indigenous communities is unassailable, some Aboriginal scholars have emphasised that we must distinguish

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between an Indigenous women's 'embodied lived experience' of violence and the collective oppression of all Indigenous peoples.<sup>7</sup>

Furthermore, it is critical to acknowledge that violence against Indigenous women is not isolated to incidents within Indigenous communities. According to NWAC, Indigenous women were almost three times more likely to be killed by strangers than non-Indigenous women.<sup>8</sup> Yet, these murders and disappearances are often dismissed as an 'inevitable' consequence of involvement in the sex industry. Indigenous women in Canada are highly over-represented as victims of sexual exploitation, but many are simply labelled as degenerate street workers. In such instances, the violence is sanitised as the victims are portrayed as posing a threat to moral order. In one odious example, Tina Washpan, a murdered Aboriginal woman was referred numerous times throughout her killer's trial as 'the hooker'.<sup>9</sup> It took over twenty years for her killer to be convicted.

## POLICE RESPONSE

First Nations have been critical of the police response. In a survey conducted with over 110 Aboriginal families, the average rating assigned to police on their performance in investigating the death of a female relative was a mere 2.8 out of 10.<sup>10</sup> Many have testified that police did not give their loved one's case adequate attention, with one family reportedly waiting eight years to have a report filed. Some allege that officers had dismissed their missing person's case, attributing the disappearance to a 'binge drinking episode'.<sup>11</sup> The tendency for police to underestimate the severity and pervasiveness of these crimes has contributed to the [naturalisation](#) of violence against Aboriginal women. Yet, advocates caution against diagnosing the crisis as a one-dimensional problem arising from the failure of law enforcement.

## GRASSROOTS MOVEMENTS LEADING TO THE INQUIRY

Despite the absence of a federal response to the crisis, reports of violence did not remain uncontested thanks to the bottom up efforts of Indigenous community actors. These activists have argued that countering violence requires the dismantling of hetero-patriarchal colonial structures and thus, have established spaces for community-led investigations. While their grassroots efforts have been longstanding, these initiatives gained more extensive attention during the political inertia that characterised Prime Minister Stephen Harper's conservative government. During this time, advocates became players on the political landscape, actively challenging the federal government's passivity in the midst of a national injustice.

A notable strategy taken by the NWAC in 2005 was launching the 'Sisters in Spirit' ('SIS') project. With no police or governmental

databases available, the 'Sisters in Spirit' investigators took on the task of assembling a national database of missing and murdered Indigenous women. Conducting interviews and statistical research, the SIS team documented the names of over 580 women.<sup>12</sup> Following five years of study, SIS released a report which provided substantiated proof that Indigenous women are disproportionately victimised. The findings in this report further accelerated loosely organised collective bodies to initiate their own forms of activism. For example, the 'Am I Next' social media campaign invited Aboriginal women to post photos of themselves holding a sign asking Prime Minister Harper: *am I next?* Thousands of women, including non-Aboriginal allies, used these photographs to call upon the government to fund a royal commission that would investigate the ongoing crisis. The poignant and visible nature of the campaign propelled the issue into public consciousness, capturing the attention of the national media. It was not the only crowd-sourced initiative to gain widespread recognition. Thousands of people have contributed to the 'Walking With Our Sisters' project which has created over 25 commemorative art installations made with moccasin tops. The tops are not sewn into completed moccasins in order to symbolise the unfinished lives of Indigenous women who have been stolen. Like the REDress project, the Walking with Our Sisters initiative ignores divisive spatial boundaries by establishing installations on both Aboriginal reserves and settler-inhabited areas. The objective: triggering a unified call for a state response.

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## THE LAUNCH OF THE INQUIRY

Notwithstanding these innovative grassroots efforts, public calls for a National Inquiry were met with further inaction by the Harper government, who argued that the murders should be understood as 'isolated crimes' rather than as a part of a 'sociological phenomenon' that required further investigation.<sup>13</sup> Following the defeat of the conservative party in the 2015 federal election, however, Harper's successor Justin Trudeau, kept true to his campaign promise. In September 2016, an independent inquiry body composed of five Indigenous Commissioners was given a budget of \$53.8 million with the expectation that their work will be completed by the end of 2018. The mandate is broadly written. Commissioners are instructed to investigate and report on:

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- i. Systemic causes of violence against Indigenous women and girls, including historical, social, economic, institutional and cultural factors that contribute to this violence; and
  - ii. Institutional practices and policies which have been established in response to violence against Indigenous women.

The Commissioner's task will be to recommend actions that can be taken to counteract these factors as well as suggest actions to honour past victims. To carry out this directive, the Commissioners are authorised to establish both regional and issue-specific advisory bodies to make recommendations on matters relevant to the mandate. The Inquiry will commence under a 'Truth Gathering Process', during which participants may tell their stories through community hearings, statement gatherings and artistic expressions. The first of these Community Hearings began in Whitehorse, Yukon at the end of May. They are scheduled to continue in regions across the country over the next two years.

**Stakeholders who have fought for years to bring the issue to the forefront—including family, friends and survivors—were excluded from key decisions such as choosing the Commissioners, designing the processes and negotiating the terms of reference.**

### EMERGING CRITICISMS

The announcement of the inquiry was initially praised by some victims' families. However, many are unsettled by the fact that the Commissioners' directive does not involve investigating or re-investigating cases. Numerous families have testified that their loved one's investigation was handled inadequately, and thus, anticipated that an independent body would be appointed to review specific cases and probe police about their management of these investigations. There will be no such probe. Furthermore, policing has not been explicitly included in the Inquiry's terms of reference, sparking anxiety that this exclusion will contribute to the muted discourse surrounding police transgressions. Regardless of this omission, Commissioners do have the authority to examine institutional policies and policing practices as they deem necessary. Yet, their authority to respond with concrete action will be limited.

Further difficulties surround the legal authority of the Inquiry. Despite having the power to demand police files and issue

subpoenas to compel testimony, the recommendations made by the Commissioners at the end of the two-year investigation will not be legally binding. The Inquiry's terms of reference prohibit commissioners from finding individuals or organisations, civilly or criminally liable. Thus, governmental bodies are under no obligation to comply with the commissioner's recommendations with any sense of urgency, if at all. The absence of powers of legal enforcement has raised concerns that the Inquiry will become another trivial exercise in cheque writing that is not followed up with any meaningful form of action.

Criticism has also been levelled at the approach adopted by the Commissioners. Although a court of law will not be able to enforce any of the Commissioner's final recommendations, the Commissioners have chosen to take a legalistic approach to their investigation by utilising formalised hearings. Critics have charged these community hearings with upholding the 'status quo colonial model' of hearing processes.<sup>14</sup> The requirement of being sworn in prior to speaking, for instance, has been an issue of contention for some families. Though traditional ceremonies precede the testimonies, there have been calls for a mandate that relies more heavily on Indigenous protocols and laws rather than formal public testimonies. The formalised nature of the proceedings has also been denounced for creating communication barriers for families' who report being confused by the legal jargon used by the Commissioners.<sup>15</sup>

The Commissioners have, however, defended their use of legal processes. The Inquiry body argues that without a legal framework the inquiry could not function, as certain judicial tools are necessary to facilitate a 'robust, independent and neutral' investigation. Compelling the testimony of police chiefs, for instance, enables a more comprehensive examination of the stories being reviewed. Leaders of the Inquiry call upon Indigenous communities to recognise that this investigation marks the first time in Canadian history that legal jurisdictions from every province have banded together to give legal powers to the Commissioners of a public inquiry. They ask Indigenous leaders to acknowledge that employing judicial tools and respecting traditional laws are not mutually exclusive practices. Efforts have been made by the inquiry to create a non-court like space for those speaking, including ensuring that no cross-examinations of survivors or family members will take place. However, attempts to effectively communicate these responses have been neither resounding nor consistent. Answers to public critiques are usually addressed on the Missing and Murdered Indigenous Women and Girls website rather than regular public statements, and the lack of ongoing communication has caused a myriad of confusion resulting in the spread of misinformation and overall mistrust.

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The Inquiry continues to face criticism not only by members of Indigenous communities observing the process, but also internally. On 11 July 2017, one of the Inquiry's five commissioners, Marilyn Poitras, announced her resignation. Explaining her decision, Poitras argued that the Inquiry's structure fails to connect with Indigenous communities and will not enable Commissioners to uncover roots of systemic violence:

This model that we're using has legal counsel driving it with an old traditional commission model of setting up hearings. The traditional colonial style says: You go in, you have a hearing, people come and tell you their problems and you figure it out... You tell us your sad story and we'll figure out what to do with you. And we're headed down that same path. And if it worked, we would all be so fixed and healthy by now. It doesn't work.<sup>16</sup>

Poitras contends that if combating systemic violence is the objective of the Inquiry, then the line of questioning at the hearings must be designed to offer insight into the core causes of this violence. According to Poitras, these questions were not asked at the Whitehorse hearing. Poitras argues that the Inquiry should proceed as a community-driven process, as opposed to a commission-driven one, but believes that a change in trajectory is unlikely. Indigenous leaders and families have shared her sentiments, expressing disappointment that grassroots activists have not been able to play a larger role. Stakeholders who have fought for years to bring the issue to the forefront—including family, friends and survivors—were excluded from key decisions such as choosing the Commissioners, designing the processes and negotiating the terms of reference. Similarly, it is reported that Indigenous service organisations in the regions hosting hearings have not been contacted with requests to become involved.

The failure of Commissioners to deliver a clear response to these widespread criticisms is highly problematic in terms of its effect on participants' trust. The success of the inquiry is conditional on affected parties disclosing detailed information about their experiences, and this contingency cannot be side-stepped through the appointment of additional lawyers or the proliferation of formal hearings. Consequently, the Commissioners' strategy of adopting a predominately legal lens will fail if this approach continues to alienate stakeholders. Commissioners must communicate with the public more consistently and transparently, not only regarding logistical details but also concerning how Indigenous procedures are shaping the probe. Improved communication by itself, however, will be insufficient. More crucially, the Commissioners must introduce a plan to involve community advocates in more direct and recognised roles, and this scheme must be publicly announced to participants using straight-forward, concise language. While it remains unclear whether holding formal hearings

is the most effective tactic for pursuing the Inquiry's mandate, it has become increasingly clear that the exclusionary approach of the Commissioners will continue to water down support amongst community activists.

## **CALLS FOR A RESTART**

Although the Inquiry's first public hearing took place at the end of May, further hearings have been delayed until December. With \$11 million dollars already spent, families are disappointed that few testimonies have been given, expressing frustration at the lack of communication leading up to the hearings, as well as in the lack of staff continuity. Besides Poitras, four other high-level staffers have stepped down from their duties this year, including executive director Michele Moreau. Following these resignations, Indigenous organisations such as the Ontario Native Women's Association have publicly withdrawn their support for the Inquiry, citing a lack of faith that Commissioners will be able to 'meet their mandate' and 'work responsibly with families and communities' under the current structure.<sup>17</sup> The ongoing turbulence calls into question whether the future of the Inquiry is in jeopardy. In light of growing uncertainties, many family members and advocates have called for a hard reset on the Inquiry. At a recent Assembly of First Nations meeting, families urged current Commissioners to resign and pled for a redesigning of the Inquiry structure from the ground up to ensure grassroots involvement. In attendance was Commissioner Michele Audette who agreed that the Inquiry has 'been in crisis mode for quite a few weeks now'.<sup>18</sup> However, despite many calls for a re-start, other family members and communities have indicated that the stakes are too high to start over, and that Commissioners must be supported in their continued efforts. Chief Commissioner Marion Buller has been reluctant to respond publicly but has stated that bureaucratic red tape has caused delays. Whether the deadline for the Commissioners' final report will be extended is yet to be known.

## **CONCLUSION**

Political unresponsiveness to the crisis of missing and murdered Aboriginal women over the past four decades has, undoubtedly, proved a shameful chapter in Canadian history. Whether the current National Inquiry will reveal previously undisclosed causes of violence and lead to accompanying solutions remains unknown. Despite uncertainties, activists whose efforts triggered the Inquiry continue to stride forward in hopes that one day the women of their communities will not live in fear, and that missing and murdered Aboriginal women and girls will receive justice. Until then, red dresses will continue to dangle vacantly amid public spaces, the image of absent bodies permeating the collective Canadian conscious.

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#### Brand the Help, 2015

Karla Dickens

Mixed media  
400mm x 1650mm x 260mm

