



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN

## **Response to Missing and Murdered Indigenous Women and Girls Inquiry: Calls for Justice**

**CANADIAN BAR ASSOCIATION  
ABORIGINAL LAW, CRIMINAL JUSTICE, CHILD AND YOUTH LAW, ENVIRONMENTAL, ENERGY AND  
RESOURCES LAW, AND SEXUAL ORIENTATION AND GENDER IDENTITY COMMUNITY SECTIONS**

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## **PREFACE**

The Canadian Bar Association is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the CBA Aboriginal Law, Criminal Justice, Child and Youth Law, Environmental, Energy and Resources Law and Sexual Orientation and Gender Identity Community Sections, with assistance from the Advocacy Department at the CBA office. The submission has been reviewed by the Law Reform Subcommittee and approved as a public statement of the CBA Aboriginal Law, Criminal Justice, Child and Youth Law, Environmental, Energy and Resources Law and Sexual Orientation and Gender Identity Community Sections.

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# **Response to Missing and Murdered Indigenous Women and Girls Inquiry: Calls for Justice**

## **I. INTRODUCTION**

Following release of the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (Inquiry report) in June 2019, the Canadian Bar Association (CBA) created a working group of five CBA Sections to study and respond to aspects of the Inquiry report most closely associated with the justice system and the practice of law, with the goal of offering our experience and perspective in relevant areas. The Aboriginal Law, Criminal Justice (and its Committee on Imprisonment and Release), Child and Youth Law, Environmental, Energy and Resources Law and Sexual Orientation and Gender Identity Community Sections (CBA Sections) have all contributed to this submission.

The Inquiry report points to countless injustices suffered by Indigenous women and girls, and the combination of institutionalized racism, economic deprivation, sexism, misogyny and other factors that have led to so many being abducted, abused and murdered in Canada, over decades. It also highlights the inadequate response by state and other actors to date to address this ongoing travesty, and sets out Calls for Justice to ameliorate those injustices and inadequacies.

## **II. PRINCIPLES FOR CHANGE AND OVERARCHING FINDINGS**

We have organized our comments following the order of the Calls for Justice in the Inquiry Report's Executive Summary. We also support a distinction based approach to consider the unique history of Inuit (16.10), Métis (17.6) and First Nations peoples (3.7), and the 2SLGBTQIA community, and we offer comments as pertinent throughout.

As a national organization representing lawyers, law students, notaries and academics, we have addressed those Calls that most clearly fall within the CBA's mission and mandate – including seeking improvement in the law and the administration of justice, and adherence to

*Charter*, equality and constitutional principles. Many Calls for Justice are consistent with CBA policy and advocacy and have our full support.<sup>1</sup>

Our addressing only some of the Calls for Justice is not intended to diminish the importance of those we do not mention. Our intent is to offer members' expertise and experience gained through their practice in different areas of law. Some of the Calls are outside the scope of that expertise and experience. For Calls within that scope, we comment based on that expertise and experience to reinforce the goals and support the implementation of the Calls for Justice. On some occasions, the CBA Sections have also offered further context and considerations for progress in achieving the Inquiry report's important desired objectives.

The Calls for Justice are rooted in the Inquiry report's core principle that a holistic approach to safety and well-being is required to address violence against Indigenous women, girls and 2SLGBTQQIA people. We agree and suggest that a holistic approach will also require meaningfully addressing the crisis of over incarceration of Indigenous people in Canada. As Canada's Correctional Investigator has recently stated:

At the current pace, within three years one in every three federal inmates will be Indigenous, even though Indigenous people comprise only five per cent of the Canadian population. The Indigenization of Canada's prison population is nothing short of a national travesty.<sup>2</sup>

The Correctional Investigator points to this problem being even worse for Indigenous women, who now represent 42% of the federal female inmate population.<sup>3</sup> These numbers are staggering and have been extremely resistant to change, as the Inquiry report acknowledges.<sup>4</sup> Great care must be taken to avoid any changes that might inadvertently exacerbate Canada's disproportionate incarceration of Indigenous people.

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<sup>1</sup> Related previous CBA advocacy includes the [Scope of Residential Schools Dispute Resolution Process Resolution](#) (CBA: Ottawa, 2004); [Responding to the Truth and Reconciliation Calls to Action Resolution](#) (CBA: Ottawa, 2016); and [Responding to the Truth and Reconciliation Commission's Calls to Action](#) (CBA: Ottawa, 2016).

<sup>2</sup> <https://www.thestar.com/news/canada/2020/01/21/prison-watchdog-decries-indigenization-of-canadas-correctional-system.html>.

<sup>3</sup> <https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx>.

<sup>4</sup> Volume 1a, at 635.

Family unity is identified by the Inquiry report as being “central to the safety and well-being of Indigenous women, girls and 2SLGBTQQIA people.”<sup>5</sup> However, according to Canada’s 2016 census data, 52.2% of children under 15 who are in foster care are Indigenous, despite only 7.7% of children under 15 being Indigenous, a statistic that worsened since the 2011 census.<sup>6</sup> Mental health services and substance use treatment were identified as key to “family well-being, preventing violence, supporting victims of crimes, and rehabilitating offenders.”<sup>7</sup> Poverty, unemployment and housing needs among Indigenous peoples are further noted as essential to successfully addressing violent behaviour. And yet, in 2018, the Auditor General of Canada found that Canada’s measures of Indigenous well-being are incomplete, and the gaps that are measured are widening.<sup>8</sup> Ending violence against Indigenous women, girls and 2SLGBTQQIA people also requires significant investment in Indigenous communities with a focus on resources, support and family unity. This is even more necessary in remote and northern areas.

The Inquiry report’s overarching findings, set out on pages 60 to 61 of the Executive Summary, acknowledge that:

- historic and current genocidal practices are the cause of violence experienced by Indigenous women, girls and 2SLGBTQQIA people
- Canada has failed to protect the rights of Indigenous people as acknowledged by domestic and international law
- Canada has replaced Indigenous governance with colonial and patriarchal systems.

The CBA Sections acknowledge these findings and agree with the overarching view that Indigenous self-determination in all areas of Indigenous society is a fundamental right and best practice that must be sustainably resourced.

We endorse the Call on governments to develop “real partnerships with Indigenous Peoples that support self-determination, in a decolonizing way” that re-establishes Indigenous Nationhood and “is rooted in Indigenous values, philosophies, and knowledge systems.” This

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<sup>5</sup> Executive Summary at 51.

<sup>6</sup> [https://www.canada.ca/en/indigenous-services-canada/news/2018/01/media\\_brief\\_backgrounderchildfamilyservices.html](https://www.canada.ca/en/indigenous-services-canada/news/2018/01/media_brief_backgrounderchildfamilyservices.html);  
<https://www150.statcan.gc.ca/n1/pub/75-006-x/2016001/article/14547-eng.htm>.

<sup>7</sup> *Ibid.*

<sup>8</sup> 2018 Spring Reports of the Auditor General of Canada, Report 5 – Socio-economic Gaps on First Nations Reserves – Indigenous Services Canada at 5.17 to 5.37.

decolonizing approach must be led by Indigenous governments, organizations and people, and again, be sustainably and equitably resourced.

Decolonizing approaches involve recognizing inherent rights through the principle that Indigenous peoples have the right to govern themselves for matters internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect for their special relationship to their resources, which many witnesses described as their relatives.<sup>9</sup>

We believe that many of the Calls for Justice will help to address the root causes of violence against Indigenous women, girls and 2SLGBTQQIA people, a prerequisite to change.

### **III. CALLS FOR JUSTICE FOR ALL GOVERNMENTS**

#### **A. Human and Indigenous Rights and Governmental Obligations**

The CBA Sections endorse the development of laws, policies and public education campaigns that challenge the normalization of violence and sexual exploitation (1.9). We support a National Action Plan that would be developed and implemented by all levels of government in partnership with Indigenous peoples to address violence against Indigenous women, girls and 2SLGBTQQIA people (1.1), and an Anti-Racism and Anti-Sexism National Action Plan to end racist and sexualized stereotypes of Indigenous women, girls and 2SLGBTQQIA people (2.6). This National Action Plan should build on the National Inquiry's work to ensure equitable access to employment, housing, education, safety and health care for Indigenous women, girls and 2SLGBTQQIA people. It must necessarily be adequately funded, regionally and culturally adapted to the diversity of Indigenous cultures and communities, and accountable to Indigenous peoples by reporting on measurable goals.

#### **a. International Human Rights**

The CBA has advocated for Canada's implementation and compliance with many of the international human rights instruments listed in Call 1.2.<sup>10</sup>

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<sup>9</sup> Executive Summary at 57.

<sup>10</sup> See, for example, 2013 CBA Resolution regarding the [United Nations Convention on the Rights of the Child](#) (UNCRC) and subsequent letter from the CBA President to the Prime Minister (CBA: Ottawa, 2014).

Canada committed to fulfill its obligations to protect children's rights under the United Nations *Convention on the Rights of the Child* (UNCRC) in 1991 when the UNCRC was ratified. However, the 2012 *Concluding Observations of the UN Committee on Canada's Third and Fourth Reports on the UNCRC* made serious criticisms of Canada. In 2014, the CBA urged the federal government to use those concluding observations to table a detailed federal Action Plan for implementing the UNCRC.

The CBA wrote to the Prime Minister in 2016 about Canada's ongoing delay in responding to the *Concluding Observations*, saying that Canada still lacked legislative compliance with the UNCRC and urging the creation of a National Children's Commissioner. Most urgently, we noted that the UN Committee had urged Canada to curb the over-representation of Indigenous children in government care, yet that situation remains dire. The legacy of Indigenous children in residential schools is more clearly understood by Canadians since the release of the *Truth and Reconciliation Commission* report<sup>11</sup> (TRC report), which mirrors many of the injustices experienced by Indigenous women and girls that are documented in the Inquiry report.

In 2018, the CBA again urged the federal government to establish a National Commissioner for Children and Youth. The National Commissioner would be an independent Officer of Parliament reporting to both Houses of Parliament, to protect and promote human rights under federal jurisdiction of children and youth in Canada and to consult and engage with Canada's Indigenous peoples to ensure the rights and interests of Indigenous children and youth are promoted and protected. We also asked the government to fulfill its commitment to children, especially Indigenous children.<sup>12</sup>

As is clear from this history, the CBA supports many of the Calls that would make the federal government accountable for its international obligations to protect the human rights of Indigenous women, girls and 2SLGBTQQIA people.

The CBA also supports the active role that Indigenous women, girls and 2SLGBTQQIA people should play in guiding implementation of international human rights instruments in Canada, as recommended by the Inquiry (1.2). As a party to the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the United Nations *Convention on the Rights of the Child* (UNCRC), the *Convention on*

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<sup>11</sup> Truth and Reconciliation Commission [Report](#).

<sup>12</sup> See, [National Commissioner for Children and Youth in Canada](#) (CBA: Ottawa, 2018).

*the Elimination of all forms of Discrimination against Women (CEDAW)* and the *International Convention on the Elimination of all forms of Racial Discrimination (ICERD)*, Canada has an obligation to uphold these instruments within its borders.

For international instruments that Canada has not ratified, any implementation must again include an active role for Indigenous women, girls and 2SLGBTQIA people. The CBA has said that Canada should continue to review its outstanding ratification of the 3rd Optional Protocol to the UNCRC. It offers a remedy under international law when no other remedy exists in domestic law, by way of a communications procedure by children and their legal representatives to the Committee on the Rights of the Child for violations of the UNCRC by member states.<sup>13</sup> Although Canada is party to the UNCRC and its two other optional protocols, it has not ratified the 3rd Optional Protocol.

Additionally, the CBA has urged the federal government to engage in public consultation on whether it should ratify the *American Convention on Human Rights* and recognize the jurisdiction of the Inter-American Court of Human Rights to hear individual complaints against Canada. Such a consultation must involve Indigenous women, girls and 2SLGBTQIA people.

### **b. Calls 1.3- 1.11**

We caution that the Call for governments to immediately take all necessary measures to, among other things, punish individuals who commit violent crimes (1.5) might not achieve the intended effect of reducing violence and healing Indigenous families, communities and nations. Research demonstrates that punishing individuals through incarceration does not reduce recidivism. In fact, there is evidence that incarceration actually has the opposite, criminogenic effect.<sup>14</sup>

This is especially true for Indigenous prisoners held in colonial institutions. The TRC report comments that the over-representation of Indigenous people in prison is the result and continuation of genocidal policies, including the residential school system, and that must be addressed by providing “sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and

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<sup>13</sup> [Letter](#) to Prime Minister Trudeau (CBA: Ottawa, 2018).

<sup>14</sup> See for example, Francis T. Cullen, Cheryl Lero Jonson and Daniel S. Nagin, “[Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science](#),” (2011) 91 *The Prison Journal* 48S.

respond to the underlying causes of offending”.<sup>15</sup> Further, merely implementing Indigenous specific processes or programs in the Canadian justice system is unlikely to be sufficient to remedy the root causes of violence.<sup>16</sup>

The CBA Sections support the Inquiry report’s Call to all governments to equitably support and promote the role of Indigenous women, girls and 2SLGBTQIA people in governance and leadership, including by developing policies and procedures to fight against sexism, homophobia, transphobia and racism in political life (1.4). We also support the Call for participation of Métis people in policy decisions that affect them (17.3) and urge governments to extend this Call to all Indigenous people.

The proposed National Action Plan requires all levels of government to adopt a collaborative and conciliatory approach that seeks to resolve jurisdictional gaps in favour of providing adequate and culturally safe services to Indigenous women, girls and 2SLGBTQIA people (1.6). The CBA advocated for a similar approach in expressing our support for the TRC recommendations regarding services to Indigenous children generally.<sup>17</sup> The CBA Sections continue to support such an approach for Indigenous girls, in particular, and for Indigenous women and 2SLGBTQIA people.

The CBA has long considered such a national strategy as a necessary corollary to a national inquiry on missing and murdered Indigenous women and girls, and actually expressed support for both measures in a 2013 resolution.<sup>18</sup> The work of the National Inquiry and the lessons learned from the contribution of Indigenous peoples from across Canada will provide important guiding principles and distinction based considerations to strengthen the content and goals of such a strategy.

Additionally, the CBA Sections support the development, delivery and dissemination of programs and awareness campaigns by Indigenous communities and organizations to prevent

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<sup>15</sup> Truth and Reconciliation Commission of Canada, [Final Report](#) of the Truth and Reconciliation Commission of Canada, Summary: Honouring the Truth, Reconciling for the Future, 2015 (Winnipeg) at 173.

<sup>16</sup> This is mainly because Eurocentric legal systems do not recognize or appropriately adopt the many Indigenous legal orders/principles. See, J (Sákéj) Henderson, “First Nations Legal Inheritances in Canada: The Mi’kmaq Model” (1995) 23 Manitoba Law Journal 1-31.

<sup>17</sup> *Supra*, note 1.

<sup>18</sup> [CBA Resolution 13-02-M](#) Ending Violence Against Aboriginal Women

all forms of violence, including lateral violence. Again, such programs and campaigns must be sustainably funded by all governments (1.8).

The establishment of a National Indigenous and Human Rights Ombudsperson and National Indigenous and Human Rights Tribunal with authority in jurisdictions (1.7) would be an office and adjudicative body specialized in responding to complaints from Indigenous individuals and communities about human and Indigenous rights violations, including government services to First Nations, Inuit and Métis people and communities. The specialized nature of the Ombudsperson and a Tribunal with a national mandate (i.e. supported by interlocking federal and provincial and territorial legislation) could allow an effective response to complaints and prompt identification of solutions to structural problems in offering services to Indigenous people and communities across Canada.

Finally, we urge the federal government to establish an independent mechanism to report on implementation of the Calls for Justice, and to archive all public records from the Inquiry's work with Library and Archives Canada (1.11).

## **B. Culture**

We support the Call for core long-term funding to protect Indigenous cultures, and for Indigenous-centred health and wellness services.

On the topic of Indigenous language and culture, the CBA Sections support the general principles in the Calls to Justice (2.1-2.7, 16.3). Indigenous people's cultures and languages must be acknowledged, recognized and protected as both inherent rights and constitutionally protected rights under section 35 of the *Constitution Act, 1982*. As we have stated before,<sup>19</sup> it is difficult to imagine anything more central to a people's distinct culture and practices than its language. Quick action is required to address the crisis facing Indigenous languages in Canada.

The Government of Nunavut has set an unprecedented protection for Inuktitut<sup>20</sup> as an official language, but other governments and the federal governments have not extended the same level of protection for Indigenous languages across Canada. Indigenous language groups are disadvantaged in comparison to minority French-language communities outside of Quebec and minority English-language communities in Quebec, who benefit from measures like: a

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<sup>19</sup> Submission on Bill C-91, [Indigenous Languages Act](#) (CBA: Ottawa, 2019).

<sup>20</sup> [We Speak Inuktitut](#)

constitutionally-guaranteed primary and secondary education system,<sup>21</sup> constitutionally-guaranteed access to federal government services,<sup>22</sup> special status within the federal public service,<sup>23</sup> the right to be tried for criminal offences in either English or French,<sup>24</sup> and a quasi-constitutional commitment to advance both French and English in Canada.<sup>25</sup>

Indigenous women, children and 2SLGBTQIA people should not be denied safe access to their culture and languages. All governments must recognize the rights of Indigenous people to protect their languages and provide the funding necessary to support the revitalization and restoration of Indigenous languages and cultures. Where rights are recognized, they must be made justiciable so courts can enforce them. Implementation efforts of the Inquiry report will require recognition and respect for First Nations, Inuit and Métis peoples' knowledge, wisdom and expertise.

The CBA Sections supports Call **16.2**, which calls for all governments to create laws and services to protect and revitalize Inuit culture and language, and Call **17.5**, which calls for Métis specific programs and services. All Indigenous people should have equitable access to culture and languages programs.

### **C. Health and Wellness**

The CBA Sections echo the Calls for funding for trauma-informed programs for survivors of trauma and violence (**3.3**) and wraparound services including mobile trauma and addictions recovery teams (**3.4**). As lawyers who work with victims of trauma know, without these vital health and wellness resources, many clients are unable to attend to potentially debilitating legal problems in their lives or ensure that they do not harm themselves or others.

Indigenous health and wellness also requires substantive equality for Indigenous-run health services (**3.6**), healing programs for the children of missing and murdered Indigenous women (**3.7**), healing and health programs for Inuit children (**16.10**) and the creation of Métis health authorities (**17.4**). We believe that these initiatives would contribute to the safety of Indigenous women, girls and 2SLGBTQIA people, to keeping families together and to the

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<sup>21</sup> *Canadian Charter of Rights and Freedoms*, section 23.

<sup>22</sup> *Canadian Charter of Rights and Freedoms*, section 20.

<sup>23</sup> *Official Languages Act*, RSC 1985, c 31 (4th Supp), Part V.

<sup>24</sup> *Criminal Code of Canada*, RSC 1985, c C-46, s 530.

<sup>25</sup> *Official Languages Act*, RSC 1985, c 31 (4th Supp), Part VII.

decarceration of Indigenous people. Substantive equality requires that the distinct needs and circumstances of Indigenous communities, including cultural, historical and geographical needs and circumstances, be taken into account in delivering programs and services to them.<sup>26</sup>

#### **D. Human Security**

We also echo the Calls for self-determination in economic and social development to address needs for safe housing, clean drinking water and adequate food in Indigenous communities, a guaranteed liveable income for all Indigenous people and safe and affordable transportation in remote communities (4.1, 4.6, and 4.7). These actions would ensure that Indigenous peoples have access to safe housing and address homelessness and near homelessness among Indigenous women, girls and 2SLGBTQIA people. The CBA Municipal Law Section recently called on governments across Canada to combat homelessness and has recognized that addressing homelessness leads to “important benefits such as recognizing the dignity and worth of all persons.”<sup>27</sup>

Call 4.3 asks governments to promote the safety and security of Indigenous women, girls and 2SLGBTQIA people in the sex industry. The CBA Sections support this goal, as stated in our 2014 submission when the *Protection of Communities and Exploited Persons Act*<sup>28</sup> was before Parliament. The CBA supported criminalizing those receiving benefits from the sex industry by exploiting those providing sexual services, but did not support measures that would undermine the ability of sex workers to avail themselves of the safeguards set out by the Supreme Court of Canada in *Canada (Attorney General) v Bedford*.<sup>29</sup>

#### **E. Justice**

In the Inquiry report, participants are cited as saying that they saw the justice system as unfair, unrepresentative and not their own, and discussed “how justice might be redefined in Indigenous terms, and in terms of how people kept each other safe, cared for one another, and

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<sup>26</sup> *First Nations Child and Family Caring Society of Canada et al v Canada (Attorney General)*, 2016 CHRT 2 at para 465. See also: CBA Submission to the House of Commons Standing Committee on Indigenous Peoples and Northern Affairs, and to the Standing Senate Committee on Aboriginal Peoples on [Bill C-92: An Act respecting First Nations, Inuit and Métis children, youth and families](#) (CBA: Ottawa, 2019).

<sup>27</sup> <http://cba.org/News-Media/News/2019/November/mortgage-instruction-and-homelessness>.

<sup>28</sup> [Bill C-36](#) — Protection of Communities and Exploited Persons Act (Ottawa: CBA, 2014).

<sup>29</sup> S.C. 2014, c. 25.

ensured that the laws and rights were upheld and related responsibilities were followed.” In 2013, the CBA’s *Reaching Equal Justice* report<sup>30</sup> made similar observations after holding community consultations with marginalized populations, including Indigenous women. We heard that legal rights are “just on paper”, that justice systems “cannot be trusted”, that justice is person-dependent and that justice systems are too difficult to navigate. We support the Inquiry report’s Calls for solutions that focus on “revitaliz[ing] Indigenous laws, and provid[ing] more rehabilitation and reintegration supports.”<sup>31</sup> The CBA has supported similar approaches in its calls for criminal justice reform over many years.<sup>32</sup>

Self-determination in the area of justice is consistent with the United Nations *Declaration on the Rights of Indigenous Peoples* Article 33, which recognizes that Indigenous peoples have the “right to maintain a justice system in accordance with their legal traditions”.<sup>33</sup>

### **a. Criminal Law Reform**

CBA members with expertise in criminal law, both as Crown and defence counsel, know that the criminal law must be flexible to achieve justice in different individual situations. Without that flexibility, the law cannot be tailored to respond appropriately to each individual and each fact situation. As worded, some of the Calls may lead to an overly punitive response to some accused, and difficulty in guaranteeing respect for core constitutional principles designed to protect sometimes conflicting rights. Our comments in this section and in the submission generally are intended to ensure that any proposed criminal law reform is meaningful, effective and that the consequences of those reforms bring about the intended results.

We suggest some further clarification of the Calls for Justice in this section would be helpful to reconcile them with other principles for change and overarching findings in the Inquiry report. One example is the Call for *Criminal Code* amendments to eliminate definitions of offences that

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<sup>30</sup> CBA’s [Reaching Equal Justice Report](#).

<sup>31</sup> The ultimate goal should be on the revitalization of robust Indigenous legal systems for Indigenous groups/nations who seek them. See: Canada. Parliament. House of Commons. Special Committee on [Indian Self-Government](#) (1983. October) 2nd Report. 32 Parliament, first session. Available at section 21. See also, the Royal Commission on Aboriginal People, which explained that reconciliations means more than simply giving effect to specific rights, or revitalizing certain aspects of culture (Vol 2, p. 35). Similarly, see TRC Call to Action #42.

<sup>32</sup> See, for just a few examples, [CBA Resolution 16-09-A](#) Overuse of PreTrial Detention; [CBA Resolution 15-06-A](#) Health Care for Federal Offenders; [CBA Resolution 15-05-A](#) Programs for Aboriginal Offenders, and [CBA Resolution 15-04-A](#) Overuse of Solitary Confinement in Canadian Prisons.

<sup>33</sup> See, [CBA Resolution 20-02-A](#) United Nations Declaration on the Rights of Indigenous Peoples.

“minimize the culpability of the offender” (5.2). It would be unfortunate if that Call was interpreted to suggest that consideration of the context of an offence and the history and circumstances of the offender is irrelevant or inappropriate.

If misinterpreted, the Call could lead to increased incarceration of Indigenous people whose offences may be related to their own unresolved trauma, and not to greater safety for Indigenous women, girls and 2SLGBTQQIA people. We appreciate that some Calls for Justice may be deliberately aspirational or broadly worded, but that breadth can also mean they will be open to interpretation. A tough approach to offenders and offending has often proven to be ineffective and expensive, had a disproportionate impact on already marginalized populations, caused backlog in the courts, produced unconstitutional legislation and led to unnecessary litigation to define what is meant or whether the law as passed is consistent with Canada’s *Constitution* and *Charter* values. This is not to mention the profound injustice to individuals that can occur when judges are hampered in taking a tailored and individualistic approach to achieving justice in each case, as occurs when mandatory minimum sentences are required.

The impact of recent legislative amendments on Call 5.3 is unclear. Since the release of the Inquiry report, there have been further reforms to the law<sup>34</sup> around sexualized violence and intimate partner violence in *Criminal Code* sections 276 and 278.1 and those reforms apply to all complainants, including Indigenous women, girls and 2SLGBTQQIA. Bill C-51 expanded protections provided to complainants of sexual assault, giving them the right to be represented by independent counsel for section 276 applications and including communications made for a sexual purpose or whose content is of a sexual nature within the definition of sexual activity for the purposes of the applications.<sup>35</sup> Section 276 now requires a seven-day notice for the application to be brought so complainants can arrange to have counsel present if they wish. Also, section 159 of the *Criminal Code* was repealed as a result of Bill C-75.<sup>36</sup> In general, whether the goal is for legislative change, dedication of more resources or further restrictions on the rights of accused people, we suggest that goal should be clearly stated.

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<sup>34</sup> See, for example, the changes as a result of Bills C-75, *Criminal Code and Youth Criminal Justice Act* amendments, now S.C.2019, c.25 and Bill C-51, *Criminal Code and Department of Justice Act* amendments, now S.C.2018, c.29.

<sup>35</sup> *Ibid.*

<sup>36</sup> This is the provision that once criminalized the act of anal intercourse.

We also call for funding for crime prevention initiatives generally (5.6). As much policing is done under provincial, territorial or municipal jurisdiction, this will need to be considered and the intended goals defined. Similarly, funding for police service in rural, northern and remote communities will require the proper allocation of resources and improved police training. Resources cannot only be allocated to police and prosecution services but must also be allocated to maintain an important balance with criminal legal aid and other social support services for people accused of serious crimes.

This is partially addressed in Call 5.6. Certainly, victims' services must be properly funded, and should not be reliant on convictions. However, Ontario has recently abolished the Criminal Injuries Compensation Board, and replaced it with an office in the Ministry of the Attorney General concentrating on compensation to victims that focusses on physical needs, such as broken glasses or dentures, rather than pain and suffering, with the result of lower compensation for victims.<sup>37</sup>

We support police oversight as recommended in Call 5.7 and Call 5.9 for protection orders to be readily available, accessible, promptly issued and effectively serviced and resourced to protect the safety of Indigenous women, girls and 2SLGBTQQIA people. The effectiveness of protection orders would again rely on proper resourcing, especially for enforcement, and should be considered with provincial and territorial family law mechanisms. Any legislative reform to implement Call 5.9 should begin with an assessment of how existing peace bond provisions are not meeting the needs of Indigenous women, girls and 2SLGBTQQIA people.

A Bench reflective of society, including in terms of Indigenous representation, as suggested by Calls 5.10 and 5.12, is a fit goal and strides have been made in this regard in the last decade. We question whether this Call would impact the qualifications to be a Justice of the Peace, or require all Justices of the Peace to be lawyers, both matters of provincial and territorial responsibility.

We support self-determination in the area of policing, as well as in justice and corrections as reflected in Calls 5.11 and 5.16. 5.11 toward meaningful and culturally appropriate justice practices by expanding restorative justice programs and Indigenous peoples' courts. The CBA

supports restorative justice approaches<sup>38</sup> and notes that specialized courts for Indigenous people have proven effective.<sup>39</sup>

The CBA also has a long history of advocating for expanded and adequately resourced access to justice, and in particular, improved and more adequate legal aid across Canada (5.13). The CBA has identified jurisdictional gaps in access to justice (1.6) that result in denial of services, or improperly regulated and delivered services, and in particular those that operate to the detriment and further marginalization of certain populations, including Indigenous women, girls and 2SLGBTQQIA people.<sup>40</sup> Certainly, Indigenous women, girls and 2SLGBTQQIA people must have access to justice and legal assistance so they can meaningfully participate in the justice system to defend and assert their human and Indigenous rights. However, additional legal aid resources, including for those accused of crimes or in child protection situations, is also imperative for the system to operate as intended, especially given the precarious nature of funding for legal aid.<sup>41</sup>

We have opposed and continue to oppose the idea of independent counsel for victims of crime if it implies a complainant having separate standing in trials or appeals.<sup>42</sup> The criminal justice system is not a tripartite system, and this idea, which has previously been considered and rejected, could result in major problems for how Crowns prosecute, how lawyers defend accused and how judges or juries decide cases.

The CBA fully supports the call to evaluate the impact of mandatory minimum sentences under Call 5.14. We have consistently opposed those sentences as removing judges' ability to consider the individual facts and circumstances in each case and for each accused.<sup>43</sup> This evaluation would also help to address the over-incarceration of Indigenous men and boys.

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<sup>38</sup> CBA Resolution 99-02-M Restorative Justice.

<sup>39</sup> [Spotlight on Gladue](#): Challenges, Experiences, and Possibilities in Canada's Criminal Justice System.

<sup>40</sup> Some of our efforts include policy development like Civil Legal Aid (1996), Legal Aid Strategy (2002), and Accountability for Access to Justice (2004). We have engaged in court challenges, including currently in regard to *Single Mothers' Alliance of BC Society v. British Columbia* 2019 BCSC 1427. The case argues B.C.'s legal aid system increases the risk of exposure to violence and intense stress for women and children, thus violating sections 7 and 15 of the *Charter* and section 96 of the Constitution Act, 1867.

<sup>41</sup> For example, see [recent funding cuts to legal aid in Ontario](#).

<sup>42</sup> See discussion in our submission on [Bill C-32, Victims Bill of Rights](#) (CBA: Ottawa, 2016).

<sup>43</sup> For example, see [CBA Resolution 11-09-A Justice in Sentencing](#).

The CBA also supports the call to properly resource Gladue reports, though national standards (5.15) must be approached cautiously to ensure that local issues can be adequately addressed. While Gladue was decided years ago<sup>44</sup>, our experience as lawyers in criminal courts is that Gladue reports remain inconsistently available. This Call and Call 5.2 may operate at cross purposes, as Gladue reports allow consideration of factors that may mitigate against the culpability of an accused.<sup>45</sup>

The CBA has supported an expanded range of options for sentencing and a focus on rehabilitation and reintegration, and we agree with the community based and Indigenous-specific approaches as proposed in Call 5.16. In our view, this should include the re-institution of conditional sentencing orders, which allow a broader range of sentencing options to allow a sentence to be tailored to a particular situation.<sup>46</sup>

Calls 5.17 to 5.19 seem intended to lead to harsher sentences for crimes involving violence against Indigenous women, girls and 2SLGBTQQIA people. An unintended consequence of those requirements could be harsher sentences against Indigenous people who commit offences against other Indigenous people. This could result in even higher rates of incarceration of Indigenous people. As noted above, the involvement of Indigenous people in the criminal justice system, including where offences relate to violence against Indigenous women, girls and 2SLGBTQQIA people, may be directly or indirectly linked to untreated experiences of trauma, often because of genocidal colonial practices including residential schools. These factors must be balanced with community safety concerns by prosecutors or judges in sentencing, as they could lead to Indigenous individuals spending more time incarcerated, which perpetuates separation of families, and often results in isolation and re-traumatization.

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<sup>44</sup> R. v. Gladue, [1999] 1 S.C.R. 688.

<sup>45</sup> For example, New Brunswick does not require Gladue Reports. Gladue related info is included in pre-sentence reports, written by (mostly non-Indigenous) probation officers. A report prepared for DOJ explains:

The main difference, according to the authors, between a pre-sentence report and an “independent Gladue report” is that the latter is prepared by an independent organization and submitted to the court on behalf of the accused by the defence while the pre-sentence report is prepared by a government organization such as Correctional Services.

See, April, S. and M. Magrinelli Orsi, “Gladue Practices in the Provinces and Territories”, Research and Statistics Division – Department of Justice Canada, 2013, at 10.

([https://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr12\\_11/p2.html](https://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr12_11/p2.html))

<sup>46</sup> See also CBA letter to [Justice Minister Lametti](#), December 2019.

Call **5.18** says that the federal government should consider violence against Indigenous women, girls, and 2SLGBTQIA people as an aggravating factor at sentencing, and amend the *Criminal Code* accordingly, as was suggested in Private Members' Bill S-215.<sup>47</sup> However, *Criminal Code* section 718.04 already says that when a court imposes a sentence for an offence involving the abuse of a person who is vulnerable because of personal experiences (including because the person is Indigenous and female), or if there is a racist intent, the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.<sup>48</sup>

We do not support expanding the first degree murder section of the *Criminal Code* to include cases where there is a pattern of intimate partner violence and abuse (**5.19**). There is no reason to further change the classification of murder. Instead, general tools already available in the *Criminal Code* should be used to achieve the same objective. A pattern of intimate partner violence is currently an aggravating factor at sentencing, but that does not change the nature of the crime itself. Bill C-75, *Criminal Code and Youth Criminal Justice Act* amendments received Royal Assent in June 2019, and the *Criminal Code* now offers a definition for intimate partner violence, and allows judges to increase the maximum allowable sentence for offences committed against an intimate partner where there is a pattern of intimate partner violence. Although these amendments do not specifically change circumstances under which an individual might be convicted of first degree murder, they do reflect the need to specifically recognize aggravating features associated with these types of criminal offences. We believe that the proposed change in this Call could have unintended and negative impacts, including longer trials, more appeals, practical difficulties for prosecutors and possible constitutional challenges.

Other changes in Bill C-75 include amendments to the bail structure. A new reverse onus has been added to section 515(6) that applies in circumstances where the accused has been previously convicted of intimate partner violence offences, again recognizing the significance of a pattern of previous intimate partner violence.

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<sup>47</sup> <https://www.parl.ca/DocumentViewer/en/42-1/bill/S-215/third-reading>.

<sup>48</sup> Following 2019 amendments, the section reads:

718.04 When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances — including because the person is Aboriginal and female — the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

The CBA Sections support the call to implement sections 79 to 84.1 of the *Corrections and Conditional Release Act* (CCRA) (5.20).<sup>49</sup> We support calls that would implement recommendations of the Correctional Investigator and other reports mentioned under Call 5.21, with the goal of reducing the over-representation of Indigenous women and girls in the criminal justice system, as well as the recommendation to return women’s corrections to the key principles of *Creating Choices*<sup>50</sup> (5.22).

We also support creating a position to oversee the Correctional Service Canada’s treatment of Indigenous prisoners (5.23), but believe that position should be external to and independent of CSC.

Calls 5.24 and 17.2 urge distinction based and intersectional data be collected (or disaggregated data on violence against Métis women, girls and SLGBTQQIA people). We recognize the importance of collecting and maintaining these metrics, and support both Calls.

The CBA Sections supports more research on men who commit violence against Indigenous women, girls and 2SLGBTQQIA people with a goal of increasing understanding about how to prevent these crimes (5.25).

#### **IV. CALLS FOR JUSTICE: INDUSTRIES, INSTITUTIONS, SERVICES AND PARTNERSHIPS**

##### **A. Calls for Media and Social Influencers**

Call 6.1 asks a wide variety of media actors and social influencers “to take decolonizing approaches to their work and publications in order to educate all Canadians about Indigenous women, girls, and 2SLGBTQQIA people.” Most relevant to legal professionals, the Calls for Justice urge avoiding and ending stereotyping, and supporting Indigenous peoples in sharing their stories “from their perspectives, free of bias, discrimination, and false assumptions, and in a trauma-informed and culturally sensitive way.”

Lawyers are often called on to speak to the media, and many lawyers are active on social media, whether in their personal capacity or as part of their marketing activities. These Calls are relevant to those activities and are generally consistent with legal professionals’ obligations under codes of professional conduct. For instance, the Federation of Law Societies of Canada’s

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<sup>49</sup> This is in keeping with our submission on [Bill C-83](#), CCRA amendments (CBA: Ottawa, 2019).

<sup>50</sup> *Creating Choices: The Report of the Task Force on Federally Sentenced Women* (Ottawa: CSC, 1990).

*Model Code of Professional Conduct* specifies that “a lawyer must not discriminate against any person.” Given that “[d]ealings with the media are simply an extension of the lawyer’s conduct in a professional capacity”, the requirement applies to a lawyer’s media and social media activities in general, which supports the aspects of the media-specific call noted above.

The CBA’s Social Media Policy prohibits the use of CBA social media accounts to disseminate “[i]nformation that negatively portrays and existing community (e.g. ethnic group, nationality, gender, occupation, etc.)” and discourages posts on personal social media accounts of CBA volunteers and employees containing discriminatory slurs, and makes such posts subject to disciplinary action.<sup>51</sup>

Although this policy reinforces an anti-discrimination and anti-stereotyping approach to publications regarding Indigenous peoples, non-Indigenous lawyers and legal professionals need to be aware of their own internal biases that will affect how they communicate with and about Indigenous peoples. The anti-racism and cultural competency training recommended by the TRC Calls to Action and by the CBA’s own commitment in response to those Calls can contribute to that awareness.<sup>52</sup>

## **B. Health and Wellness Service Providers**

The Calls to Justice under this heading aim to secure stable and ongoing funding for health and wellness services that meet the needs of Indigenous peoples. The CBA expressed support for these aims in our submissions to Parliament in 2019 on *An Act respecting First Nations, Inuit and Métis children, youth and families*.<sup>53</sup>

The CBA Sections support the Call for self-determination in providing health and wellness services to Indigenous people that are grounded in the world views, cultures, languages, practices and values of the communities they serve (7.1). We support the Call to resource Indigenous-led services to help Indigenous people heal from all forms of unresolved trauma, including intergenerational trauma (7.2), and the funding of preventative initiatives listed under 7.3.

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<sup>51</sup> [Social Media Policy](#)

<sup>52</sup> See, [CBA Resolution 16-12-A](#) Responding to the Truth and Reconciliation Commission’s Calls to Action; see also [Truth and Reconciliation – Our Commitment](#).

<sup>53</sup> S.C. 2019, c. 24.

In particular, the CBA Sections support Call **7.4** for resources to support Indigenous health and wellness initiatives that are land-based, and agree it is especially important that prisoners have access to these programs so that they can heal from unresolved trauma, as prisoners often have significant needs for healing. The CBA Sections further support Call **17.27** to develop rehabilitation programs specific to Métis cultural realities, to help address root causes of violence and reduce recidivism. Access to culturally safe and appropriate services is essential to rehabilitation and reintegration. Barriers to support and services for Métis outside their home provinces or territories should also be addressed (**17.5**).

Call **17.7** says that all governments should fund and support culturally appropriate programs and services for Métis people living in urban centres, which is similar to Calls for funding and housing services for Indigenous people and Inuit in urban centres. We note though that no Call addresses culturally appropriate programs and services for all Indigenous people in urban centres. We suggest that this is warranted not just for Métis but for all Indigenous people and youth.

The CBA Sections further support Calls **16.4** and **17.8** recognizing Inuit, Métis and First Nations as distinct peoples. Appreciating that healing and health is not limited to stand alone health centres, we call on governments to develop policies and programs to include healing and health programs under the educational systems, not only for the Inuit (**16.10**) but for all Indigenous peoples to teach Indigenous children appropriate socio-economical coping skills, pride and capacity.<sup>54</sup>

Call **17.8** also addresses the need for cultural competency training for public servants in policing, justice, education, health care, social work and government regarding trauma-informed care, cultural safety, antiracism, Métis culture and history. This is similar to Call **10.1** under “Justice” and takes up the call within the TRC for all public servants.

We support funding and administration of an Inuit Healing and Wellness Fund to support grassroots and community-led programs (**16.9**). This fund must be permanently resourced and administered by Inuit, independent from the government. This is in light of the Nunavut Land Claims Agreement articles 23 and 25, and commitments by government to provide for the housing and economic needs of Inuit. Additionally, the CBA Sections support Call **16.1** in that

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<sup>54</sup> This is consistent with previous CBA statements, for example, see submission on [Bill C-92, Indigenous Child Welfare](#) (CBA: Ottawa, 2019).

governments should honour all socio-economic commitments as defined in land claims agreement and self-government agreements between the Inuit and the Crown.

Further, health and wellness services in Inuit communities should be designed and delivered inclusive of Elders and people with lived experience, as recommended in Call **16.7**.

### **C. Police Services**

The CBA Sections acknowledge that the relationship between police services and Indigenous women, girls and 2SLGBTQQIA people has been defined by colonialism, racism, bias and discrimination, and we support the call to ensure service delivery is culturally appropriate and trauma-informed. As such, we support Indigenous self-determination in the area of policing (**5.4**) and an approach based on Indigenous laws and best practices, rather than being based exclusively on colonial models of policing.

The CBA Sections also support the justice system moving toward greater knowledge, understanding and respect for Indigenous people, and especially the actions recommended in **9.2, 16.27** and **17.13**. Many Calls in this section of the Inquiry report will depend heavily on adequate resources and time to create the necessary culture shift in police services and ensure that those services keep pace with social change (**9.3**). We particularly support the Call for independent, special investigation units to investigate failures to investigate, misconduct and discrimination by police services against Indigenous people (**9.6**). Developing protocols to deal with policing of the sex industry, in consultation with those engaged in the industry, and a specific complaints mechanism about policing in that area would be important for the safety of workers, in our view (**9.10**).

The CBA Sections support employing more Indigenous individuals to work in policing (**9.1-9.11** and **16.32**). However, we also urge governments to support measures that seek to build trust between Indigenous communities and police. For example, the CBA has supported reforms to how law enforcement agencies routinely share information through criminal record check processes.<sup>55</sup> With technological advancements, that information is easily and routinely shared and includes information far beyond simply criminal records. This tends to limit opportunities for Indigenous and marginalized persons more than others. Another example is

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<sup>55</sup> [CBA Resolution 19-03-A](#) Disclosure of Non-Conviction Records.

the ongoing overuse of “carding” or “street checks” of Indigenous people, which was recently reflected in new procedures for Vancouver police published in January 2020.<sup>56</sup>

To this end and as recommended by the Inquiry report, we support new and existing partnerships between police services and Métis communities, organizations and people (17.12) and engaging in appropriate and better communication with Indigenous peoples (17.14). We suggest that this is warranted not just for Métis but for all Indigenous people.

#### **D. Attorneys and Law Societies**

The CBA Sections support the Inquiry’s Call for Crown counsel, defence lawyers, court staff and all who participate in the criminal justice system to receive training in Indigenous cultures and histories, including distinction based training. We believe that all lawyers should receive this training as part of their professional development commitments and the CBA has recently launched an education program to members called, *The Path: Your Journey through Indigenous Canada*.<sup>57</sup>

The Inquiry report’s Call echoes Calls to Action 27 and 28 of the TRC report, which the CBA supported in its submissions on that report. In those same submissions, the CBA stated cultural competency training should address gender inequality from the perspective of Indigenous women. As the Inquiry report states, the training should be developed in partnership with Indigenous communities, and especially Indigenous women, girls and 2SLGBTQIA people.

The CBA Sections recognize that lawyers must have the skills necessary to serve a diverse population of clients professionally, equitably and in a manner that does not further the trauma the justice system can inflict on Indigenous individuals and communities. The CBA organizes national, regional and local conferences, seminars and workshops for lawyers that include components of cultural competency training. As part of the CBA’s response to the TRC Calls to Action, this has been working to further expand cultural competency training to our members and to CBA staff, and will continue to do so.<sup>58</sup>

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<sup>56</sup> See [Vancouver Police Department Regulations & Procedures Manual](#) at 233.

<sup>57</sup> [Truth-and-Reconciliation/Professional-Development](#)

<sup>58</sup> See, for example, *ibid.*

The CBA Sections support the Calls related to lawyers and law societies under **10.1**, **16.43**, and **17.8** for cultural competency training and standards, and for Indigenous courtroom liaison workers to ensure Indigenous people in the court system know their rights and are connected to appropriate services. The CBA Sections recognize the importance of adequately funding and staffing the court system to equitably serve a diverse population, including Indigenous people. We support allocating adequate resources to ensure access to Indigenous court liaison workers as needed in courts across Canada. Indigenous court worker programs currently exist in most, but not all, provinces and territories in Canada. Regular evaluation of these services must continue to ensure access to justice for Indigenous people is improved.

In implementing this Call from the Inquiry report, the provinces and territories could look to their efforts to expand Francophone court services for inspiration. Given the over-representation of Indigenous people in the criminal justice system, the importance of culturally safe and informative services for Indigenous individuals to the improvement of access to justice cannot be overstated.

### **E. Social Workers and Child Welfare**

In 2007, the CBA Resolution, [Rights of the Child in Child Welfare Proceedings](#), recognized that since Canada became a signatory and the UNCRC was ratified in 1991, all Canadian children have the right to be raised by their parents within a family or cultural grouping, the right to express their opinions and to have those opinions heard and acted on and the right to protection from abuse or exploitation.<sup>59</sup> Canada has not yet acted on international obligations to ensure that children's views are heard when the state considers suspension or termination of the relationship between them and their parents in child welfare matters. Provincial and territorial governments make their own decisions about access to publicly funded legal aid for children's legal representation, resulting in a patchwork of services across the country.

CBA Sections support Calls **12.1**, **12.2**, **16.17**, **16.18** and **17.16** aimed at Indigenous self-determination and inherent jurisdiction over child welfare, and at Indigenous communities' control over the design and delivery of child welfare systems for their families and children. Child welfare programs must prohibit the apprehension of children on the basis of poverty and

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<sup>59</sup> Consistent with Articles 3, 6, 9, 12, 19, 34, 35, and 36 UNCRC.

cultural bias (**12.4, 16.9**) and end the practice of targeting and apprehending infants from Indigenous mothers right after they give birth (**12.8**).

With respect to Inuit children and youth, **16.15** calls for the appointment of an Inuit Child and Youth Advocate with jurisdiction over all Inuit children in care. We urge all governments to work with Inuit on this Call and that it be extended to all Indigenous people as appropriate. For Inuit children and youth, this should include culturally and age-appropriate programs to learn about developing interpersonal relationships (**16.22**), identify exploitation (**16.24**) and combat the normalization of domestic and sexualized violence against Inuit women, girls and 2SLGBTQQIA people (**16.23**).

We support Call **12.10** to adopt the Canadian Human Rights Tribunal<sup>60</sup> standards regarding the implementation of Jordan's Principle in relation to all First Nations (status and non-status), Métis, and Inuit children and Call **12.15** to fully investigate deaths of Indigenous youth in care. In relation to suicide of Inuit youth, we call on governments to adequately fund the Inuit Tapiriit Kanatami and appropriately execute it in accordance with the national Inuit Suicide Prevention strategy with Inuit nationally and regionally (**16.12**). We also support Call **7.3**, for governments to support Indigenous-led suicide prevention for all youth and adults.

The CBA Sections endorse Call **12.6** which says that in cases where apprehension is unavoidable, “child welfare services prioritize and ensure that a family member or members, or a close community member, assumes care of Indigenous children” with financial support. We particularly support the call for reform of laws related to youth “aging out” of the system to ensure opportunities for education, housing and supports, including free post-secondary education for all children in care in Canada (**12.11**). We believe that this would help to prevent violence against Indigenous women, girls and 2SLGBTQQIA people and reduce the number of Indigenous people in prison.

Call **12.9** asks for a National Child and Youth Commissioner with the obligation to include strengthening the framework of accountability for the rights of Indigenous children in Canada. This is something the CBA has also urged, and strongly supports.<sup>61</sup> That Call also requires the

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<sup>60</sup> 2017 CHRT 14.

<sup>61</sup> See [CBA Resolution 18-01-A](#) National Commissioner for Children and Youth.

appointment of a Child and Youth Advocate in each jurisdiction with a specialized unit for Indigenous children and youth, which we also endorse.

Call **12.14** requires appropriate care and services for children who have been exploited or trafficked while in care. It seeks to establish more rigorous requirements for safety, harm-prevention, and needs-based services within group or care homes, as well as within foster situations, to prevent the recruitment of children in care into the sex industry. The CBA Sections also support this Call.

In our 2019 submission on Bill C-92<sup>62</sup>, we highlighted the need for predictable, stable, sustainable, needs-based and substantively equal funding for child and family services in Indigenous communities. We sought express affirmation in the Act's preamble for the federal government's international obligation under the UNCRC and United Nations *Declaration on the Rights of Indigenous People*, of independence of dispute resolution mechanisms and the right of Indigenous children to physical, emotional and psychological safety, security and well-being.

The CBA Sections support Calls **12.3** and **16.14** to develop and apply a definition of "best interests of the child" based on distinct Indigenous perspectives, world views, needs and priorities, including the perspective of Indigenous children and youth, as well as their families and communities. In our submission on Bill C-92, we recommended adding a child's gender identity and expression among the needs of the child in weighing "best interests". Further, we recommended adding continuity in the child's care and the possible effect of disruption of that continuity, and the effects on the child of delay in determining the outcome of a case, as factors in determining the best interests of an Indigenous child. The CBA has defended each individual Canadian child's right to a determination of their best interests based on their specific and unique circumstances.<sup>63</sup>

## **F. Extractive and Development Industries**

The Inquiry includes five Calls for Justice that address the safety and security of Indigenous women, girls and 2SLBGTQQIA people in relation to resource extraction and development activities in Canada. Broadly speaking, the Calls address the need to strengthen gender-based

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<sup>62</sup> [Bill C-92](#), An Act respecting First Nations, Inuit and Métis children and youth and families,

<sup>63</sup> See CBA Response to the [Truth and Reconciliation Commission's Call to Action](#) (at 6) and CBA [Child Rights Toolkit](#) (in particular, section on Indigenous Children).

socio-economic assessment at all stages of project planning, assessment, implementation, management and monitoring as well in the negotiation of impact benefit agreements.

These Calls align with the CBA's support for gender-based analysis plus (GBA+) in federal impact assessment, including in decisions as to whether assessment should be undertaken. Section 9(2) of the new federal *Impact Assessment Act* explicitly refers to considerations of the potential impact of a project on the rights of Indigenous women when the Minister of the Environment decides to submit a project to impact assessment.

In particular, Call **13.5** identifies the need for improvements to the social infrastructure in Indigenous communities affected by resource exploration and development projects. This would include adequately resourced and culturally safe policing, social services and health services as potential mitigation measures connected to the approval of projects. The CBA Sections support such recommendations.

Regarding Call **13.3**, the impact benefit agreements are private contracts independent of, although often related to, the impact assessment process for project development. As such, we suggest that any calls for equitable benefits related to project development should be addressed through the obligation of the federal and provincial and territorial governments to consult regarding, and then accommodate, Indigenous interests affected by the project.

Finally, the CBA Sections recommend that the federal government work with provinces and territories to incorporate and implement GBA+ analysis into all impact assessment regimes such that extractive and development initiatives are completed in a manner that protects such interests.

## **G. Correctional Service Canada**

The CBA Sections support initiatives for self-determination in the area of corrections so Indigenous prisoners have access to culturally safe and appropriate services that allow healing from trauma outside of colonial institutions. In 2015, the CBA urged Canadian governments to renew their commitment to addressing the over-incarceration of Indigenous people in correctional institutions and to provide culturally diverse and appropriate programming in those institutions, particularly for Indigenous people.<sup>64</sup>

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<sup>64</sup> CBA [Resolution 15-05-A](#) Programs for Aboriginal Offenders.

In particular, the CBA supports the Call for governments to fund long-term substantial alternatives to incarceration of Indigenous people under section 81, as that would allow Indigenous communities to achieve self-determination for correctional services. Substantial ongoing funding is also needed to support community-based services so Indigenous prisoners can be released to Indigenous communities under section 84 of the CCRA (**14.1, 14.2**).

We question whether Corrections Service Canada would itself be capable of meeting the needs of Indigenous prisoners, as expressed in Call **14.8**, and support funding for Indigenous-led alternatives to incarceration in colonial institutions. There is a pressing need to rescind maximum security classifications of Indigenous women so they can access services to facilitate safe and timely reintegration (**14.3**). We support reform to CSC's security classification tools that would shift the focus from risk to identifying unmet needs, and believe that shift would reduce risk and allow Indigenous prisoners to cascade to lower security and conditional release (**14.4** and **14.5**). These reforms are important for men as well as women, if men are to be able to access services necessary to heal from trauma and end the cycle of multi-generational trauma in Indigenous families and communities.

We recognize the need for comprehensive mental health, addictions, and trauma services for incarcerated Indigenous people that continue upon reintegration into the community (**14.6**). However, these services should be offered independent of CSC, and by Indigenous agencies or in partnership with Indigenous agencies. They should be available to all Indigenous prisoners, including men, with the goal of supporting successful community release and preventing violence. Funding must be available to make sure this happens.

We support the Call to engage with community-based hospitals to provide mental health services to women prisoners rather than transferring them to CSC-run male treatment centres (**14.7**). We support the Call for increased opportunities for prisoners to receive meaningful vocational training and education (**14.9**), and for Elders to have more authority in decision making for Indigenous prisoners (**14.10**) including for therapeutic services.

The CBA also supports using sections 81 and 84 of the CCRA to ensure that Indigenous mothers and their children are not separated (**14.11, 16.30**), as this is an essential step in ending this damaging practice. We echo the Call to end strip-searches (**14.13**), as many clients' report that practice as re-traumatizing to them. Finally, we support the Call to provide programming for men and boys that confronts and ends gender-based violence (**14.12** and **16.12**).

## V. DISTINCTION BASED CALLS

The Inuit, Métis and First Nations are distinct peoples. Work on implementing the Inquiry report must recognize the distinct needs and governance structures of each population, and appreciate the internal diversity with each Inuit, Métis and First Nations community. Our comments on the distinction based Calls are primarily integrated throughout this submission.

### 2SLGBTQIA

The CBA Sections recognize the need for police services, police services boards, and coroners to improve the quality of service offered to 2SLGBTQIA communities. Calls **18.12**, **18.13**, **18.14**, and **18.23** are important steps relating to these issues.

The CBA Sections endorse Call **18.12**, which calls for all police services to better investigate crimes against 2SLGBTQIA people and ensure accountability for investigations and handling of cases involving 2SLGBTQIA people. To work toward this Call, we recommend that all police services boards and police services maintain independent community-based 2SLGBTQIA consultative committees.

We also support Call **18.13**, which requires all police services to engage in education regarding 2SLGBTQIA people and experiences to address discrimination, especially homophobia and transphobia in policing. As part of this education, the CBA Sections recommend that training on 2SLGBTQIA issues in policing be an annual mandatory component of police officer training.

The CBA Sections endorse Call **18.14**, which says that all police services should take appropriate steps to ensure the safety of 2SLGBTQIA people in the sex industry. To inform this process, the CBA Sections recommend that police services proactively consult with sex worker advocacy and representative organizations, locally and nationally.

The CBA Sections recognize that persons who do not identify on the gender binary face serious and pressing challenges in the correctional context. Calls **18.21** and **18.22** are important steps to address this issue. To that end, the CBA Sections endorse Call 18.21, for provincial and territorial correctional services to engage in campaigns to build awareness of the dangers of misgendering in correctional systems and facilities and to ensure that the rights of trans people are protected. In addition, the CBA Sections endorse Call **18.22**, for federal, provincial and territorial correctional services to provide dedicated 2SLGBTQIA support services and cultural supports.

Call **18.23** would require coroners involved in the investigation of missing and murdered Indigenous trans individuals and individuals with non-binary gender identities to use gender-neutral or non-binary options for coroners' reports and information related to crimes. We endorse this proposal.

## **VI. CONCLUSION**

The CBA Sections support the primary goals underlying the National Inquiry's Calls for Justice, to stop violence against Indigenous women and girls, and discrimination based on gender, orientation, poverty, ethnicity, and age. We echo the Calls to all Canadians to, among other things:

1. Denounce and speak out against violence against Indigenous women, girls and 2SLGBTQQIA people (**15.1**).
2. Confront and speak out against racism, sexism, ignorance, homophobia and transphobia (**15.5**).
3. Protect, support and promote the safety of women, girls and 2SLGBTQQIA people by acknowledging and respecting the value of every person and every community, as well as the right of Indigenous women, girls and 2SLGBTQQIA people to generate their own, self-determined solutions (**15.6**).